

1.0 INTRODUCTION

Article 57 of The Treaty for the establishment of the East African Community in, mandates any member to propose any motion or introduce any Bill to the Assembly. In this respect, The EAC Electronic Transaction Bill, 2014 was developed and introduced as a private Member's Bill to the East African Legislative Assembly for consideration in May 2014. The Bill aims at making provision for the use, security, facilitation, and regulation of electronic communications and transactions; to encourage the use of e-Government service and to provide for related matters.

Following the legislative process, the Assembly also referred the bill to the Committee on Communications, Trade and Investment for consideration. Among other means of consideration of bills, the Committee adopted holding public hearings with a view to involve citizens in the legislative process by getting their inputs on the Bill. Therefore it is against this background that from 1st - 5th March 2015, the Committee Members held public hearing workshops with different stakeholders in all Capitals of the EAC Partner States to consult on the bill.

The Committee tabled its report during the plenary meeting in August 2015 in Kampala, however due to the request made by various stakeholders notably the East African Law Society (EALS), the East African Communications Organisation (EACO), and the Monetary Affairs Committee (MAC) to bring on board more inputs to the Bill, the Chairperson Council of Ministers moved a motion for adjournment on the debate of the report so that the Committee can consider those inputs to enrich the Bill. It is against this background that the Assembly adjourned the debate to allow the Committee time to consider the in puts, and report back to the Assembly during the October 2015 plenary.

2.0 OBJECTIVES OF THE STAKEHOLDER CONSULTATIONS

The overall objective of the public hearings was to consult the public about the EAC Electronic Transaction Bill, 2014 but specifically to:-

(a) gather-public opinions, views and inputs that can inform the Bill,

- (b) understand the likely opportunities, challenges, and impact associated with the Bill,
- (c) come up with relevant recommendations.

3.0 METHODOLOGY

To carry out the public hearings effectively and efficiently in all EAC Partner States, The Members of the Committee were divided into two groups. One group covered the Republics of Burundi and Rwanda while another one covered the United Republic of Tanzania and the Republic of Kenya and both groups converged in the Republic of Uganda to hold public hearings on the EAC Electronic Transaction Bill, 2014.

All the Public Hearings were held in EAC Partner States' Capitals and were participatory in nature to consult various stakeholders from the government, private sector, and civil society including media to bring on board their views to the Bill. The stakeholders consulted included among others: -

- 1) The Ministry responsible for ICT, including ICT regulators and the e-government agencies;
- 2) Ministry of Trade, Commerce, Tourism;
- The Ministry responsible for Finance including financial sector regulators and agencies;
- 4) The Office of the Attorney General, including the Law Reform Commissions;
- 5) The East African Law Society and Law Enforcement agencies;
- 7) The East African Business Council and Private Sector Federation;
- 8) The East African Communications Organization;
- 9) The East African Monetary Affairs Committee.

From the stakeholder consultations, observations, comments and recommendations were made and amendments proposed. The Committee comprehensively considered and analyzed all the concerns, comments, recommendations and amendments from the stakeholders during the public consultations.

The Committee later received the in puts from the East African Law Society (EALS), the East African Communications organization (EACO) and the Monetary Affairs Committee

(MAC) on the Bill and further considered them accordingly. Having carefully considered all the inputs from all the stakeholders, the Committee came up with a schedule of the proposed amendments to the Bill herewith attached on this report.

4.0 OBSERVATIONS

4.1 SPECIFIC OBSERVATIONS

All five countries Uganda, Tanzania, Kenya, Rwanda and Burundi have adopted different forms of E-transactions comprising mainly of online and mobile payments. The status in each country with regards to forms of e-transaction is as below; -

- 1. Burundi The Central Bank has developed draft regulations on E-transactions. The government for adoption is currently considering the regulations.
- 2. Kenya The National ICT Sector Policy of 2006 contemplates E-transactions in the Kenyan market. The Kenya Information and Communications Act CAP 411 of 1998 (KICA) also makes various provisions for E-transactions. The Kenya Information and Communications (Electronic Certification and Domain Name Administration) Regulations 2010 provide a regulatory framework for E- transactions in Kenya. The Communications Authority of Kenya (CAK) has also developed a licensing framework for Electronic Certification Service Providers (E-CSP). Kenya has also put in place a National Public Key Infrastructure (NPKI) and National Cybersecurity Master Plan (NCMP). With regards to payments, the National Payments System Act has been enacted but yet operationalized by Government.
- 3. Rwanda Law N° 18/2010 of 12/05/2010 relating to Electronic Messages, Electronic Signatures and Electronic Transactions has been enacted. Regulation N°07/2010 of 27/12/2010 of the National Bank of Rwanda on Electronic Fund Transfers and Electronic Money Transactions has been enacted. Rwanda also has a raft of regulation governing certification authorities and is currently developing an interoperability policy for Payment systems.

- 4. Tanzania E-transactions are provided for in the National ICT Policy 2003. Further, E-transaction regulations are currently at the final stage of Government approval given those E-transactions processes has been adopted by many firms. Tanzania's National Payment Systems Act has also been revised to take into consideration developments in payment systems including E-transaction, which is currently receiving Government approval. Further E-Transactions are also contemplated in the Bank of Tanzania Act 2006, Agent Banking Guidelines of 2013 as well as in the Mobile Payment Regulations. Tanzania is also undertaking other initiatives to provide for E- transactions in the Electronic Transaction and Communications Bill 2013 as well as the Mobile Money Regulations but not yet officially being introduced.
- 5. Uganda Uganda has developed the Electronic Signatures Act, 2011, the Electronic Transactions Act, 2011, the Computer Misuse Act, 2011, the Electronic Signatures Regulations (Statutory Instrument no. 43 of 2013), the Electronic Transactions Regulations (Statutory Instrument no. 42 of 2013), the Bank Of Uganda Mobile Money Guidelines, 2013 and also the National Payments Systems legislation. Uganda is also currently developing Infrastructure side regulations to facilitate mobile money operations.

4.2 GENERAL OBSERVATIONS

- During the consultations in the Partner States on the Draft EAC Electronic Transactions Bill, 2014, it was observed that this Bill is important and timely however it needed further enrichment to cover regional, international, cyber security and enforcement aspects;
- The Bill will facilitate the development, growth and support for E-Transactions in the East African Community taking into consideration that governments have the responsibility of providing an environment that allows for certainty and mitigates the risks of transacting electronically both locally and internationally;

- 3. The Bill will Provide a harmonized regional legal framework for E-transactions in the EAC with internationally accepted principles;
- 4. The Bill will remove barriers and encourage uptake and use of E-Transactions to ease doing business in the EAC;
- The Bill proposes measures to ensure safety and confidence of the Consumers of E-Transactions which will encourage investment and economic participation through E-Transactions;
- 6. It was found out that EAC does not have a legal framework on electronic transactions however it is developing a legal framework for Cyberlaws;
- 7. Stakeholders held the view that the Bill should be inline with the provisions of the Draft EAC Cyberlaw framework;
- Stakeholders appreciated that the EAC Electronic Transactions is necessary for the use, Security, facilitation and regulation of electronic communications and transactions;
- Stakeholders further appreciated that the bill is a piece of legislation for building trust in electronic transactions and promoting e-Government services and other related matters;
- 10. Stakeholders agreed that the Bill would facilitate the promotion and application of innovations in information and communication technologies to economic development;
- 11. All countries have taken different initiatives to address policy and regulatory issues in terms of National payment laws, e-commerce laws and regulations relating to electronic transactions. However, their initiatives are at different stages in their development;
- 12. It came out clearly from stakeholders that the development of E-transactions in the region will also necessitate the harmonization of the various enacted E-transactions laws, data protection laws as well as establishment of the cyber security framework in each of the member states.

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5.0 RECOMMENDATIONS

- 1. The Committee urges the Assembly to pass the EAC Electronic Transaction Bill so that the region can have a legal instrument regulating the electronic transactions;
- 2. The Committee urges the Council of Ministers to fast track regulations that are needed for the implementation of the EAC Electronic Transaction Bill;
- Partner States should embrace the Electronic Transaction Bill and harmonize their laws to the regional law to create a proper environment for all possible users and beneficiaries of ICT in the region and beyond;
- 4. The Committee urges the Assembly to consider and adopt the amendments proposed herein attached in the schedule.

6.0 CONCLUSION

For E-Transactions to flourish there must be a clear, precise and predictable legal environment that will drive confidence by customers, businesses and government institutions. Businesses must be able to make and enforce electronic contracts and have the confidence to invest in new technologies and take advantage of new opportunities. Consumers must be provided with the same protection that they have when conducting businesses face-to-face and using paper documents. The approach taken to provide legal certainty therefore must be compatible with internationally accepted best practices so that businesses and consumers can freely operate across international borders.

7.0 ACKNOWLEDGEMENTS

- 1. The Committee appreciates the concerted efforts by all the stakeholders who spared their valuable time off very busy schedules to bring inputs that have tremendously improved the Bill.
- 2. The Committee also grateful for the support and tireless efforts that EALA Management has rendered to the Committee to take Bill through all the necessary stages.

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CLAUSE	AMENDMENTS: EAC ELECTRONIC TRANSACTIC	JUSTIFICATION
2	Clause 2 is amended- (a) by inserting in their correct alphabetical order, the	The following new definitions have been provided for more
	following new definitions- "advanced electronic signature" means an electronic signature, which is –	clarity in the law with the view to avoiding likely ambiguities.
	 (a) uniquely linked to the signatory; (b) reliably capable of identifying the signatory; (c) created using a secure signature creation device that the signatory can maintain under his sole control; and (d) linked to the data to which it relates in such a manner that any subsequent change of data or the connections between the data and signature are detectable; 	
	"authentication service provider" means a natural or a legal person who provides one or more authentication services;	
	"certificate" a record issued by a Certification Service provider for the purpose of supporting digital signatures which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair;	
	"certification services provider "a person providing an authentication product or service in the form of a digital certificate attached to, incorporated in or logically associated with a data message;	
	"closed system" refers to electronic transactions using developed and customized sector specific systems;	
	"Community" means the East African Community established under Article 2 of the Treaty;	
	"computer" means an electronic, magnetic, optical, electrochemical, or other date processing device or a group of such interconnected or related devices, performing logical, arithmetic or storage functions; and includes any data storage facility or communications facility directly related to or operating in conjunction with such a device or a group of such interconnected or related devices;	
	"data message" means information generated, sent, received or stored by electronic, optical or similar means	

SCHEDULE OF AMENDMENTS: EAC ELECTRONIC TRANSACTION BILL 2014

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including, but not limited to, electronic data inte electronic mail, telegram, telex or telecopy;	erchange,
"digital signature" means a transformation message using an asymmetric cryptosystem such person having the initial message and the signer's p can accurately determine:-	n that a
 (a) whether the transformation was created using th key that corresponds to the signer's public key; a 	- 1
(a) whether the message has been altered si transformation was made;	nce the
"electronic time stamp" means data in e form which binds other data in electronic for particular time establishing evidence that the lat existed at that time;	m to a
"open system" means all electronic transactions but not limited to e-Government, e-Commerce, and t communications networks or systems;	5
"public key" means the key of a key pair used a digital signature and listed in the digital s certificate;	-
"public key infrastructure" means a framework creating a secure method for exchanging information on public key cryptography;	1
"service provider" means: -	
(a) any public or private entity that provides to the us service the ability to communicate by mean computer system, and	
(b) any other entity that processes or stores computer behalf of such communication service or users service;	
"signature verification data" means uniq such as codes or public cryptographic keys, used purposes of verifying an electronic signature;	
"signature verification device" means co	nfigured

software or hardware, used for the purpose of verifying an electronic signature;
"signed or signature" and its grammatical variations includes any symbol executed or adapted or any methodology or procedure employed or adapted, by a person with the intention of authenticating a record, including an electronic or digital method;
"subscriber" means a person who:-
 (a) is the subject listed in a certificate; (b) accepts the certificate; and (c) holds a private key which corresponds to a public key listed in that certificate;
"suspend certificate" refers to making a certificate ineffective temporarily for a specified time forward;
"time-stamp" means:-
(a) to append or attach to a message, digital signature or certificate or digitally signed notation indicating at least the date, time and identity of the person appending or attaching the notation; or
(b) the notation appended or attached;
"transactional certificate" means a certificate, incorporating by reference one or more digital signatures, issued and valid for a specific transaction;
"Treaty" means the Treaty for the establishment of the East African Community;
"trustworthy system" means computer hardware and software which:-
 (a) are reasonably secure from intrusion and misuse; (b) provide a reasonable level of availability, reliability and correct operation; and (c) are reasonably suited to performing their intended functions;
"valid certificate" means a certificate which-
 (a) issued by a licensed certification service provider; (b) has been accepted by the subscriber listed in it; (c) has not been revoked or suspended; and (d) has not expired, but a transactional certificate is a valid

certificate only in relation to the dig incorporated in it by reference;	gital signature
"verify a digital signature" means, i given digital signature, message and public ker accurately that-	
 (a) the digital signature was created by the privious corresponding to the public; and (b) the message has not been altered since its signature was created; 	
"writing or written" includes any printing, electronic storage or transmission method of recording information or fixing in form capable of being preserved;	or any other
"critical internet resources" means an int address, internet autonomous system numb protocol identifier;	•
" network service provider " means a perso licensed by an Authority to provide inf communications technology services in accord law of the Partner State;	formation and
"public information" means information the assembled or maintained under the relevant la State or in connection with the transaction of o by a government body; or for a government government body owns the information or access it.	aw in a Partner official business t body and the
(b) By replacing the definitions in the following new definitions -	Bill with the
"e-Government" refers to the use by government information and communications technologies services and relate with citizens, businesses and government.	s to deliver its
electronic transaction is the provision of good whether between businesses, households governments, and other public or private conducted over electronic networks, where and/or the ultimate delivery of the good or s conducted on or off-line.	s, individuals, organizations, e the payment

	 (c) by deleting the word "natural" appearing in the definition of the term "consumer"; (d) by deleting "natural" appearing in the definition of the term "data subject"; 	
4	 Clause 4 is amended by replacing paragraphs (g), (j) and (l) with following new paragraphs – (g) encourage investment and innovation in information and communications technologies to promote electronic transactions; 	For clarity
	 (j) promote public confidence in the integrity and reliability of electronic records, electronic signatures and electronic <u>transactions;</u> (i) for the providence of the propagation of the propagat	
	 (I) foster economic and social prosperity in the Community through the information <u>and</u> communications technology sector. 	
12 (4)	This clause is amended by inserting immediately after the words "provided by the sender", the words "provided that such transformation does not affect the integrity of the document"	To provide for the requirement of the authorized service provider to maintain the integrity of the message it has been authorized to send on behalf of the sender.
Clause 13 (3)	"reviewed", the words "by that party contractual terms is limited to a contract party's representative	
Clause 13 (4)	3 This clause is amended by deleting the word "natural" where to accommod contracting by no natural persons sinelectronic transaction shall also be initiated non-natural persons.	
18	Clause 18 is replaced with the following new Clause –	For best industrial
	"An expression of interest may be in the form of a data message and <u>shall</u> be with an electronic signature as long as it is possible to infer the interest of the person from the data message"	practice

19	Clause 19 (2) (b) is replaced with the following new provision	For clarity
13	-	TOE GALLY
	2(b) the data message received by the addressee resulted	
	from the action of a person <u>duly authorized</u> by the originator	
	to gain access to a method used by the originator to identify	
	electronic records as records of the originator;	
Clause 24	This clause of the Bill is deleted.	Because private
		agreements, o
		contracts, canno
		invalidate a statute
Part VI	This part of the Bill is amended by deleting the heading "PART	to avoid repetition
	VI CONSUMER PROTECTION" appearing immediately after	
	clause 41.	
40	Clause 40 (1) (c) is replaced with the following –	For clarity
	(c) the website address and e-mail address of the person;	
Clause 42	This clause is amended by inserting the following new sub-	to avoid costs incurred
	clause (2)-	on unsolicited messages
	"(2) A person who sends an unsolicited commercial	
	communication to a consumer under subsection (1)	
	shall do so at no cost to the consumer"	
45	Clause 45 is amended by	To comply with th
		applicable terminology
	(a) replacing the words "service provider" with	
	"intermediary" and deleting the word "merely"	
	(b) inserting immediately after the word "access" the	
	words "hosts, transmit or stores"	
46	Clause 46 is amended by	To comply with the
	(a) replacing "service provider" with "intermediary"	applicable terminology
	(b) deleting paragraphs (a) and (b)	and for clarity
	(c) replacing the words "being informed" with "receiving	
	and considering a valid complaint under section 47,	
	and replacing the word "user" with the words	
	"complainant or the person on behalf of whom the	
	complaint is made"	
47 (1)	Clause 47 (1) is amended by replacing "a data message or an	For clarity
	activity relating to the data message" with "information" and	
	replace "service provider" with "intermediary"	
47 (1) (d)	Paragraph (d) is amended by adding "including in the case of	For clarity
	material on a computer network or on the Internet, an	
	electronic address or other information that uniquely	
i	identifies and locates the material" after the words "infringing	
	the activity"	
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	47 (1) (e) is deleted	

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Replace the words "for the purposes of complying with this part, a service provider" with "an intermediary" Replace paragraph (a) with the following – (a) monitor the data which the intermediary transmits,	For clarity
(a) monitor the data which the intermediary transmits,	
receives, provides access, hosts or stores; or"	
Clause 48 (2) is amended by replacing "The Council" with "A Partner State"	For proper allocation of responsibility
NEW CLAUSES PROPOSED TO BE INSERTED IN THE BILL-	JUSTIFICATION
The Bill is amended by inserting the following new clauses after clause 21	For closing the gaps apparent in the Bill
XX "Management of critical internet resources	
(1) The Minister responsible for information and communications technology in a Partner State shall designate a person to manage critical internet resources.	
(2) The Person designated in subsection (1) shall be responsible for keeping an up-to-date record of the allocation, assignment and utilization of critical Internet resources pursuant to the Regulations made under this Act.	
XX Data protection The Minister responsible for information and communications echnology shall develop a legal framework on data protection o cover data retention, security, access, management and haring.	
(XX Controller 1) The Minister responsible for information and communication technology in a Partner State shall designate a public officer to be the Controller of certification authorities for the purposes of this Act	
2) The Controller shall set standards and make provision for cross-certification across Partner States.	
	 NEW CLAUSES PROPOSED TO BE INSERTED IN THE BILL- he Bill is amended by inserting the following new clauses fter clause 21 XX "Management of critical internet resources (1) The Minister responsible for information and communications technology in a Partner State shall designate a person to manage critical internet resources. (2) The Person designated in subsection (1) shall be responsible for keeping an up-to-date record of the allocation, assignment and utilization of critical Internet resources pursuant to the Regulations made under this Act. XX Data protection he Minister responsible for information and communications echnology shall develop a legal framework on data protection o cover data retention, security, access, management and haring. XX Controller The Minister responsible for information and communication and communication technology in a Partner State shall designate a public officer to be the Controller of certification authorities for the purposes of this Act 2) The Controller shall set standards and make provision for

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В	The Bill is amended by inserting the following new clauses after clause 27-
	"X- Conduct of the relying party provide for the relying party
	A relying party shall bear the legal consequences of its failure-
	(a) to take reasonable steps to verify the reliability of an electronic signature; or
	(b) where an electronic signature is supported by a certificate, to take reasonable steps-
	 (a) to verify the validity, suspension or revocation of the certificate; and (b) to observe any limitation with respect to the
	(b) to observe any limitation with respect to the certificate. XX- Recognition of foreign certificates and electronic provide for clarity and the second sec
	signatures best practice
	(1) In determining whether, or to what extent a certificate or an electronic signature is legally effective, no regard shall be had-
	 (a) to the geographic location where the certificate is issued or the electronic signature created or used; or
	 (b) to the geographic location of the place of business of the issuer or signatory.
	(2) A certificate issued outside the Community shall have the same legal effect in the Community as a certificate issued in the Community if it offers a substantially equivalent level of reliability.
	 (3) An electronic signature created or used outside the Community shall have the same legal effect in the Community as an electronic signature created or used in the Community if it offers a substantially equivalent level of reliability.
	 (4) In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of subsection (2) or (3), regard shall be had to recognized international standards and to any other relevant factors.
	 (5) Where, notwithstanding subsections (2), (3) and (4), parties agree as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under the applicable law.

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С	The Bill is amended by inserting the following new clauses after clause 30-	provide for legal effects, liability and international aspects of
	"XXX- Legal effects of electronic signatures	electronic signatures
	(1) The Partner States shall ensure that advanced electronic signatures which are based on a qualified certificate and which are created by a secure-creation device-	
	 (a) satisfy the legal requirements of a signature in relation to data in electronic form in the same manner as a handwritten signature satisfies those requirements in relation to paper-based data; and (b) are admissible as evidence in legal proceedings. 	
	(2) The Partner States shall ensure that an electronic signature is not denied legal effectiveness and admissibility as evidence in legal proceedings solely on the grounds that it is-	
	 (a) in electronic form; (b) not based upon a qualified certificate; (c) not based upon a qualified certificate issued by an accredited certification-service-provider; or (d) not created by a secure signature-creation device. 	
	XIV International aspects	to provide for
	 (1) The Partner States shall ensure that certificates which are issued as qualified certificates to the public by a certification-service-provider established in a third country are recognized as legally equivalent to certificates issued by a certification-service-provider established within the Community if- (a) the certification-service-provider fulfills the requirements laid down in this Act and has been accredited under an accreditation scheme established in a Partner State; (b) a certification-service-provider established in the Community which fulfills the requirements under this Act guarantees the certificate; or (c) the certificate or the certification-service-provider is recognized under a bilateral or multilateral agreement between the Community and third countries or international organizations. 	international aspects and to conform to the best practice
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	In order to facilitate cross-border certification services with third countries and legal recognition of advanced electronic signatures originating in third countries, the Council shall where appropriate, make proposals to achieve the implementation of standards and international agreements applicable to certification services.	
	The Bill is amended by inserting the following new clauses before clause 38	For closing gaps apparent in the Bill
	XXX Country code top level domain names In order to enhance the security of e-Government services, every public body shall utilize their respective country code top level domain for delivery of e-Government services.	
	XXX Localization of public information Public information belonging to a Partner State shall be hosted and stored within its national boundaries.	
	The Bill is amended by inserting the following clauses after clause 43	For closing gaps apparent in the Bill
	XXX Framework for identification Partner States shall develop a framework for identification and/or authorization of any person who offers on a commercial basis, the sale, hire or exchange of goods or services through an electronic transaction.	
	XXX Tracking mechanisms A person offering goods or services for sale, hire or exchange through an electronic transaction shall provide a tracking mechanism by which a customer can ascertain the status of delivery of the goods or services.	
	(1) The delivery of goods and services obtained through electronic transactions shall be through a duly licensed courier operator in the respective Partner State except where the delivery of the goods or services is done directly by the seller.	
D	The Bill is amended by inserting the following new clause after clause 48- "XV Establishment of interoperability system	to recognize the importance of interoperability, not just in networks but in
	The Partner State shall develop regulations and standards on interoperability to ensure seamless communication between networks, services and applications."	services and applications to facilitate competition and consumer protection/choice.

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Members of the Committee on Communication, Trade and Investment Report on Public Hearings on the E-Transactions Bill 2014

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