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**EAST AFRICAN COMMUNITY  
EAST AFRICAN LEGISLATIVE ASSEMBLY**



**COMMITTEE ON LEGAL, RULES AND PRIVILEGES**

**REPORT ON THE PUBLIC HEARINGS ON THE EAC COUNTER-TRAFFICKING IN  
PERSONS BILL, 2016**

**4<sup>TH</sup> TO 8<sup>TH</sup> SEPTEMBER 2016**



Tabled by Hon. Ussi  
Tahaya, Representing  
Chair, Legal, on  
13/10/16.









## **1.0 INTRODUCTION**

Trafficking in Persons is internationally defined as a means of recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The exploitation could be in form of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, armed conflict or removal of human organs. The main cause of this evil is commercial sex activities, need for cheap/free labour, armed conflicts and the illegal use of human organs. It is one of the Transnational Organized Crimes perpetuated by criminal syndicates all over the world. It can be committed within a national or between nations and sometimes it does not involve transportation because victims can be kept in a secret place within the same country or locality.

The International Organization for Migration (IOM) estimates that, in 2001, between 700,000 and 2 million women and children were trafficked across international borders. There is increasing evidence that a significant amount of this activity is associated with armed conflict. Trafficked women and girls face severely compromised physical and mental health, in particular reproductive health problems due to rape, sexual abuse, STIs, including HIV/AIDS, trauma and unwanted pregnancies. The conditions that push women and girls into forced labour, trafficking and other forms of exploitation stem from a combination of internal and external factors. Pre-war systems of gender inequality, war economies, criminal syndicates, and the destruction and destabilization of livelihoods combine to place women and girls at high risk of









trafficking. Trafficking is fostered by transition, instability, poverty, disintegrating social networks, and disintegrating law and order in sending, transit and receiving countries. Corruption contributes to trafficking. The inefficiency, as well as the complicity of the law enforcement and military personnel in some countries, allow traffickers to function since they do not fear arrest, prosecution or conviction.

The conclusion of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially on Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime is one of the global efforts to suppress this vice. Member States of African Union agreed to suppress this crime especially to women and children through the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. All EAC Partner States are part to both Protocols. Within the East African Community, Article 124 of the Treaty for the Establishment of the East African Community, read together with Article 12 of the Protocol on Peace and Security requires Partner States to undertake joint operations in controlling and preventing transnational and cross-border crimes including human trafficking.

In 20<sup>th</sup> August 2015 this Assembly passed a Resolution to Call for an Urgent Action to Prevent Trafficking in Persons, Protect Victims of the Crime of Trafficking in Persons and Prosecution of Perpetrators of Trafficking in Persons in the East African Community. In that Resolution, the Assembly inter alia urged the East African Community to enact an anti-trafficking in persons legislation to address the cross border aspect of trafficking in persons.









The EAC Counter Trafficking in Persons Bill, 2016 was introduced as a private Member's Bill by Hon. Dora C. K. Byamukama and thereafter referred to the Committee on Legal, Rules and Privileges. The object of this Bill is to provide a legal framework at the East African Community level to-

- i. prevent and counter-trafficking in persons, paying particular attention to women and children; and vulnerable members of the society;
- ii. protect and assist the victims of trafficking in persons in a manner that respects their human rights; and
- iii. promote cooperation and harmonized action among the Partner State in order to prosecute perpetrators and comprehensively counter trafficking in persons.

The Committee on Legal, Rules and Privileges carried out Public Hearings in the five Partner States on the EAC Counter-Trafficking in Persons Bill, 2016 from 4<sup>th</sup> to 8 September, 2016.

## **2.0 Objectives of the Public Hearings**

The overall goal of the public hearings was to facilitate involvement of EALA Members, Partner States, Civil Society Organisations and experts in the legislative process of this Bill. Specifically, the public hearings facilitated exchange of knowledge, information, and experiences among the stakeholders for the purpose of enriching the Bill.

## **3.0 Methodology**

During the consideration of the Bill, the Committee:

- i) conducted public hearings in the EAC Partner States during which we received stakeholder views on the Bill,
- ii) reviewed literature on the subject matter of trafficking in persons,







- iii) held a meeting to consider the draft report on the Bill.

## **4.0 FINDINGS AND OBSERVATIONS**

### **4.1 GENERAL FINDINGS**

The Committee noted that the crime of trafficking in persons is prevalent in all EAC Partner States. In comparing the magnitude of the problem in EAC Partner States with other countries, the Committee referred to the Trafficking in Persons Report published yearly by the Department of State of the United States of America. These reports rankings all countries in the world into three TIERS: TIER 1, TIER 2, TIER 2 Watch List, and Tier 3 basing on the government's efforts against trafficking as measured by the Trafficking Victims Protection Act of 2000<sup>1</sup> (TVPA) standards. The key parameters considered in ranking countries are actions taken by that country in the prosecution, protection and prevention sections of that country.

TIER 1 comprises countries whose governments fully meet the Trafficking Victims Protection Act's (TVPA) minimum standards. TIER 2 which comprises countries whose governments do not fully comply with the TVPA minimum standards, but are making significant efforts to bring themselves into the compliance with those standards. TIER 2 Watch List comprising countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND:

- i. The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

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<sup>1</sup> The USA Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended.







- ii. There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
- iii. The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

Lastly, TIER 3 comprises countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

According to the Trafficking in Persons Report published in 2016 the Republic of Kenya and the Republic of Uganda are grouped under TIER 2. The Republic of Rwanda and the United Republic of Tanzania are ranked under TIER 2 Watch List while the Republic of Burundi is ranked under TIER 3.

The Committee also noted that the Republics of Burundi, Kenya, Uganda and the United Republic of Tanzania have specific laws on counter-trafficking in persons which are in line with the UN Protocol. However, the penalties for offences under the laws of Partner States differ from one jurisdiction to another. The Republic of Rwanda is yet to enact a specific counter-trafficking in persons law however, offences and penalties for trafficking in persons are provided for under the Penal Code.

## **4.2 SPECIFIC FINDINGS**

### **4.2.1 THE REPUBLIC OF BURUNDI**

The following were comments and issues that emerged during public hearings in the Republic of Burundi:







- i. There is need for Partner States to develop strategies to prevent practices that could lead to human trafficking such as early/child marriages and adoption;
- ii. Children without family care including those in institutions are likely to be trafficked;
- iii. Parents should be encouraged to take measures to keep their children within the family;
- iv. Embassies and missions abroad should be tasked to liberate and repatriate victims found where they are;
- v. Training provided under the Bill should include human rights, gender and specific need of affected children;
- vi. The Bill should include issues relating to protection of witness;
- vii. Partner state should be required to have programs to provide for physical, psychological and social recovery of victims;
- viii. The minimum sentence for offences committed by a civil servant, parent, guardian or care giver for a child should be 15 years;
- ix. The Bill should also provide for a minimum sentence for fine; and
- x. The law need to provide for the exchange of perpetrators of trafficking in persons arrested in a foreign countries;

#### **4.2.2 THE REPUBLIC OF KENYA**

The following were the comments and views that emerged from stakeholders in the Republic of Kenya:

- i. The Bill should address employment agents who sometimes engage in recruiting people for trafficking and not for employment;
- ii. The proposed minimum penalty of ten years of imprisonment is lenient;
- iii. While it was the stakeholders wish that the law be enforceable even outside EAC, this is not possible. However, Bilateral arrangements need to







be made with other countries outside the region to facilitate the repatriation of victims.

- iv. The law need to cover traffickers who use EAC as a transit area;
- v. People with disability including albinism and other vulnerable groups are not clearly addressed in the Bill;
- vi. Trafficking in human parts is extremely serious because in most cases victims are killed in order to get their parts;
- vii. The ongoing child adoption in Africa is one form of trafficking in children in our continent, therefore the law should address it. Also the law should provide for penalties to officials who breach confidential information especially those relating to victims;
- viii. Offences relating to promotion and facilitation of trafficking in persons should be included in the Bill;
- ix. The services to be provided to victims should include re-settlement and re-integration (the issue of stigmatization);
- x. Issues of asylum seekers, document recovery and children of the victims should be considered in the Bill;
- xi. The law should address issues of witness and victim support and protection;

#### **4.2.3 THE REPUBLIC OF RWANDA**

The following comments and views arose during the public hearings in the Republic of Rwanda:

- i. Under Part I Clause 3 on Objectives, it was proposed to include point (d) on the creation of a special unit, such as specialized police units and judicial structures to ensure timely response and protection of victims of the crime of trafficking in persons in every Partner State;









- ii. The Bill does not have provisions on protection of witnesses;
- iii. The Bill should create a provision for the arrest of suspects and search without a warrant of premises suspected to be holding victims;
- iv. The Bill is silent on the transfer of criminal proceedings and prisoners (Extradition);
- v. Clause 15 (4) requires Partner States to provide employment opportunities for victims. There is need to reconsider this clause since it may attract self-victimization;
- vi. Obstruction of justice and participation in organized criminal groups should be included as part of related offences;
- vii. Under the clause on repatriation of victims it was proposed that the Bill creates a provision for the return of a trafficked person from the hosting Partner State and this should be preceded by a risk assessment and with due regard for his/her safety to the home country;
- viii. The Bill should prioritize the prosecution of trafficking in persons rather than related offences;
- ix. Under Clause 6 and 7 the Bill does not draw a distinction between "traffickers" and "persons" who facilitate the commission of the crime;
- x. Clause 4 (7) may be revised to be clearer because it is not succinct on whether it a person who destroys documents for the perpetrator of trafficking in person or documents for the victim;
- xi. Under Clause 6 (1) on restitution, it should be mandatory to a person convicted for the offense of trafficking in persons to retribute the victims;
- xii. Clause 10 (a) and (d) seem to be inter-twined and may be merged as they are stating on the development of policies & programs;
- xiii. Under Clause 15, there is need to have clear national referral mechanisms for victim protection and assistance. There is also need to put in place









mechanisms in each Partner State to facilitate the contact between victims and their families because in some cases families reject family members who have been victims;

- xiv. Other than forfeiture of proceeds of crimes, the law should also include confiscation of properties and award of damages to victims;
- xv. The Bill should have a provision for the sharing of the burden of taking care of victims between the concerned Partner States and relatives of victims especially where the family had a hand in the commission of the offence; and
- xvi. Stakeholders in the Republic of Rwanda proposed for the abolition of international adoption of children in the East African Community

#### **4.2.4 THE UNITED REPUBLIC OF TANZANIA**

The following comments and issues that emerged during public hearings in the United Republic of Tanzania:

- i. The East African Community has a Technical Team working on the harmonization of laws relating to the Community, therefore, they suggested that this Bill be brought to the attention of the Technical Team for their technical inputs;
- ii. The Bill does not provide for the protection of people with disabilities;
- iii. The Bill is silent on the protection of witnesses;
- iv. The law should criminalize perpetrators, promoters and facilitators of the offence;
- v. Having different penalties among the Partner States will affect countries with lenient penalties because traffickers will be concentrating in those countries;







- vi. The burden of taking care of the victims should be shared between Partner States, EAC, and even family members of the victims;
- vii. Apart from forfeiture of proceeds of crimes, the law should also include confiscation of properties and award of damages to victims;
- viii. The Bill is silent on the rehabilitation of victims of trafficking in persons;
- ix. Institutions in Partner States should be designated to implement this law instead of creating other institutions;
- x. Some of the offences need to be included: trafficking by intermediary, severe trafficking and subsequent offenders and facilitating the commission of the offence;
- xi. Offences relating to body corporate should be limited to the concerned directors and managers and not to the entire corporate to avoid punishing innocent persons;
- xii. Immunities from offences relating to immigration is interfering with the immigration laws of Partner States;
- xiii. Requiring all proceedings to be held in camera is not good practice. Whether in camera or not should be a case by case issue determined by courts;
- xiv. Use of appropriate housing is ambiguity. The most important is for the victims to get "dwelling places" (Clause 15(4) (a) and 15 (5);
- xv. Provision of employment to victims is a difficult thing to Partner States because already there are many unemployed people among the citizens (Clause 15 (4) (d); and
- xvi. It was noted that with victims remaining permanently in receiving Partner States is in contravention of immigration laws and also places a burden on the Partner States (Clause 16 (1)).







#### **4.2.4 THE REPUBLIC OF UGANDA**

The following were the comments and issues that emerged during public hearings in the Republic of Uganda:

- i. The role of Foreign Missions in stemming human trafficking does not come out in the Bill;
- ii. The EAC Partner States should form specialised units or focal point offices to handle various aspects of human trafficking like child labour, and prostitution;
- iii. There is need for a mechanism to address the problem of transnational/regional syndicates in the EAC;
- iv. Recruitment agencies need to be controlled and supervise because they are sometimes used to recruit people for human trafficking;
- v. The Partner States should consider establishing a special fund to assist/help victims of human trafficking;
- vi. While the Bill provides for training of prosecutors, little is mentioned about investigators;
- vii. There is need to benchmark the Kenyan model of having Shelters to help victims outside the EAC region. Kenya has a Shelter in Malaysia and her nationals in the Far East are supported under this arrangement;
- viii. The EAC Partner States need to come up with a framework of co-operation in the protection of victims of human trafficking outside the region. A protocol should be signed to this effect;
- ix. The Bill provides for a penalty of imprisonment of the perpetrators of the offence trafficking persons upon conviction. However, it does not provide for a corresponding penalty of a fine;
- x. There is need to differentiate "Restitution" and "Compensation" in the Bill especially in reference to Clause 6;







- xi. In the Bill, "Shelter" should be used instead of "Housing" especially in respect of Clause 15; and
- xii. There is need to step up sensitisation on this Bill and other related pieces of legislation because some of the offences like child labour are committed out of ignorance by both the victims and the perpetrators.

## **5.0 CONCLUSION**

The Committee appreciates the overwhelming support the Bill received from all Partner States and for the commendable participation by the stakeholders. The stakeholders we interfaced with were happy with most of the Clauses of the Bill, likewise they proposed important amendments to further enrich the Bill. The Committee hereby presents its report on the Bill and recommends that the House debates and adopts the proposed amendments attached hereto.

## **6.0 ACKNOWLEDGEMENTS**

The Committee would like to express deep appreciation to all organs, institutions and individuals who facilitated and enabled the Committee to undertake this critical activity. Specifically the Committee acknowledges the Rt. Hon. Speaker of EALA for opportunity afforded to the Committee to carry out the Public Hearings and the Clerk of EALA for the facilitation extended to the Committee.

Further still, special thanks goes to all Ministries/State Departments for East African Affairs for coordinating this activity in their respective Partner States, line ministries for their active participation, international organizations and civil societies for their valuable inputs.


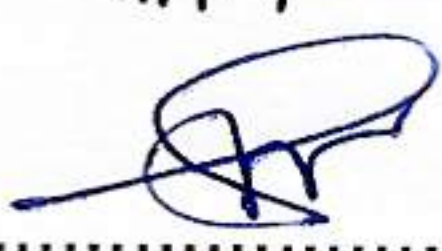
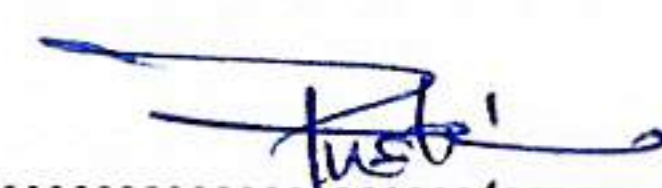

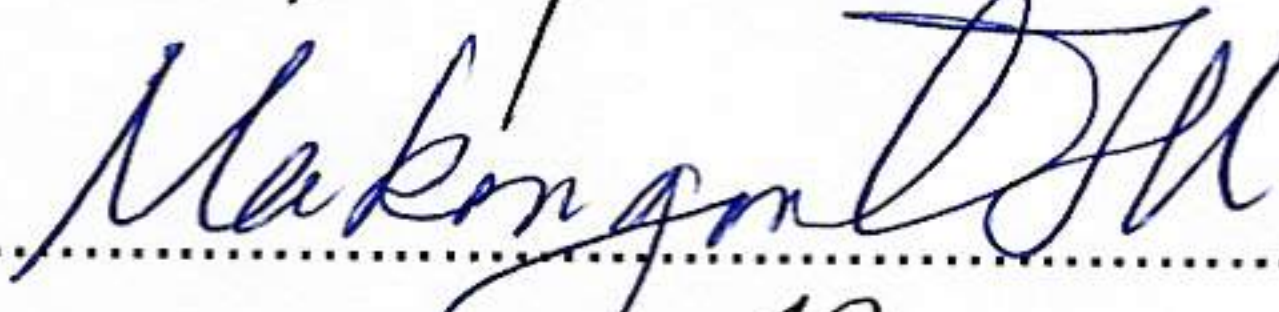

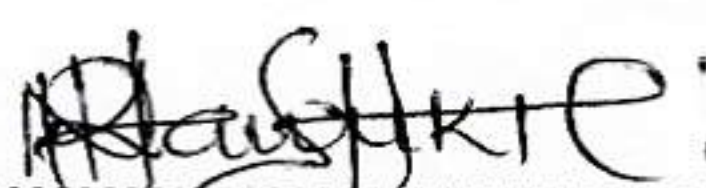
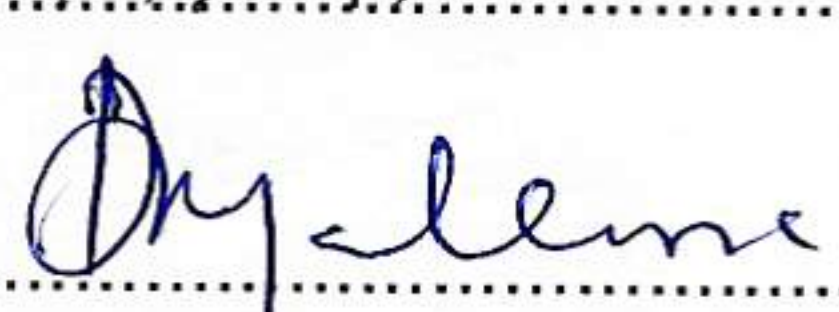
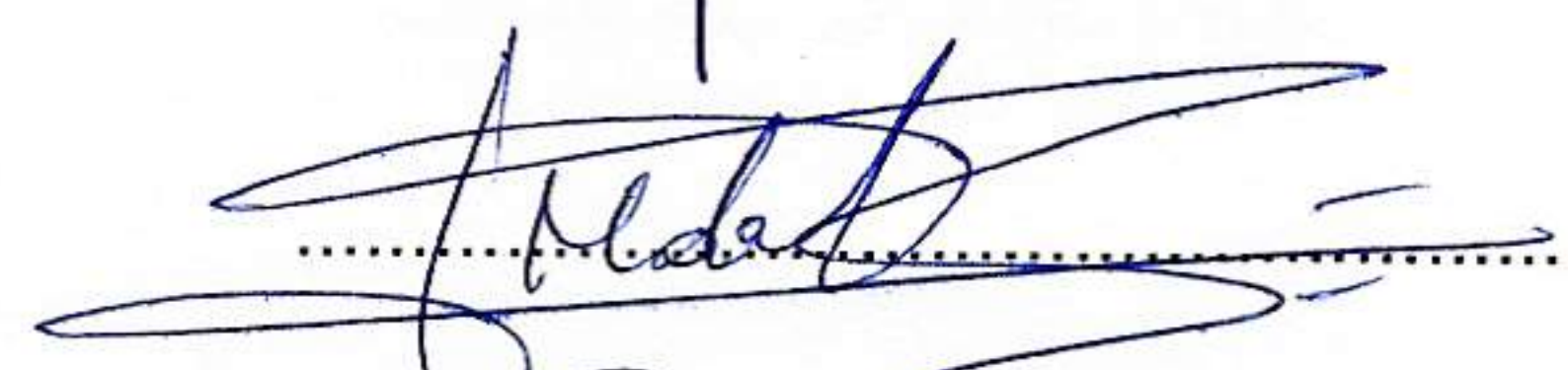

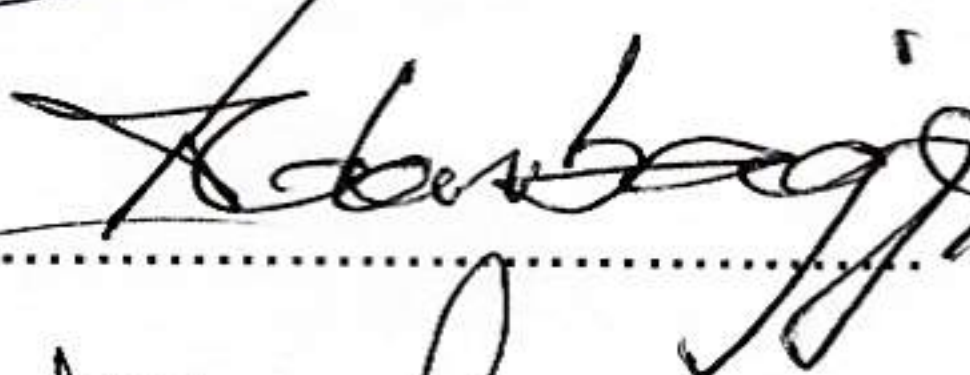

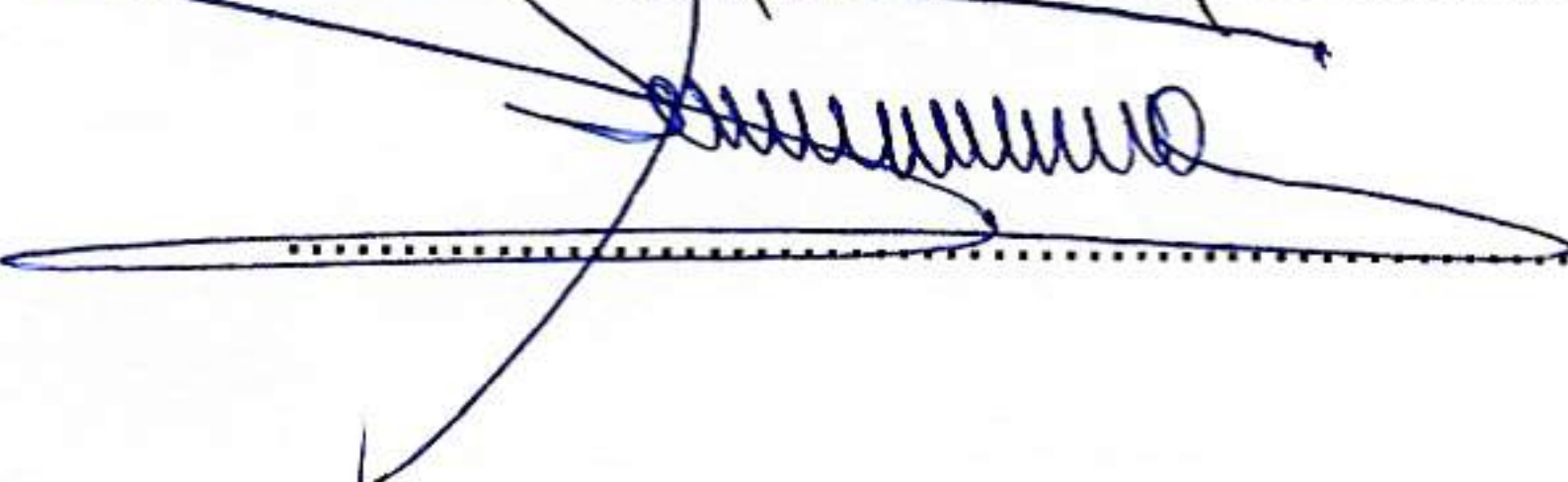






**REPORT OF THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE  
EAC COUNTER-TRAFFICKING IN PERSONS BILL, 2016**

**4<sup>TH</sup> – 8<sup>TH</sup> AUGUST 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. Valerie Nyirahabineza |  |
| 14. Hon. Martin Ngoga          |   |







## ANNEX I







**PROPOSED AMENDMENTS TO BE MOVED AT COMMITTEE STAGE BY THE CHAIRPERSON OF THE COMMITTEE ON LEGAL RULES AND PRIVILEGES ON THE EAC COUNTER TRAFFICKING IN PERSONS BILL, 2016.**

Clause 2

Clause 2 is amended-

- (a) By replacing the words "this Treaty" appearing in the definitions of "Assembly" and "cooperation" with the words "the treaty";
- (b) By inserting in their proper alphabetical order, the following new definitions-

"gender" means the roles, duties and responsibilities which are culturally or socially ascribed to women and men , girls and boys;

"Treaty" means the Treaty for the Establishment of the East African Community;

"vulnerable groups" means population groups which, as a result of having the least access to public, economic and other resources, or as a result of their sex, physical ability, migrant status or age, are the least capable of maintaining subsistence, and easily fall prey to violation of their human rights;

"persons with disabilities" means persons who have long-term physical, mental, intellectual, developmental or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others;

**JUSTIFICATION:**

To enhance clarity.





#### Clause 4

Clause 4(1) (a) is amended by deleting the word "another" appearing before the words "or harbours"

#### JUSTIFICATION

The word is unnecessary

#### Clause 8

Clause 8 of the Bill is replaced with the following new clause-

"Where a person provides evidence that he or she is a victim, that person shall not be liable to prosecution for any offence that is a direct result of the offence of trafficking in persons committed against him or her."

#### JUSTIFICATION

Providing immunities against immigration and penal laws should be left to the relevant laws in the Partner States.

#### Clause 11

Clause 11(3) of the Bill is amended by adding the following new paragraph after paragraph (f)-

"(g) any other relevant training relating to counter-trafficking in persons".

#### JUSTIFICATION

For clarity and best practice.

#### Clause 17

Clause 17 (2) is amended by deleting the words "and shall preferably be voluntary" appearing at the end of the subclause.

#### JUSTIFICATION

To provide certainty and predictability in the law.