

(Memo No.....)

REPUBLIC OF KENYA



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL
TRADE

MEMORANDUM TO THE SPEAKER OF THE NATIONAL
ASSEMBLY ON THE RATIFICATION OF THE EAST
AFRICAN COMMUNITY PROTOCOL TO
OPERATIONALIZE THE EXTENDED JURISDICTION OF
THE EAST AFRICAN COURT OF JUSTICE

(Submitted by the Cabinet Secretary for Foreign Affairs and
International Trade)

May 2016

1.0 OBJECTIVE OF THE MEMORANDUM

The purpose of this Memorandum is to:

- a. Inform the National Assembly of the adoption of the East African Community (EAC) Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice (EACJ), by Partner States of the East African Community;
- b. Inform the National Assembly that the Cabinet in its Second Cabinet Meeting held on 18th February, 2016 approved the ratification of the Protocol;
- c. Seek the approval of the National Assembly for Kenya to ratify the Protocol.

2.0 BACKGROUND

Kenya is a Partner State of the EAC, having ratified the Treaty for the Establishment of the EAC (hereinafter referred to as the Treaty). Article 27(2) of the Treaty requires Partner States to recognize that the East African Court of Justice (hereinafter referred to as the EACJ) shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council. Further, under Article 27(2), Partner States

agreed to conclude a Protocol to operationalize the extended jurisdiction of the Court.

Recognizing the critical role of the EACJ in regional integration, following the establishment of the EAC Customs Union, EAC Common Market and the EAC Monetary Union, the 15th Ordinary Summit of the Heads of State, on November 30, 2013, approved the recommendation of the EAC Council of Ministers to extend the jurisdiction of the EACJ to cover trade and investment, arising out of the implementation of the Protocol on the Establishment of the EAC Common Market, and disputes arising out of the implementation of the Protocol on the EAC Monetary Union.

The Protocol to Operationalize the Extended Jurisdiction of the EACJ was adopted and signed by the EAC Heads of State on April 25, 2015 in Nairobi, Kenya.

4.0 PROBLEM ANALYSIS

a) Objects and Subject Matter of the Protocol

The main objective of the Protocol is to extend the jurisdiction of the EACJ to cover trade and investment matters arising out of the implementation of the Protocol on the Establishment of the EAC Customs Union, the Protocol on the Establishment of the EAC Common Market and disputes arising out of the implementation of the EAC Monetary Union.

The Protocol obligates Partner States to inter alia, undertake to:

- i. Prevent, contain and peacefully resolve conflicts and disputes among Partner States arising from trade and investment matters;
- ii. Observe and encourage the implementation of the Protocol on the Establishment of the EAC Customs Union, the Protocol on the Establishment of the EAC Common Market and the Protocol on the Establishment of the EAC Monetary Union.

b) Constitutional Implications

- i. The Protocol does not anticipate any amendments to the Constitution of Kenya.
- ii. The Protocol is in line with the principles of the Constitution of Kenya and specifically recognizes the principles for the respect of sovereignty, territorial integrity, political independence, good neighbourliness and non-interference in the internal affairs of each Partner State.

c) Impact of the Protocol on National Interests

The Protocol encourages Partner States to foster and maintain an atmosphere that is conducive to the enhancement of trade and to develop mechanisms which are aimed at:

- i. Coordinating and cooperating with other EAC Partner States in matters related to trade and investments;
- ii. Preventing, containing and peacefully resolving conflicts and disputes among EAC Partner States arising from trade and investments;
- iii. Observing and encouraging the implementation of the Protocol on the Establishment of EAC Customs Union, the Protocol on the Establishment of the EAC Common Market and the Protocol on the Establishment of the EAC Monetary Union.
- iv. Enhance capacity of the EAC with respect to trade and investment.

d) Obligations imposed on Kenya by the Protocol

Article 151(4) of the Treaty provides that Protocols form an integral part of the Treaty, which Kenya has already ratified and domesticated vide the Treaty for the Establishment of the EAC Act No. 2 of 2000. The obligations imposed by the Protocol are therefore linked to those of the EAC as established by the Treaty.

e) Requirements for Implementation of the Protocol

At the national level, the existing Government agencies mandated to handle specific thematic areas of the Protocol shall oversee its

implementation, under the auspices of the State Department of East African Affairs.

f) Policy and Legislative Considerations

- i. Harmonization of policies and strategies on trade and investment
- ii. Harmonization of approximation of laws and regulations for effective coordination of cooperation in the sector

g) Ministerial Responsibility

The responsibility of the implementation of the Protocol shall be vested in the Cabinet Secretary in charge of East African Affairs.

h) Implications on matters relating to Counties

The scope of the Protocol relates to functions that fall under the purview of the national Government, which shall, whenever necessary, coordinate with the county Governments.

i) Public Participation

The State Department of East African Affairs convened a forum at the Laico Regency on April 28, 2014, where the public was invited to share views on the Protocol.

j) Provision for Reservation

The Protocol has no provision for reservations.

5.0 FINANCIAL IMPLICATIONS

It is envisage that the implementation of the Protocol will have financial implications and it is expected that the State Department of East African Affairs will sensitize the respective Government agencies on their roles in the implementation of the Protocol as well as the financial implications.

6.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to:

- a) Take note of the contents of this Memorandum;
- b) Approve the ratification of the Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice.

SIGNED

DATE


.....

3/05/16
.....

AMB. (DR.) AMINA C.
MOHAMED, EGH, CBS, CAV
CABINET SECRETARY FOR
FOREIGN AFFAIRS
AND INTERNATIONAL TRADE

ANNEXES

1. Protocol to Operationalize the Extended Jurisdiction of the East African Court of Justice.
2. Cabinet Approval of the Ratification of the Protocol.

Please proceed and initiate action as directed by the Cabinet.

Yours

Sincerely,
J. K. Kinyua

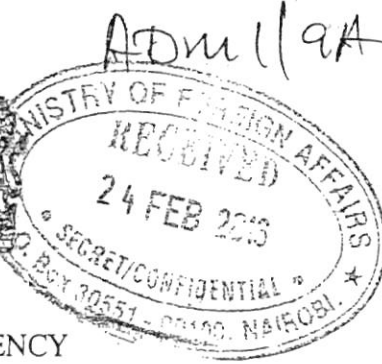
JOSEPH K. KINYUA, EGH
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

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Ref. No. **OP/CAB:58/4A**
and date

18th February, 2016, 20.....

Ms. Betty Chemutai Maina,
Principal Secretary/East African Community
Ministry of East African Community (EAC),
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Amb. Monica Kathina Juma, DPhil., CBS
Principal Secretary
Ministry of Foreign Affairs and International Trade
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Mr. Njee Muturi
Solicitor General,
State Law Office,
NAIROBI

Dear *Amb. Juma,*

**RE: CABINET MEMORANDUM ON RATIFICATION OF THE EAST AFRICA
COMMUNITY PROTOCOL TO OPERATIONALIZE THE EXTENDED
JURIDICTION OF THE EAST AFRICAN COURT OF JUSTICE**

I refer to the **Second Cabinet Meeting 2016**, held on **18th February, 2016**, during which Cabinet Memorandum **CAB(15)97**, jointly submitted by the Cabinet Secretaries for: Tourism; Foreign Affairs & International Trade; and the Attorney-General; was presented and discussed.

I wish to inform you that Cabinet **noted** the contents of the Memorandum and:

- (i) **Approved** ratification of the Protocol.
- (ii) **Directed** the Cabinet Secretaries for: Tourism; Foreign Affairs & International Trade; and the Attorney-General; to take appropriate action.

SECRET



ARTICLE 4
Amendment of the Protocol

This Protocol may be amended by the Partner States in accordance with the provisions of Article 150 of the Treaty.

ARTICLE 5
Entry into Force

This Protocol shall enter into force upon ratification by all the Partner States and deposit of instruments of ratification with the Secretary General.

ARTICLE 6
Depositary and Registration

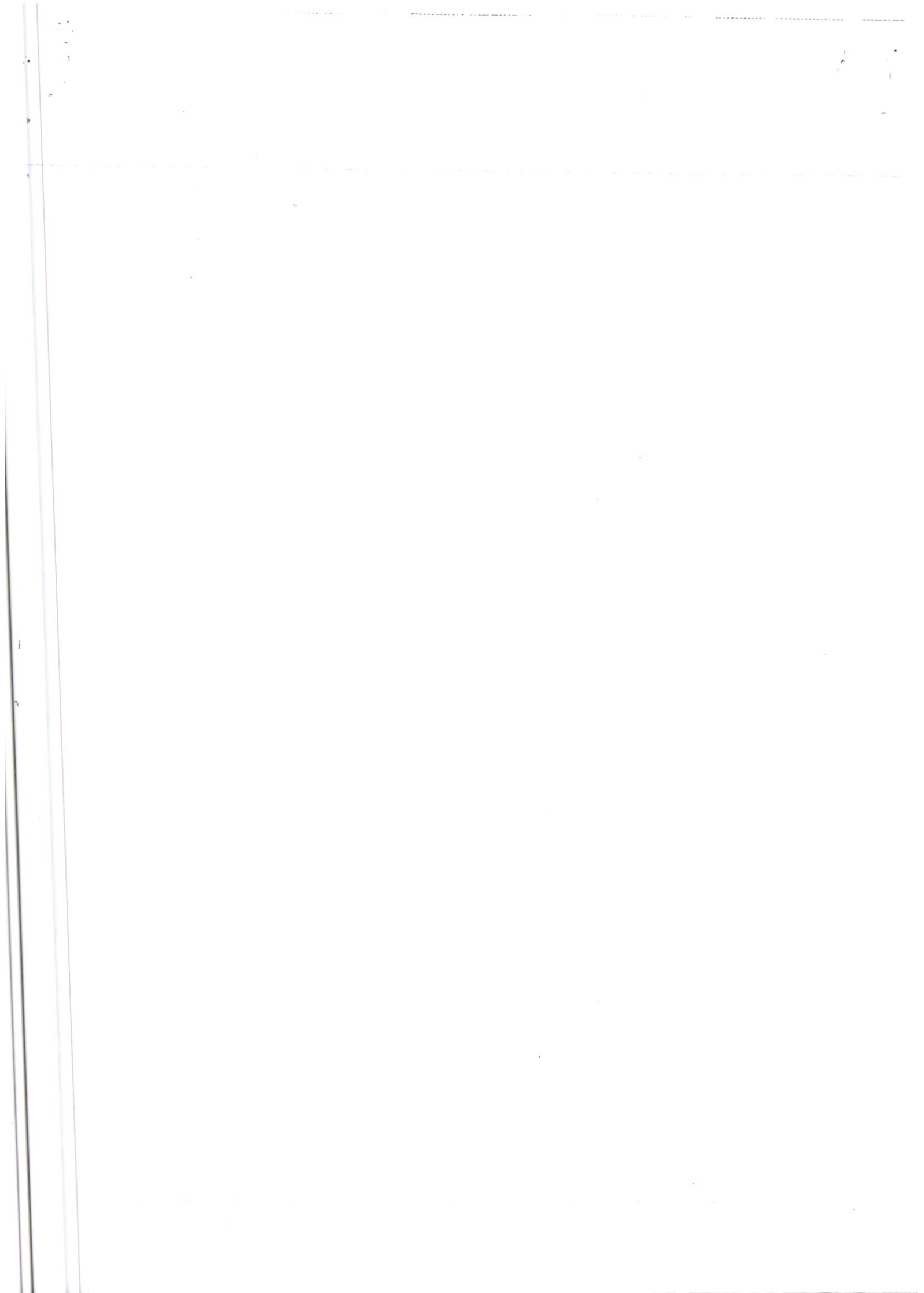
- 1 This Protocol and all instruments of ratification shall be deposited with the Secretary General who shall transmit certified true copies of the Protocol and instruments of ratification to all the Partner States.
- 2 The Secretary General shall register this Protocol with the African Union and such other organisation as the Council may determine.

DONE at Arusha, Tanzania, on the ^{20th} day of ~~.....~~ FEBRUARY in the year Two Thousand and Two Thousand and Fifteen.

IN FAITH WHEREOF the undersigned have appended their signatures hereto:

For the United Republic of Tanzania _____ For the Republic of Uganda _____ For the Republic of Burundi _____ For the Republic of Kenya _____ For the Republic of Rwanda _____





ARTICLE 1
Definitions

In this Protocol unless the context otherwise requires

"Community" means the East African Community established by Article 2 of the Treaty;

"Council" means the Council of Ministers of the Community established by Article 9 of the Treaty;

"Court" means the East African Court of Justice established by Article 9 of the Treaty;

"Treaty" means the Treaty for the Establishment of the East African Community and any annexes and protocols thereto

ARTICLE 2

Objective of the Protocol

The objective of this Protocol is to extend the jurisdiction of the Court to cover trade and investment matters arising out of the implementation of the Protocol on the Establishment of the East African Community Customs Union and the Protocol on the Establishment of the East African Common Market and disputes arising out of the implementation of the Protocol on the Establishment of the East African Community Monetary Union.

ARTICLE 3

Jurisdiction of the Court

1. The Court shall have jurisdiction over:
 - (a) disputes on trade and investment arising from the implementation of :
 - (i) the Protocol on the Establishment of the East African Community Customs Union; and
 - (ii) the Protocol on the Establishment of the East African Community Common Market;
 - (b) disputes arising out of the implementation of the Protocol on the Establishment of the East African Monetary Union.
2. The extension of jurisdiction under paragraph 1 shall not preclude the exercise of jurisdiction conferred upon other bodies by the Treaty or the relevant laws of the Partner States



PROTOCOL TO OPERATIONALISE THE EXTENDED JURISDICTION OF THE EAST AFRICAN COURT OF JUSTICE

PURSUANT TO THE PROVISIONS OF ARTICLE 27 (2) OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, THE PROVISIONS FOR THE EXTENSION OF JURISDICTION FOR THE EAST AFRICAN COURT OF JUSTICE ARE HEREBY SET FORTH:

PREAMBLE

CONSIDERING that the Treaty for the Establishment of the East African Community ("the Treaty"), established the East African Court of Justice as a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with the Treaty;

WHEREAS

- (a) under the provisions of Article 27 (2) of the Treaty, Partner States recognise that the Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council; and
- (b) within the provisions of Article 27 (2) of the Treaty, the Partner States agree to conclude a protocol to operationalise the extended jurisdiction of the Court;

AND WHEREAS the Summit of the East African Community Heads of State at its 15th Meeting held on 30th November 2013 approved the Council's recommendation to extend the jurisdiction of the East African Court of Justice to cover trade and investment matters arising out of the implementation of the Protocol on the Establishment of the East African Community Customs Union and the Protocol on the Establishment of the East African Common Market and disputes arising out of the implementation of the Protocol on the Establishment of the East African Community Monetary Union;

WHEREAS the Partner States recognize the critical role of the East African Court of Justice in regional integration following the establishment of the East African Community Customs Union, East African Community Common Market and the East African Monetary Union as envisaged under Article 5(2) of the Treaty;

HAVE AGREED AS FOLLOWS:



TABLE OF CONTENTS

PREAMBLE

ARTICLE 1 Definitions

ARTICLE 2 Objective of the Protocol

ARTICLE 3 Jurisdiction of the Court

ARTICLE 4 Amendment of the Protocol

ARTICLE 5 Entry into Force

ARTICLE 6 Depository and Registration