



**THE REPUBLIC OF UGANDA**

**MINISTRY OF EAST AFRICAN COMMUNITY AFFAIRS**

**A PAPER PRESENTED BY**

**Edith N. Mwanje (Mrs)  
PERMANENT SECRETARY**

**on**

**The role of the Justice, Law and Order Sector in East African Community Integration at the Joint Government of Uganda Development Partners Review, Imperial Royale Hotel, Kampala, 4<sup>th</sup>-5<sup>th</sup> October 2010.**

## **STRUCTURE OF THE PAPER.**

- 1.0 Introduction
- 2.0 Justice, Law and Order- East African Community Context.
- 2.1 The Rule of Law
  - 2.1.1 The Treaty for the Establishment of the East African Community
  - 2.1.2 The East African Court of Justice (EACJ)
  - 2.1.3 Related Professional Bodies
- 3.0 Promotion and Protection of Human Rights.
- 4.0 Promotion of Safety of the Person and Security of Property.
- 5.0 Promotion of Economic Development.
- 6.0 Conclusion

## **1.0 Introduction**

I would like to thank His Lordship, the Hon. Chief Justice for inviting me to present a paper and participate in the 15<sup>th</sup> Annual Review of the Justice Law and Order Sector (JLOS); under the theme “*Consolidating the gains: moving towards the third Sector Investment Plan*”. In this paper, I will give some highlights on regional initiatives, in the areas that reflect the five Key Result Areas (KRA); JLOS seeks to address which are-

promotion of the rule of law and due process; fostering a human rights culture across the JLOS institutions; access to justice for all especially the marginal poor; reduction of incidence to crime and promotion of safety of the person and security of property; and contribution to economic development<sup>1</sup>

In this respect, therefore, this paper will address the above KRAs of JLOS, by giving an up to date on their attainment at the regional level , efforts towards realizing them, institutional framework and the way forward .

## **2.0 Justice, Law and Order- East African Community perspective.**

The Treaty<sup>2</sup> for the Establishment of the East African Community (the Treaty), inter alia provides, for the fundamental principles that shall govern the objectives of the EAC, and they include: the rule of law, social justice, equal opportunities, promotion and protection of human and people’s rights and adherence to the principles of democracy .

### **2.1 Organs and Institution of the EAC**

The Treaty<sup>3</sup> for the establishment of the EAC, provides for the following Organs –

---

<sup>1</sup> The Justice, Law and Order Sector (JLOS) Annual Performance Report 2009/2010 page 09.

<sup>2</sup> Article 6(d) of the Treaty.

<sup>3</sup> Article 9 of the Treaty

- i. Summit of Heads of State;
- ii. The Council of Ministers;
- iii. Sectoral Committees;
- iv. Coordination Committees;
- v. The East African Court of Justice;
- vi. The East African Legislative Assembly;
- vii. The Secretariat; and
- viii. Such other organs as may be established by the Summit

The EAC Institutions include-

- i. East African Development Bank;
- ii. Lake Victoria Fisheries Organization;
- iii. Lake Victoria Basin Commission;
- iv. Civil Aviation Security, Safety and Oversight Agency;
- v. East African School of Aviation Academy Soroti.
- vi. Inter University Council For East Africa.

## 2.2 **The Rule of Law**

The doctrine of rule of law means the supremacy of law, equality before the law, respect for the rights and freedoms of citizens<sup>4</sup>. However, in its wider application, rule of law has been extended to embrace rights to socio-economic development and social justice. In this sense, the rule of law not only prohibits those in power from abusing it, but also obligates them to act positively and meaningfully for the welfare of the people as a whole. The rule of law therefore, precludes arbitrary action on the part of those who run and control government. This is particularly the case with regard to the executive which carries out various duties of the state<sup>5</sup>.

Within the EAC region, there exists a wide range of legal, institutional and administrative frameworks and mechanisms aimed at strengthening the administration of justice and the promotion of the rule of law. These include the following:-

---

<sup>4</sup> Keriako Tobiko, Director Public Prosecutions, Kenya, in his presentation on strengthening and administration of justice and upholding the rule of law in East Africa: challenges and opportunities; the second EAC conference on Good Governance 19<sup>th</sup> -20<sup>th</sup> August, 2010, Nairobi Kenya.

<sup>5</sup> Justice professor Dr G.W Kanyeihamba, Constitutional and Political History of Uganda, from 1894 to the present, Centenary Publishing House Ltd, Kampala, 2002, page 302.

### **2.1.1 The Treaty for the Establishment of the East African Community**

The EAC Treaty is anchored on strong pillars of good governance including to adherence to the principles of democracy; rule of law; accountability, transparency, social justice, equal opportunities, gender equality, promotion and protection of human and peoples rights.<sup>6</sup>

Some of the objectives of the common foreign and security policies within the region are to<sup>7</sup> -

- i. develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms.
- ii. ensure peaceful resolution of disputes and conflicts between and within Partner States.
- iii. preservation and strengthening of peace and security.

There are areas of cooperation under the initiative of regional peace and security which include – enhanced cooperation in the handling of cross-border crime; provision of mutual legal assistance in criminal matters; arrest and repatriation of criminal fugitives and exchange of criminal intelligence and other security information for combating criminal activities including counter-terrorism measures<sup>8</sup>.

---

<sup>6</sup> Articles 3(b), 6(d), & 7(2) of the Treaty. These articles have emphasized good governance, democracy and the recognition, promotion and protection of human and peoples' rights.

<sup>7</sup> Article 123 of the Treaty

<sup>8</sup> Article 124 of the Treaty

The scope of cooperation in legal and judicial affairs<sup>9</sup> includes- harmonization of legal training and certification; and standardization of judgments of Courts within the Community. It is envisaged that this area of cooperation will be realized through-

- i. establishing a common syllabus for the training of lawyers and a common standard to be attained in examinations in order to qualify as advocates;
- ii. harmonization of legal learning, exchange of legal and judicial knowledge and jurisprudence;
- iii. harmonization of national laws to accord with community laws;
- iv. revival of the publication of the East African Law Reports etc

### **2.1.2 The East African Court of Justice (EACJ)**

The East African Court of Justice (the Court) like other organs of the Community is a creature of the Treaty. The Court was inaugurated on 30<sup>th</sup> November 2001, after the appointment of the first Judges by the Summit of Heads of State. The East African Court of Justice was established as one of the commitments to concretize the integration process. The Court's mandate<sup>10</sup> is to ensure the adherence to law in the interpretation and application of and compliance with the Treaty.

The Court is constituted of two divisions. First Instance Division is at any given time composed of not more than ten (10) Judges, whereas the Appellate Division is comprised of 5 Judges<sup>11</sup>.

The Court has jurisdiction to hear and determine disputes between the Community and its employees that arise out of the terms and conditions of employment and application and interpretation of staff rules and regulations.

The Summit, the Council or a Partner State may request Court to give an advisory opinion regarding a question of law arising from the Treaty.

---

<sup>9</sup> Article 126 of the Treaty

<sup>10</sup> Article 23(1) of the Treaty.

<sup>11</sup> Article 24(2) of the Treaty.

The Court is accessible by a range of stakeholders from state level to that of an individual. The following have been expressly given access to the Court by the Treaty:-

- (i) **Partner States.** When a Partner State Considers that another Partner State or Community organ has failed to fulfill an obligation under the Treaty or that there is need for determination by the Court on legality of any Act, regulation, directive , decision or action on ground of being *ultra vires* or unlawful or an infringement to the Treaty.
- (ii) **Secretary General.** Where the Secretary General considers that a Partner State failed to fulfill obligation or has infringed a provision of the Treaty.
- (iii) **National Courts.** Where a question is raised before any court or tribunal of a Partner State concerning the interpretation of the Treaty, the court or tribunal may request the EACJ to give a preliminary ruling on the matter.
- (iv) **Reference and Legal and Natural Persons.** A person who is a resident in a Partner State may refer for determination by the Court, the legality of any act, regulation, directive, decision or action by a Partner State or an institution of the Community.

Article 27(2) of the Treaty, is to the effect that, Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. A draft protocol to extend the jurisdiction of the Court is being consulted upon and once it is concluded, the Court's mandate will be enhanced to administer justice more broadly, effectively and efficiently.

### **2.1.3 Some Related Professional Bodies**

There are a number of professional bodies and associations within the region that play a key role in the administration of justice, promotion of good governance, democracy and rule of law and promotion and protection of human rights. These include-

- i. The East African Law Society;
- ii. The East Africa Judges and Magistrates Association;
- iii. The East Africa Association of Prosecutors;
- iv. The East Africa Association of Anti-corruption Authorities;
- v. The Eastern Africa Police Chiefs Cooperation Organization;
- vi. The East Africa Chief Justices Forum; and
- vii. The EAC Heads of Prisons /Correctional Services Forum

These bodies and organizations, contribute immensely to the promotion and enhancement of legal and judicial cooperation and in the exchange and sharing of information; best practices; knowledge and expertise as well as in building synergies between the National and Community institutions and organs.

### **3.0 Promotion and Protection of Human Rights.**

There are collaborative efforts in this sector which include cooperation among National Human Rights Commissions which are implementing the East African Community Plan of Action on Protection and Promotion of Human Rights<sup>12</sup>.

---

<sup>12</sup> EAC Budget Speech for the Financial Year 2009/2010 to the East African Legislative Assembly, Bujumbura, Burundi; 21<sup>st</sup> May 2009.

In order to promote harmonization of protection of human rights, the EAC has developed a draft EAC Bill on Rights. Once enacted, it will ensure that the Partner States advance in the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. The draft bill examines national constitutions and other international instruments with the ultimate aim of standardizing and adopting best practices.

#### **4.0 Promotion of Safety of the Person and Security of Property.**

In the EAC context, peace and security are prerequisites to social and economic development of the Community. This has been acknowledged as critical to the creation of the right environment upon which regional integration in all aspects can be fostered. As the implementation of the Common Market Protocol progresses, strategies on the control of cross border crime and ensuring security of persons and property, as they move within the region are being strengthened. There other measures to achieve safety of persons and security of property in the region which include-

promotion of good neighborliness; establishment of regional disaster mechanism; cooperation in handling cross border crime; mutual assistance in criminal matters including arrest and repatriation; and exchange of information for combating criminal activities.

#### **5.0 Promotion of Economic Development.**

The justifications for many regional integration arrangements are mainly economic. Therefore, the main goal for the EAC as an economic and political entity stems from the desire by the governments of EAC Partner States to improve the standard of living of the population through increases competitiveness, value added production, trade and investment. In order to realize the objectives of the Community, the Partner States agreed to undertake the integration process in a phased manner. The first stage is the ea Customs

Union (2005), followed by an EA Common Market (July 2010), subsequently a Monetary Union (2012) and ultimately a Political Federation.

## **6.0 Conclusion**

It should be noted that there are some challenges affecting the integration process such as inadequate resources to finance regional infrastructural programmes, multiple memberships to other Regional Economic Communities (REC's) like COMESA and SADC etc.

As a way forward therefore, it is imperative that we build on the successes so far attained. The institutions comprising the JLOS should be the leading stakeholders on the areas of Cooperation in Legal and Judicial sectors, Governance and Development. More needs to be done to give greater focus on building a united, strong and a progressive East Africa. Let us continue to work together to realize the common objectives of improved standard of living and quality of life of our people, peace, security and stability.

**I THANK YOU.**

## **References**

East African Community; Budget Speech for the Financial Year 2009/2010 to the East African Legislative Assembly, Bujumbura, Burundi; 21<sup>st</sup> May 2009.

Keriako Tobiko, Director Public Prosecutions, Kenya, strengthening and administration of justice and upholding the rule of law in East Africa: challenges and opportunities; the second EAC conference on Good Governance 19<sup>th</sup> -20<sup>th</sup> August, 2010, Nairobi Kenya.

Justice Professor Dr G.W Kanyeihamba, Constitutional and Political History of Uganda, from 1894 to the present, Centenary Publishing, House ltd, Kampala, 2002.

The Justice, Law and Order Sector (JLOS) Annual Performance Report 2009/2010.

The Treaty for Establishment of the East African Community, 1999