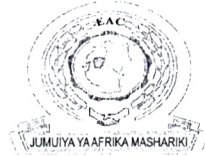
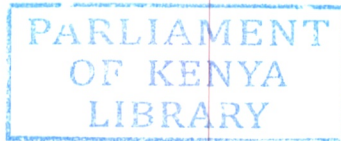


Laid on Table on 9th June 2022

EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY



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COMMITTEE ON LEGAL, RULES AND PRIVILEGES

REPORT OF THE COMMITTEE ON THE ASSESSMENT OF THE STATUS OF THE
RATIFICATION AND IMPLEMENTATION OF EAC PROTOCOLS & EAC LAWS BY
THE PARTNER STATES

9TH TO 12TH FEBRUARY 2022

EAC PARTNER STATES

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1.0 INTRODUCTION

1.1 PROTOCOLS OF THE COMMUNITY

Article 151 of the Treaty for the Establishment of the East African Community, empowers the Partner States to conclude Protocols as may be necessary for each area of co-operation. Protocols are approved by the Summit on the recommendation of the Council. Once approved, Protocols are subject to signature and ratification by the Partner States. Protocols enters into force upon ratification and depositary of the ratification instruments with the Secretary General by all Partner States.

Since the coming into its operation, the EAC concluded a number of Protocols, some of which entered into force after ratified by all Partner States while others are not yet in force because they are not fully ratified.

The non-ratification of Protocols delays the implementation of the respective Protocols and consequently affects negatively the attainment of the objectives of the Community as specified by the Treaty and the relevant Protocols. The table below shows the list of Protocols that were not fully ratified by the time of undertaking of this activity.

Table 1: Protocols Pending Ratification by Partner States

SN	PROTOCOL	NOT YET RATIFIED BY
1	Protocol on Immunities and Privileges	The Republic of Burundi
2	Protocol on Cooperation in Meteorological Services	All Partner States
3	Protocol on Sanitary and Phytosanitary Measures	The United Republic of Tanzania
4	Protocol on Information, Communications and Technology	The United Republic of Tanzania, the Republic of Kenya and the Republic of Burundi
5	Protocol on Extended Jurisdiction of	The Republic of Burundi, the Republic

	the East African Court of Justice	of Uganda and the United Republic of Tanzania
6	Protocol on Foreign Policy Coordination	The United Republic of Tanzania
7	Amendment to Article 24 (2) of the Protocol on the Establishment of the East African Community Customs Union	All Partner States

Source: Information from the EAC Secretariat

1.2 LAWS OF THE COMMUNITY

In accordance with Article 62 of the Treaty, enactment of the legislation of the Community shall be effected by means of Bills passed by the Assembly and assented to by the Heads of State. Section 12 of the Laws of the Community (Interpretation) Act, 2003 provides that every Act published in the Gazette and, upon such publication, shall be a public Act and shall be judicially noticed.

Further, Section 14 of the legislation referred above provides that an Act shall come into force on the date of its publication in the Gazette or if it is provided in that Act that some or all of its provisions shall come into force on some other date whether before or after the date of publication, those provisions shall come into force on that other date.

The East African Community have enacted a number of laws which some commenced their application on the dates specified by the Council when the laws were published. However, it is possible for laws duly enacted and are in force not to be implemented by the Community and some Partner States.

Premised on the above introduction, the Committee on Legal, Rules and Privileges, decided to execute its oversight role by conducting an activity to assess the status of ratification of all protocols concluded by the EAC and the implementation of the laws of the Community which are already in force.

2.0 OBJECTIVES

The main objective of this activity was to assess the status of ratification of concluded Protocols and to assess the implementation of laws of the Community by the Partner States. The specific objectives were the following:

- i. To understand the reasons for the delay in the ratification of Protocols;
- ii. To assess the readiness of the Partner States that have not ratified some Protocols to ratify them;
- iii. To interact with the Partner States on the important of fast tracking the ratification of pending Protocols;
- iv. To assess the implementation of laws of the Community by the Partner States;
- v. To understand the challenges which Partner States face in the implementation of the laws of the Community; and
- vi. To understand the level of awareness of the people of the East African Community with regard to Protocols and laws of the Community.

3.0 METHODOLOGY

The Committee undertook this activity by conducting meetings with government officials and the relevant stakeholders in the Partner States. On the ratification of Protocols, the Committee focused on the Protocols pending ratification in each Partner State.

On the aspect of implementation of the laws of the Community, the Committee assesses the implementation of the East African Community Vehicle Load Control Act, 2016.

The Republic of South Sudan joined the EAC while all the Protocols included in the table above were already concluded, therefore RSS is not required to ratify them. For that

reason, in the Republic of South Sudan, this activity focused on preparedness of the country to implement the EAC Protocols.

PART I

4.0 STATUS OF RATIFICATION OF THE EAC PROTOCOLS

4.1 REPUBLIC OF BURUNDI

4.1.1 PROCESS OF RATIFICATION OF PROTOCOLS IN THE REPUBLIC OF BURUNDI

The Ministry of EAC Affairs, Youth, Sports and Culture takes stock of all the Protocols, laws and other correspondences from the EAC Headquarters. When received, the Ministry coordinates the action due.

- i. Once a protocol is concluded by the EAC, the Ministry in charge of EAC Affairs receives the Protocol and transmit to the relevant Ministry for comments;
- ii. After receiving feedback from the relevant Ministry, the Protocol is forwarded to the Ministry of Justice for legal input and interpretation;
- iii. The relevant Ministry sends the Protocol to the office of the Prime Minister who is in charge of government business in the National Assembly. The Prime Minister will table the Protocol to the Cabinet for approval and onwards to National Assembly;
- iv. If the National Assembly adopts the Protocol, it will be is sent to the President for Assent; and
- v. After Assent, the Minister in charge of EAC Affairs will deposit the Instrument of Ratification to the Office of the Secretary General.

4.1.2 PROTOCOLS PENDING RATIFICATION BY THE REPUBLIC OF BURUNDI

The Republic of Burundi reported to have four pending protocols whose depository has not been done yet. These are, Protocol on Immunities & Privileges, Protocol on Cooperation in Meteorological Services, Protocol on Information, Communication & Technology and Protocol on the Extended Jurisdiction of the EACJ. Efforts are underway to have these protocols ratified.

Table 2: Status of Ratification of Protocols Pending in the Republic of Burundi

SN	PROTOCOL	STATUS
1	Protocol on Immunities and Privileges	The Committee was informed that this Protocol has gone through all the processes of ratification. The instrument of ratification was deposited on 8 th June 2022
2	Protocol on Cooperation in Meteorological Services	The Protocol was transmitted to the Ministry in charge of Environment for consideration
3	Protocol on Information, Communication and Technology	The Protocol was forwarded to the relevant Ministry. There are some areas in the opinion of the Republic of Burundi that need to be improved. Comments on this Protocol will be submitted to the Secretariat for consideration
4	Protocol on the Extended Jurisdiction of the EACJ	All concerned departments have already given their positive feedback on this Protocol. it is now in the President's office for assent and subsequent depositary of the ratification instrument.

4.1.3 CHALLENGES ENCOUNTERED IN THE RATIFICATION OF PROTOCOLS

The biggest challenge is limited communication between government departments when it comes to follow up on EAC Protocols. A concern was raised by Members of the National Assembly that whereas the national Assembly of Burundi is willing to approve the ratification EAC Protocols, the relevant Ministry does not bring Protocols on time.

In June 2021, the Ministry of EAC Affairs conducted a meeting with institutions and stakeholders to identify the pending Protocols and the challenges that caused the delay in ratification.

4.2 REPUBLIC OF KENYA

4.2.1 THE PROCESS OF RATIFICATION OF PROTOCOLS IN THE REPUBLIC OF KENYA

The process of ratification of Protocols is governed by the Treaty Making and Ratification Act, 2012. The Executives are responsible for the negotiation and ratification process of Protocols and Treaties in Kenya. Once a decision to engage the Republic of Kenya in negotiation for a Protocol or Treaty is taken, the relevant Ministry in consultation with the Ministry of Foreign Affairs, the Office of the Attorney General and the Department of Justice prepares proposals and position paper. Thereafter a negotiating team is nominated to form part of the government delegation to negotiate the draft treaty in the interest of the people of Kenya.

Where the Republic of Kenya has signed a Treaty or where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant Ministry or State Department shall in consultation with the Cabinet Secretary for Foreign Affairs and the Attorney General prepare and submit to the Cabinet, the Treaty and a Memorandum seeking approval to ratify it.

Once the Cabinet approves, the Cabinet Secretary for Foreign Affairs shall within a reasonable time submit the Treaty and a Memorandum on the Treaty to the Speaker of the National Assembly. The Speaker of the National Assembly shall refer the Treaty together with the Memorandum to the relevant Committee(s) for consideration. The relevant Committee(s) shall ensure public participation in the ratification process in accordance with the laid procedures. The National Assembly may approve, approve with reservation to a particular Article (s) or disapprove the ratification of a Treaty.

Where the National Assembly approve the ratification of a Treaty, the Clerk of the National Assembly shall submit the Resolution of the House to the relevant Cabinet Secretary confirming the Treaty has been duly considered and ratified by the National Assembly. The relevant Cabinet Secretary, shall within thirty (30) days from the date of the approval of the ratification request the Cabinet Secretary for Foreign Affairs to prepare the Instrument of Ratification.

The Ministry of Foreign Affairs shall, prepare the Instrument of Ratification for signature by the Cabinet Secretary for Foreign Affairs. The Cabinet Secretary for Foreign Affairs thereafter shall cause the deposit of the signed Instrument of Ratification with the relevant depository office and also undertake to register the Treaty with the Secretary General of the United Nations pursuant to Article 102 of the Charter of the United Nations. The copy of the instrument shall be filed with the Registrar of Treaties.

4.2.2 STATUS OF RATIFICATION OF EAC PROTOCOLS BY THE REPUBLIC OF KENYA

Whereas Table 1 above indicates that the Republic of Kenya has not ratified three Protocols, the Republic of Kenya informed the Committee that it ratified and deposited the instrument of ratification of the follows Protocols:

- a) The Protocol on Cooperation in Meteorological Services was ratified on 31st March, 2019 and the instrument was deposited in July 2019; and
- b) Protocol on Information, Communications and Technology was ratified on 30th October 2019 and the instrument was deposited in December 2019.

The EAC Secretariat confirmed that the Republic of Kenya ratified the Protocol on Information, Communication and Technology and deposited the Instrument of Ratification on 30th October 2019.

The Committee was informed that the Republic of Kenya is yet to ratify the Amendment to Article 24 (2) of the Protocol on the Establishment of the East African Community Customs Union. The amendment was considered by the Committee on Regional

Integration, which recommended for the ratification. The report will be tabled before the Committee of the Whole House of the National Assembly for final decision. The delay in the ratification of this amendment was occasioned by the reconstitution of the leadership of the Committee of the Whole House and the Committee on Regional Integration. The report will be tabled once the Chairperson of the Committee on Regional Integration is dully appointed.

4.3 REPUBLIC OF RWANDA

4.3.1 RATIFICATION OF EAC PROTOCOLS IN RWANDA

According to Article 167 of the Constitution of Rwanda, the power to negotiate and sign international treaties and agreements is vested with the President of the Republic or his/her delegate. The same Article also indicates that, *"international treaties and agreements concerning armistice, peace, commerce, accession to international organizations, those which commit state finances, those requiring modification of national legislation or relating to the status of persons can only be ratified after approval by Parliament"*.

Also, Article 167 elaborates that, treaties and agreements ceding or exchanging part of the territory of Rwanda or adding a territory of another country to Rwanda cannot be ratified without the consent of Rwandans through a Referendum.

Once a Protocol is approved at the EAC level and adopted by the Summit of Heads of State, it is sent to Partner States for ratification. Regarding with the nature of the Protocol as stipulated under article 167 of the Constitution of Rwanda, a Protocol can be ratified by a Presidential Decree.

For a protocol that concerning armistice, peace, commerce, accession to international organizations, those which commit state finances, those requiring modification of national legislation or relating to the status of persons can only be ratified after approval by the Parliament. Once such a Protocol is adopted by the Summit and

forwarded to Rwanda for ratification, the Ministry for EAC Affairs shall table the Protocol to the Parliament for approval. Under this process the parliament will be guided where necessary by the Minister of Justice for clarification and enlightenment before the Parliament passes a law which ratifies the Protocol.

After the Protocol is ratified by the Parliament, the Ministry responsible for the EAC Affairs submits the instruments of ratification to the Secretary General.

4.3.2 STATUS OF RATIFICATION OF EAC PROTOCOLS BY THE REPUBLIC OF RWANDA

The Committee was informed that the Republic of Rwanda have not yet ratified the following protocols:

- a) Protocol on Cooperation in Meteorological Services, and
- b) Amendment of Article 24 (2) of the Protocol on the Establishment of the EAC Customs Union.

The Committee was further informed that the Protocol on Cooperation in Meteorological Services need to be revived from the Ministry responsible for meteorology for the ratification process of the Protocol to take place. The delay was occasioned by the reshuffling of the ministries. Initially meteorology was under the Ministry of Infrastructure but later it was shifted to the Ministry of Environment.

The Committee was also informed that on the amendment of Article 24(2) of the Protocol on the Establishment of the EAC Customs Union, the Protocol is under review and will be processed for ratification.

The Republic of Rwanda is ready and willing to ratify all the EAC protocols, since these Protocols once ratified become integral part of the EAC Treaty, and Rwanda has a political will on implementing the Treaty to its best. On the other hand, Rwanda is aggravated with other Partner States which delays in ratification of EAC Protocols.

4.4 REPUBLIC OF UGANDA

4.4.1 RATIFICATION OF PROTOCOLS IN UGANDA

The representatives from the Ministry of Justice informed the Committee that the Constitution of the Republic of Uganda of 1995, Article 123 (2), is to the effect that the Parliament shall make laws to govern ratification of treaties, conventions, agreements, or other arrangements made under Clause 1 of Article 123 which are between Uganda and other countries. Section 2 of the Ratification of Treaties Act Cap 204 states that all treaties shall be ratified as follows,

- a) By the Cabinet in case of any Treaty other than a Treaty referred to in paragraph (b) of this section; or
- b) By the Parliament:
 - i. Where the Treaty relates to the armistice, neutrality or peace; or
 - ii. in the case of a Treaty in respect of which the Attorney General has certified in writing that its implementation in Uganda would require an amendment of the Constitution.

The law further stipulates that the instrument of ratification of a Treaty shall be signed, sealed, and deposited by the Minister responsible for Foreign Affairs.

4.4.2 STATUS OF RATIFICATION OF EAC PROTOCOLS IN UGANDA

Whereas Table 1 above indicates that the Republic of Uganda has not ratified three Protocols, the Government of Uganda informed the Committee that Uganda ratified the following Protocols:

- a) The Protocol on Cooperation in Meteorological Services; and
- b) The Protocol on Protocol on Extended Jurisdiction of the East African Court of Justice.

The Committee was further informed that a sub-committee on harmonization of laws/ratification of Protocols have been established under the auspices of the Common

Market. The committee meets quarterly and one of its objectives is to track progress made in the ratification of Protocols.

4.4.3 CHALLENGES CAUSING DELAY IN THE RATIFICATION OF PROTOCOLS

The Committee was also informed about the challenges that are encountered in the process of ratifying the Protocols and these include among others:

- a) Bureaucratic delays in securing the requisite clearances for example certificates of financial implications, and technical compliance as well as allocation on the cabinet business agenda;
- b) The existing capacity gaps in drafting; and
- c) Mismatch in the ratification by other Partner States renderings ratification redundant since a Protocol only takes effect upon full ratification by all Partner States.

4.5 UNITED REPUBLIC OF TANZANIA

4.5.1 THE PROCESS OF RATIFICATION OF PROTOCOLS IN THE UNITED REPUBLIC OF TANZANIA

The process of ratification of Protocols in the United Republic of Tanzania requires the relevant Ministry to prepare a Cabinet Paper about the Protocol for consideration by the Cabinet. If the Cabinet approves the Protocol, it will be forwarded to the National Assembly for consideration. The National Assembly will pass a resolution either to approve or reject the Protocol. If the Protocol is accepted by the National Assembly, it will forward the Resolution to the relevant Ministry which will forward it to the Ministry responsible for Foreign Affairs.

The Ministry responsible for Foreign Affairs will prepare the Instrument of Ratification and submit to the President together with the Resolution of the Assembly for signature. The signed instrument will be forwarded to the Ministry responsible for Foreign Affairs which will deposit it to the Depository Authority.

4.5.2 STATUS OF RATIFICATION OF EAC PROTOCOLS BY THE UNITED REPUBLIC OF TANZANIA

The table below indicate the status of Protocols pending ratification by the United Republic of Tanzania:

Table 3: Status of Ratification of Protocols by United Republic of Tanzania

1	Protocol on Cooperation in Meteorological Services-	the Ministry of Transport in collaboration with the Tanzania Meteorological Agency are still consulting before submitting their report to the Cabinet for consideration
2	Protocol on Extended Jurisdiction of the East African Court of Justice-	the Cabinet will submit its report about the Protocol to the President soon
3	Protocol on Foreign Policy Coordination	stakeholders' views and opinions has been collected; the report is being prepared for submission to the Cabinet
4	Amendment to Article 24 (2) of the Protocol on the Establishment of the East African Community Customs Union	the United Republic of Tanzania has no objection in ratifying this protocol. The protocol will be tabled in Parliament in September 2022.

The Committee was informed that the United Republic of Tanzania ratified and deposited the Instruments of Ratification for the following Protocols:

- i. the Protocol on Information, Communication and Technology (instrument was deposited in January 2020); and
- ii. the Protocol on Sanitary and Phytosanitary Measures (instrument deposited in September 2021).

The EAC Secretariat confirmed that the United Republic of Tanzania ratified all the two Protocols. The Instrument for the Protocol on Information, Communication and Technology was deposited on 30th January, 2020. The letter forwarding the Instrument for the Protocol on Sanitary and Phytosanitary Measures was received on 29th March, 2022.

4.5.3 CHALLENGES THAT CAUSE DELAY IN THE RATIFICATION PROCESS

The following are the challenges that cause delay in the ratification of Protocols in the United Republic of Tanzania:

- i. The United Republic of Tanzania is still in the process of harmonizing her laws in line with the EAC Protocols. This involves country consultations hence the delay in ratification of the Protocols; and
- ii. Legal technicalities cause delay in the ratification process since it requires research.

The Committee was informed that in 2019 the Government issued a directive that the process of ratifying all pending Protocols should be completed within two years at the technical level and submit reports regarding the protocols to the cabinet by December 2021.

It was also reported that the delay in the ratification of Protocols by Partner States negatively affects intra- EAC trade.

4.5.4 RECOMMENDATIONS

- i. Partner States should endeavour to ratify EAC Protocols on time and communicate to EAC Secretariat within a short period of time if decided not to ratify; and
- ii. EAC Partner States should follow procedure when entering a bilateral trade agreement with foreign countries as stipulated in Article 37 of the Protocol on the Establishment of the East African Community Customs Union. Some

agreements have implications on the provisions of the said Protocol therefore affecting other EAC Partner States.

4.6 REPUBLIC OF SOUTH SUDAN

In the Republic of South Sudan, the activity was carried out differently from other Partner States because the RSS joined the EAC while all the pending Protocols were already concluded, therefore she was not required to ratify them.

4.6.1 THE PROCESS OF RATIFICATION OF PROTOCOLS IN REPUBLIC OF SOUTH SUDAN

The Committee was informed that before a State ratifies or accede to a Treaty in accordance with the provisions of the Law of Treaties, it has to complete the necessary procedures at the National level. These procedures are governed by the national law or the Constitution. The Constitution of the Republic of South Sudan gives the power to the President to ratify Treaties with the approval of the Assembly. The practice show that some Treaties automatically become domestically binding once they become internationally binding and some need to be implemented through legislation. The following is the procedure undertaken by the Republic of South Sudan before any ratification is done.

- i. Collection of all relevant documents;
- ii. Cost-benefit analysis of becoming Party to the Treaty or Protocol;
- iii. Assessment of whether the legal system established by the Treaty or Protocol will be beneficial to the Country;
- iv. Seek legal opinion from the Ministry of Justice;
- v. The Minister of Justice present it to Council of Ministers;
- vi. Table it before the Assembly;
- vii. The President to sign the instrument of ratification; and
- viii. The Ministry of Foreign Affairs or Ministry of EAC Affairs as the case maybe for deposit the instrument of ratification.

4.6.2 TREATY OF ACCESSION OF THE REPUBLIC OF SOUTH SUDAN INTO THE EAST AFRICAN COMMUNITY

- i. The Committee was informed that the Republic of South Sudan acceded to the EAC Treaty on the 15th day of April 2016 and ratified the Accession Treaty thereafter which means that it become Party to the Treaty. RSS joined the EAC with full and equal rights, obligations and privileges;
- ii. The Republic of South Sudan is bound to implement the Treaty, all legislation and Protocols concluded before it joined the EAC;
- iii. In regard to the Accession of the EAC Treaty by the Republic of South Sudan it was automatic that the Protocols and Agreements where ratified by virtual of Accession.

4.6.3 PREPARATION BY THE REPUBLIC OF SOUTH SUDAN TO IMPLEMENT THE EAC PROTOCOLS

The Committee was informed that the Republic of South Sudan has already laid a program to implement all EAC Protocols. The preparations are:

- i. Studying the Instrument of Ratification of the Republic of South Sudan to the EAC;
- ii. Harmonizing the national laws pertaining to the Community;
- iii. Adoption of trade facilitation measures, such as the harmonization of standards and laws;
- iv. Implementation of EAC programs and policies; and
- v. Making reference to the Treaty and Protocols while drafting national laws.

4.7 UPDATED STATUS OF THE RATIFICATION OF PROTOCOLS

The table below indicate the status of Ratification of Protocols updated by the information from the EAC Secretariat on 7th June 2022.

Table 4: Status of Ratification of Protocols as of 8th June, 2022

SN	PROTOCOL	STATUS
1	Protocol on Immunities and Privileges	The Protocol is now fully ratified
2	Protocol on Cooperation in Meteorological Services	Not yet ratified by all Partner States
3	Protocol on Sanitary and Phytosanitary Measures	The Protocol is now fully ratified
4	Protocol on Information, Communications and Technology	The United Republic of Tanzania and the Republic of Kenya ratified this Protocol. It is only awaiting the ratification by the Republic of Burundi
5	Protocol on Extended Jurisdiction of the East African Court of Justice	The Republic of Burundi, the Republic of Uganda and the United Republic of Tanzania
6	Protocol on Foreign Policy Coordination	Not yet ratified by the United Republic of Tanzania
7	Amendment to Article 24 (2) of the Protocol on the Establishment of the East African Community Customs Union	Not yet ratified by all Partner States

4.8 GENERAL OBSERVATIONS ON THE RATIFICATION OF EAC PROTOCOLS

The Committee made the following observations with regards to ratification of EAC Protocols:

- i. All Partner States have delays in the ratification of some Protocols;
- ii. The following five Protocols are pending ratification as of 8 June, 2022:
 - a. Protocol on Cooperation in Meteorological Services;

- b. Protocol on Information, Communications and Technology;
 - c. Protocol on Extended Jurisdiction of the East African Court of Justice;
 - d. Protocol on Foreign Policy Coordination; and
 - e. Amendment to Article 24 (2) of the Protocol on the Establishment of the East African Community Customs Union.
- iii. There are different procedures of ratification of Protocols in the Partner States which contributes to the delay in the ratification of Protocols in some Partner States;
 - iv. All Partner States indicated their willingness and commitment to ratify all the pending Protocols;
 - v. There is a delay in depositing the Instruments of Ratification with the Secretary General by the depositing authorities of the Partner States after Protocols are ratified by the Partner States;
 - vi. Many EAC Citizens are not aware of the Protocols concluded by the EAC and those not ratified by their respective Partner States;
 - vii. There is a need for the Community to assist in the capacity building to the Republic of South Sudan with regards to the implementation of the EAC Protocols;
 - viii. Protocols concluded should take into consideration the specific needs of people with special needs including people with disabilities, elderly and children;
 - ix. Some Protocols are ratified by all Partner States but are not implemented by the Community and Partner States;
 - x. Delayed ratification of Protocols delays the implementation and attainment of the objectives of the Community specified in the Treaty and by the relevant Protocols;
 - xi. Synergy is important amongst the key stakeholders in the process of ratification and implementation of laws and Protocols;
 - xii. There is lack of awareness of the EAC Protocols for officials who implement them.

4.9 GENERAL RECOMMENDATIONS ON THE RATIFICATION OF EAC PROTOCOLS

The Committee recommends to the Assembly to urge the Council of Ministers to:

- i. Always set a timeline for the Partner States to ratify a concluded Protocol;**
- ii. Direct the Partner States to ratify all the pending Protocols because they have taken long time since they were concluded and adopted;**
- iii. Direct the Secretary General to prepare an update information on the status of ratification and implementation of all EAC Protocols;**
- iv. Direct Partner States and the EAC Secretariat to conduct awareness programs to the EAC Citizens on various integration processes including the Protocols and laws of the Community; and**
- v. Direct Partner State and the EAC Secretariat to conduct awareness program to officials who implements the EAC Protocols in Partner States, especially officials at the border points.**

PART II

5.0 IMPLEMENTATION OF THE EAC VEHICLE LOAD CONTROL ACT, 2016

5.1 REPUBLIC OF BURUNDI

Burundi is a land locked country; this means that its imports and exports are carried coastwise by road. The country therefore enjoys the benefits of the implementation of the law but equally suffers from the shortcomings in its implementation.

5.1.1 IMPLEMENTATION OF THE EAC VEHICLE LOAD CONTROL ACT, 2016

Burundi assented to the Vehicle load Control Act and fully harmonized it with her national laws. However, the country has faced challenges in the implementation of the law.

- i. Enforcement of the law has increased Non-Tariff Barriers. For example, whereas the United Republic of Tanzania previously reduced the number of weigh bridges to three it has now gone back to seven check points to enforce the vehicle load control. The seven checks points are at Nyagahura, Kahama, Nakawa, Singida, Morogoro, Vigwaza and Dar es Salaam.
- ii. The Association of Drivers in Burundi informed the committee that when a truck is found in breach of the law, it is only the drivers who are punished, leaving out the truck owners and the owners of cargo.
- iii. There was complaint that the weighing of axle load should be substituted with overall tonnage of the vehicle. In transit luggage loaded may move resulting in an axle weighing more than recommended.
- iv. Drivers from Burundi complained of non-tariff barriers in Kenya, Uganda and the United Republic of Tanzania.

5.2 REPUBLIC OF KENYA

5.2.1 INTRODUCTION

The Kenya National Highways Authority (KENHA) is a state corporation established under the Kenya Roads Act, 2007 with the responsibility for Management,

Development, Rehabilitation and Maintenance of National Roads. KENHA had put in place management, operation and maintenance of all overloading control centers (weighbridges) on major trunk roads under management contracts in groups known as clusters, vis: Athi River /Juja / Isinya, Mariakani / Mtwapa / Dongo Kundu, Gilgil / Maai Mahiu, Busia / Rongo and Webuye clusters for ease of management.

These weighbridges are installed with weighing scales of different types, namely multi deck scales, single axle weigher scales (SAW) and high-speed weigh in motion (HSWIM) to filter trucks and determine while in motion whether a vehicle need to go into the weigh station for weight confirmation or otherwise.

The EAC Vehicle Load Control Act, 2016 is enforced in weighbridges except at the Maai Mahiu (Suswa) station which is outside the schedule covered by the Regional Trunk Road Network.

The representative from KeNHA informed the Committee that, seamlessly implementing the East Africa Community Vehicle Load Control Act, 2016 will protect roads from overloaded trucks. The law, which was gazetted in 2016, limits weights on the roads with tough penalties prescribed against those found guilty of contravening the laid down regulations.

The law requires that all vehicles with more than 3.5 tonnes to be weighed at weighbridges and any transporter who bypasses, absconds or evades a weighing station is liable for prosecution. The law puts the maximum axle load at 56 tonnes. Business persons transporting unusual cargo are required to acquire a special licence from respective authorities. Individuals who flout the law are required to pay a fine of up to \$15,000 or be jailed for a maximum of three years or both penalties.

The Committee was informed that the United Republic of Tanzania, Uganda, Rwanda, and South Sudan have initiated the process of enforcing the law but unique legislative

framework of the countries poses a number of challenges. Burundi remains the only EAC country yet to start the process of implementing the law.

Kenya has positioned itself to handle more transporters with the introduction of virtual weigh stations in its 10 weighbridges along the Northern Corridor. At the stations, trucks are weighed while in motion, meaning that little time is wasted in conducting inspection. Some weight bridges are currently electronically operated to a system that records trucks data in motion and it is connected with a computer network. The high-speed weigh-in-motion technology provided by Kistler quartz sensors will also reduce time spent in the station and corruption as they would not be manned by human beings.

5.2.2 THE MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

The Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works, and State Department for Transport is responsible for the implementation of policy and regulations on the road transport operations in the country. A number of key stakeholders presented the following challenges in complying with the EAC Vehicle Load Control Act:

- i. Gross weight free allowance should be increased at least by 1% per way;
- ii. The current fines are heavy. The transporters recommend that fines should be minimal or better still there needs to be a resumption of the previous fines schedule which was less punitive;
- iii. If a transporter has exceeded the axle load and pays a fine, they should be allowed to pass all set weighbridges for the complete journey. The current allowed load is extra 1 tonne should be increased to 2 tonnes;
- iv. Weighbridge managers should treat the truck owners with respect and not like criminals;
- v. Redistribution of cargo should be allowed across all weighbridges. Miritini weighbridge has so far been identified as notorious for not allowing it;

- vi. The queues at certain weighbridges are too long. This is caused by officers who are weighing each vehicle manually with special reference to Juja and Isinya;
- vii. There should be recognition of (truck/trailer) manufacturers design weight specifications;
- viii. Transporters should be issued with the weighing ticket at all times and the ticket should be admissible in subsequent weighbridges in case one is said to have exceeded especially for containers under customs seal;
- ix. There is need for an increase in the time-frame for re-weighing from the allowable 30 minutes to 2 hours to allow the relevant parties coordinate compliance; and
- x. The requirement for Police Escorts for every low-loader is expensive for the transporters. They should however be allowed to in convoys.

Aside from these challenges it was noted that Kenya and the United Republic of Tanzania are engaging in bilateral engagements aimed at harmonizing road user charges. Tanzania charges higher fees than Kenya hence the Kenyan Transporters are aggrieved.

5.3 REPUBLIC OF RWANDA

The EAC Vehicle Load Control Act, 2016 is partially implemented in the Republic of Rwanda. Currently Rwanda does not have the implementation tools such as weighbridges. However, the lack of weighbridges on the road network does not restrain Rwanda to enforce the Act completely. The Gross Vehicle Mass (GVM) of 56 tones and the maximum number of axles (7) are enforced.

5.4 PREPARATIONS MADE BY RWANDA BEFORE THE COMMENCEMENT OF THE APPLICATION OF THE EAC VEHICLE LOAD CONTROL ACT, 2016

Rwanda is currently putting in place the weigh stations on the road network and the regulatory framework is under development through the draft law governing land and waterways transport to cater for operationalization of the weighbridges. The draft law

will fully implement the EAC Vehicle Load Control Act, 2016, where specific provisions will be catered in a Ministerial Order. The Committee noted that the progress of putting in place weigh station. The Development Strategy on vehicle load control was completed in 2017. This strategy demarcates locations where weighbridges will be constructed.

5.4.1 THE INSTITUTIONAL FRAMEWORK FOR THE ENFORCEMENT OF THE EAC VEHICLE LOAD CONTROL ACT, 2016 IN RWANDA

The Ministry of Infrastructure (MININFRA) is the policy organ for Vehicle Load Control. The management and operation of the weighing stations are the responsibility of the National Agency in Charge of Transport Development (RTDA) as provided by the aforementioned draft law. Rwanda Standards Board (RSB) has responsibility with regard to weighbridge standards and accreditation.

5.4.2 LAWS THAT WERE AFFECTED BY THE IMPLEMENTATION OF THE EAC VEHICLE LOAD CONTROL ACT, 2016

The EAC Vehicle Load Control Act, 2016 slightly affected the Presidential Order Decree N° 85/01 of 02/09/2002 regulating general traffic police and road traffic, especially in its chapter III on maximum weights authorized. The Act also contains new provisions that are not in the Presidential Order Decree, which will require to amend and incorporate all the essential provisions.

5.4.3 THE LEVEL OF AWARENESS OF STAKEHOLDERS CONCERNING THE EAC VEHICLE LOAD CONTROL ACT, 2016

Due to the reason stated above, the Act is not completely enforced and therefore its awareness remains an activity in the portfolio, which will be done as Rwanda puts in place the enforcement tools such as policies and weigh stations.

5.4.4 THE BENEFITS GAINED FROM ENFORCEMENT OF THE EAC VEHICLE LOAD CONTROL ACT, 2016

Though the EAC Vehicle Load Control Act 2016 is not completely enforced in Rwanda, it is certain that having legal limit of the vehicle load prevent roads from deterioration.

Harmonization of the vehicle load control has allowed smooth movement of goods in Rwanda and in the region as whole.

5.4.5 HOW THE NON-ENFORCEMENT BY OTHER PARTNER STATES AFFECTED THE PARTNER STATE

The existence of many weighing stations in Kenya and Tanzania has been causing delays and extra-costs. But current feedback shows that, there are only 3 stops for weighing in Central Corridor which has reduced the delay and the cost of doing business.

5.4.6 AREAS THAT NEED REVIEW AND AMENDMENT TO THE EAC VEHICLE LOAD CONTROL ACT, 2016

There is a compromise between the fees for transportation of abnormal load that are based on overloading fees and the obligation to get permission to transport abnormal load.

Normally when you have a permission, you should not pay overloading penalty. Rather, a fee should be provided for getting the permission and/or repairing the damages that might be caused by the transportation of the abnormal load. The EAC Vehicle load control regulations (enforcement) should be revised to address this issue.

5.5 REPUBLIC OF UGANDA

The Ministry of Works informed the Committee that the EAC Vehicle Load Control Act, 2016 has been domesticated under the Uganda National Roads Authority Act and being implemented under different agencies.

5.5.1 SUBMISSION BY A REPRESENTATIVE FROM REGIONAL LORRY DRIVERS AND TRANSPORTERS

In his submission, the representative of the Lorry Drivers emphasized the following:

- a) There is a need to improve the weighbridges at Magamaga and Mubende among others to facilitate the speedy flow of commercial traffic on the corridors and

across the borders of all countries in the region while also ensuring that vehicle overloading is minimized efficiently and cost-effectively;

- b) The non- harmonized laws pose a challenge to drivers and transporters; and
- c) Government Agencies need to work in tandem with other agencies like Uganda Revenue Authority.

5.6 UNITED REPUBLIC OF TANZANIA

5.6.1 ACTIONS TAKEN BY THE UNITED REPUBLIC OF TANZANIA TO IMPLEMENT THE EAC VEHICLE CONTROL ACT, 2016

The Committee was informed that the United Republic of Tanzania is fully implementing the EAC Vehicle Control Act, 2016 and its Regulations since 1st March 2019. Before commencement of the law the government through the Ministry of Works and Transport conducted awareness programs to transporters and weighbridge operators concerning the law. Awareness continued after the implementation started by the Tanzania National Roads Agency (TANROADS). The meeting was also informed that:

- i. The Ministry of Works and Transport through weighbridge stations monitored by TANROADS, continued implementing the EAC Vehicle Load Control Act, 2016;
- ii. There are no laws that were affected by the implementation of the EAC Vehicle Load Control Act, 2016;
- iii. The level of awareness of stakeholders with regard to this law is good since there is an improvement in terms of vehicle loads;
- iv. Stakeholders are concerned with the magnitude of overloading charges as applied in the East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018. The overloading charges that are in place are too high and are not realistic for implementation. It was further noted that the charges hinder trade because they increase the cost of doing business;
- v. Substandard road bumps pose challenges while in transit as trucks go over the bumps, cargo shifts to other axles increasing the load on some axles and hence causing the driver to be fined;

- vi. Effective enforcement of the EAC Vehicle Load Control Act, 2016 help to prevent overloading which makes roads safer and lower the highway maintenance costs; and
- vii. Some Partner States does not enforce the law by allowing passenger vehicles (buses) to use their trunk roads without being weighed. This causes challenges to the enforcing authority in Tanzania as bus owners complain of being weighed in Tanzania while they are not weighed in other Partner States.

5.6.2 AREAS THAT NEED REVIEW AND AMENDMENT IN THE EAC VEHICLE LOAD CONTROL ACT,2016

- i. Overloading charges should be reviewed to be realistic.
- ii. It was recommended that in special circumstances the roads authority in consultation with the relevant minister may refrain from imposing a fee or waive or reduce an imposed fee. The waiver or reduction of fees should be considered if:
 - a. the matters are of national security;
 - b. it is for bilateral agreements between governments; and
 - c. the motor vehicles are used as a result of natural disaster relief or for emergency infrastructure restoration.
- iii. Part III, Section 13(6) of the East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 state that *"an overloaded vehicle carrying a hazardous load which cannot comply with special safety and health precautions for offloading and intends to proceed with the journey shall pay in addition to the normal overloading fee, four times the overload fees for the remaining part of its journey within the Partner State."*

The word hazardous is too specific while we have other type of load that cannot be reduced or re-arrange to bump into required legal load limit in terms of weights. It is recommended to read as *"an overloaded vehicle carrying a SPECIAL load which cannot comply with special safety and health precautions for offloading and intends to proceed*

with the journey shall pay in addition to the normal overloading fee, four times the overload fees for the remaining part of its journey within the Partner State. "

5.6.3 RECOMMENDATIONS FROM STAKEHOLDERS IN TANZANIA

- i. There is a need to ensure that calibration of weighbridges is done often in order to maintain accuracy;
- ii. Conduct regular sensitization programs to enhance awareness among the users of the EAC Vehicle Load Control Act, 2016;
- iii. There is a need to observe best practices from other EAC Partner States and reduce NTB's, for example allowing the empty trucks and flatbed to proceed with the journey without passing through the weighbridges;
- iv. Drivers should be allowed to verify and accept that his/her truck has truly overloaded before being penalized;
- v. There is a need to ensure that road bumps are made at a reasonable standard in order to facilitate and accelerate trade in the region; and
- vi. Transporters should familiarize themselves with the law and observe the rules and regulations in order to protect the region's roads system and reducing the number of road accidents.

5.7 REPUBLIC OF SOUTH SUDAN

The EAC Vehicle Load Control Act, 2016 is not implemented in the Republic of South Sudan. The legal instrument in the Republic of South Sudan that would set up institutional framework for the enforcement of the EAC Vehicle Load Control Act, 2016 is the Road and Safety which is still a Bill under the Ministry of Justice & Constitutional Affairs.

The Committee was informed that the Republic of South Sudan has no weighbridges. This has led to non-monitoring of the weights of vehicles on roads of South Sudan which is causing damage to the constructed roads due to overloading. The road network of the Republic of South Sudan is not included in the first schedule of the EAC Vehicle Load Control Act, 2016 which covers the Regional Trunk Road Network. This also

affects the implementation of this legislation because there are no links with the network.

5.7.1 CHALLENGES ENCOUNTERED IN THE REPUBLIC OF SOUTH SUDAN

The committee observed the following challenges;

- i. Delays and inadequacies in domestication and realignment of the EAC Legal frameworks into national laws due to the delayed start of the Revitalized Transitional National Legislative Assembly which plays a lead role in legislating the legal instruments needed to operationalize the EAC Protocols and other related laws;
- ii. Limited capacity. Institutional capacity constraints and skills gaps among the staff of the Ministry of Justice and Constitutional Affairs poses a challenge in terms of drafting the EAC legal instruments;
- iii. The judicial system of the Republic of South Sudan is based on the Arabic system which makes it a challenge for the Ministry of Justice and Constitutional Affairs to incorporate the laws and regulations of the East African Community; and
- iv. Limited of information about the EAC laws and Protocols.

5.7.2 OBSERVATIONS

- i. The Committee observed lack of coordination amongst Ministries/Departments on activities and programmes of the East African Community;
- ii. The Committee observed that relevant Ministries were not involved to participate sectoral Meetings of the East African Community;
- iii. The committee observed that the EAC legal documents are not available in the relevant Ministries/Departments and committees of the Transitional National Legislative Assembly;
- iv. The committee observed with pleasure the speed at which the private sectors is moving ahead of the government in matters of the EAC integration within the business aspect. For example, the representative of the private sector informed

the Committee that the private sector is already Member of the East African Business Council.

5.7.3 RECOMMENDATIONS FROM THE STAKEHOLDERS IN THE REPUBLIC OF SOUTH SUDAN

- i. Urge the EAC Secretariat to avail all EAC Protocols and Laws to the Republic of South Sudan. The Ministry responsible for EAC affairs in the Republic of South Sudan should make sure all the EAC laws and Protocols are disseminated to the relevant Ministries, Departments and Institutions;
- ii. Urge the EAC Secretariat to collaborate with the Ministry responsible for EAC Affairs in the Republic of South Sudan to layout a well-structured capacity building for the Ministries responsible for Justice and Constitutional Affairs and Foreign Affairs and all other key stakeholders in the integration process of the EAC;
- iii. Urge the EAC Secretariat to collaborate with the Ministry responsible for Roads and Transport of the Republic of South Sudan to map out the road network that will be linked to Regional Trunk Road Network; and
- iv. The Ministry responsible for EAC affairs in Republic of South Sudan should conduct periodic sensitization across the country via media outlets such as Radio, TV, Newspapers and other means of communication to the people.

5.8 GENERAL OBSERVATIONS

The Committee observed the following with regards to the implementation of the EAC Vehicle Load Control Act, 2016:

- i. Public participation is paramount in the process of the implementation of laws and protocols;
- ii. The EAC Vehicle Load Control Act, 2016 is implemented differently by Partner States: While some are implementing the law fully, some reported partial implementation while others enacted national laws to domesticate the EAC law;
- iii. There is need to have special lane in EAC roads for vehicles with heavy loads;

- iv. The existence of substandard bumps causes the load to shift and hence penalizes drivers for mistakes they did not commit;
- v. The road network of the Republic of South Sudan is not included in the first schedule of the EAC Vehicle Load Control Act, 2016 which covers the Regional Trunk Road Network. This also affects the implementation of this legislation because there are no links with the network;
- vi. There is need for sensitization of all road users in order to protect the EAC roads;
- vii. Transporters in Tanzania have been opposing the law on grounds that its provisions on the limit of cargo weight are not in line with those enforced by the Southern African Development Community (SADC);
- viii. Whereas the EAC Vehicle Load Control Act, 2016 reduced the NTBs in the transport sector in the EAC and reduced the cost of doing business, there are other laws which the EAC should consider to enact. One of the critical areas to consider is the traffic laws;
 - i. Fines and fees charged at the weighbridges are exorbitant and charged differently;
 - ii. Some Partner States reduced the number of weigh bridges, but later reintroduced them and hence going against the purpose of the law; and
 - iii. Long truck queues are still witnessed along the weighbridges.

5.8 GENERAL RECOMMENDATIONS

The Committee recommends to the Assembly to urge the Council of Ministers:

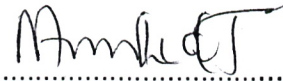
- i. To direct all Partner States to fully implement the EAC Vehicle Load Control Act, 2016 and its regulations;**
- ii. To direct the EAC Secretariat to develop standards for road bumps to be applied in the entire EAC;**
- iii. To initiate the review of the EAC Vehicle Load Control Act, 2016 and its regulations to address among other things:**
 - a. Review the fees and fines provided by the laws which is too exorbitant;**

- b. To include in the regional road network the roads from the Republic of South Sudan and the Democratic Republic of Congo.**
- iv. To direct the EAC Secretariat to prepare a sensitization program on the appropriate use of roads which is to be implemented by the EAC Secretariat and the Partner States;**
- v. To direct Partner States that increased the number of weigh bridges to adhere to what is provided by the law;**
- vi. To harmonise traffic laws in the Partner States or prepare a Bill for the EAC Traffic Act.**
- vii. To direct the EAC Secretariat and Partner States to disseminate and sensitize the public on the existing laws of the Community.**

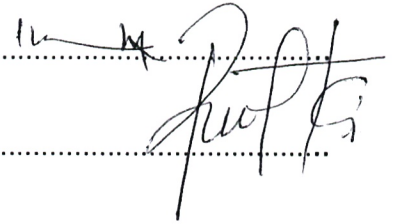
REPORT OF THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE ASSESSMENT OF THE STATUS OF THE RATIFICATION AND IMPLEMENTATION OF EAC PROTOCOLS & EAC LAWS BY THE EAC PARTNER STATES

9TH – 12TH FEBRUARY 2022

1. Hon. Mukulia Kennedy Ayason



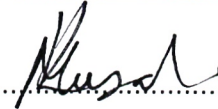
2. Hon. Thomas Dut Gatkek



3. Hon. Kim Gai Ruot Duop

4. Hon. Simon Mbugua

5. Hon. Kennedy Kalonzo



6. Hon. Lawrence Mpuru Aburi

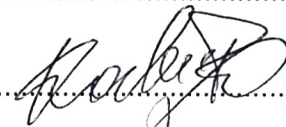
7. Hon. Maryam Ussi Yahya



8. Hon. Dr. Ngwaru Maghembe

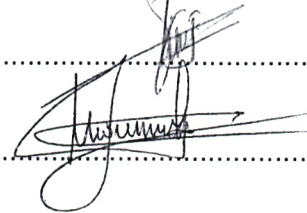
9. Hon. Alhaj Adam O. Kimbisa

10. Hon. Dr. Francois X. Kalinda



11. Hon. Francine Rutazana

12. Hon. Francoise Uwumukiza



13. Hon. Mukasa Fred Mbidde

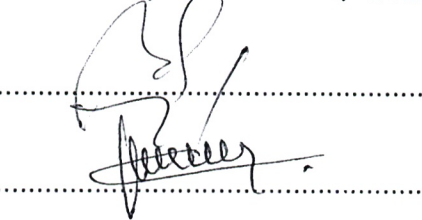
14. Hon. Namara Denis



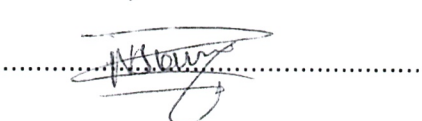
15. Hon. Rose Akol Okullu



16. Hon. Victor Burikukiye



17. Hon. Mo-Mamo Karerwa



18. Hon. Sophie Nsavyimana