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**EAST AFRICAN LEGISLATIVE ASSEMBLY
COMMITTEE ON COMMUNICATIONS, TRADE AND
INVESTMENT (CTI)**



**REPORT OF COMMITTEE ON THE TOUR OF CUSTOMS BORDER POSTS
AND PORTS IN EAST AFRICA
JULY 17th – 29th, 2006**

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August 17, 2006**



Background



The Committee on Communications, Trade and Investment (CTI) is the focal Committee of the EALA on trade-related aspects of the Community. It was heavily involved in the final stages of enactment of the East African Community Customs Management Act 2004. The Committee has recently conducted working visits and public hearing workshops to all the major customs border posts in the three Partner States. This followed a number of complaints raised by stakeholders on challenges of the Customs Union among them the fact that:

1. Customs officials at border points still use the old tariffs despite a new tariff structure having come into force.
2. The three countries are yet to update their computer systems to take into account the new Common External Tariff (CET) duty structure.
3. There is lack of confluence in interpretation with regard to what constitutes raw materials versus processed goods by the three countries.
4. The Partner States have not yet standardized their customs regulations, and this therefore makes the implementation of Customs Union difficult.
5. There is lack of sensitization as many stakeholders do not have proper information about the new tax regimes. As a result, they have found it difficult to understand the benefits of Customs Union.
6. There is poor infrastructure at the Customs entry points that cannot support a fully fledged Customs Union.

The objectives of the working visits were thus to understand why the problems are being encountered and to try and recommend the measures that will address those problems.

Against this background, the CTI undertook the two week mission around the border and entry points in East Africa. The Mission was supported by the Friedrich Ebert Stiftung (FES). Also accompanying the team were 4 journalists

There is likewise improved domestic cross border trade and investment and increased volume of trade, improved trade facilitation, and diversification towards speeding up the region's industrialisation process.

AREAS OF CONCERN

The Customs Union is not without shortcomings in the process. The Committee tried to focus on this area in order to give it an opportunity to take corrective measures.

1. Lack of Customs Management Act (CMA) Regulations

Enforcement of Regulations is the *sine qua non* towards ensuring any laws are abided with. Although the CMA is in force, lack of regulations to ensure proper enforcement of the Act is a big impediment. EALA expresses concern at the lack of regulations which forces Partner States to use national laws thus contravening the very principle of the Customs Union. The use of national regulations to administer the CMA is deemed inappropriate and confusing to citizens. The CMA laws according to the Protocol should supercede national laws.

At the same time, the business community is accusing the authorities of being selective and punitive in enforcement of regulations and in their view, these seem to be done to benefit Revenue Authorities at the expense of facilitating trade. Concern is raised that the problem could be compounded with the entry of Rwanda and Burundi into the Community, whose systems and regulations are different.

Regulations are also not clear on the transportation of goods within the Partner States. There are differences in definition of the terms local goods and transit goods with respect to the labeling of the term "transit goods" on lorries between Kenya and Uganda and this confusion and frustration calls for the speedy harmonizing of regulations.

EALA wants the regulations to be published as a matter of urgency. The CTI understands that the regulations are ready and awaiting the Council of Ministers' approval. This should be done immediately and copies of the regulations printed and disseminated to facilitate trade.

2. Lack of Sensitization on CMA

Many people are not aware of Customs Management Act and the benefits of the Customs Union. There seems to be not enough efforts to popularize the Customs Union which may be due to many reasons including limited scope of funds and no built in mechanisms to focus on sensitization of citizens on the important issues at national and regional levels.

Focus should also be moved to the informal and formal traders, officials in Revenue Authorities, Security Departments, Immigrations, Customs and their Agents, and the Bureau of Standards officials.

EALA found out that Uganda Revenue Authority (URA) has a monthly training programme on taxation. This is in itself commendable. But the workshops have very little to do with the sensitization on the Customs Union.

Kenya Revenue Authority (KRA) on its part has put up a Library in Kisumu. The library however lacks materials and possibly the EAC could stock it with its publications including handbooks about the Treaty and the Customs Union Protocol.

The EAC is people-centred and market driven according to Article 7 (1)*a* of the Treaty. This is yet to be fully realized as the situation on the ground shows that many people still do not know about the Customs Union and where they do, the benefits of participating in the same has not been fully publicized. Various cases



of smuggling are still been reported at the border points as a result of lack of sensitization. This should not happen especially from Uganda and Tanzania whose traders with goods crossing to Kenya do not attract any tariffs and taxes. It does suggest that the use of *panya* routes is a result of lack of information on the benefits of no tariffs on goods entering Kenya from the two Partner States.

More education of the small scale traders on the benefits of the Customs Union and increased publicity is therefore necessary.

On the integration process, a good number of people feel that the Customs Union did not take into consideration the proper stages. While this is true, its genesis is historical and it is incumbent on the Partner States and the EAC to educate the masses on the reasons behind the move to commence regional integration with the Customs Union.

3. Documentation

Various challenges in documentation were noted including:

- The presence of too many forms required to be filled by traders,
- Complexity in the forms leading to misunderstanding and making room for corrupt officials to carry out abuse of office
- The lack of proper coordination of documentation between the various departments handling the documents.

4. Small traders and the Certificate of Origin

Small and informal traders continue to face challenges owing to inadequate sensitization. They sometimes travel all the way to Nairobi to buy goods which they fail to carry across the borders to trade when authorities request for Certificates of Origin despite knowing with certainty that the goods are Kenyan in

origin. In such instances, the traders are penalized and have to pay the full CET tariffs even in cases where presentation of invoices could have sufficed.

To date, the absence of the EAC Certificate of origin means that the COMESA Certificate of Origin is still used by the Partner States. An adjoining problem is the issue of differing signatures on the Certificates and a number of times, Customs officials send back business people thus questioning the validity of the signatures and document and delaying business.

Currently, there is no harmonization on the institutions responsible for issuance of the Certificates of Origin. In Uganda and Kenya, the Certificate is issued by the respective Revenue Authorities while in Tanzania, the Certificate is issued by the Tanzania Chamber of Commerce and Industry. The issuance needs to be harmonized immediately.

5. Non-Tariff Barriers (NTBs)

EALA found out that Non Tariff Barriers (NTB) continue to be a stumbling block to the Customs Union. Among the NTBs highlighted are:

a) Temporary work permit

The introduction of the Temporary work permit of USD 100 by Tanzania began in February this year. Unfortunately, citizens of the Partner States coming to Tanzania for business purposes are also banded into this category. The temporary work permit is treated as a single entry.

The new requirement on the permit is interpreted, used and applied differently at the different border points. EALA learned that a number of truck drivers and their ton boys from Uganda paid the amount at the Mutukula border post when transporting sugarcane to Kagera region. Another example mentioned was that experienced by Kenyan businessmen purchasing maize in Arusha. The

introduction of the temporary work permit goes against the spirit of the integration process. It also stops business people from coming to take produce, and therefore in essence, halting the efforts of local producers, affecting consumers directly and making prices expensive.

EALA feels this is wrong and further states that it would be detrimental for the other 2 Partner States (Kenya and Uganda) to reciprocate the move as was reported.

b) Weigh bridges

Weighbridges in the northern corridor especially in Kenya need to be streamlined and made more efficient and not used as NTBs. Currently, there are weighbridges in Mariakani and Athi-river and cargo trucks here are delayed by Revenue Authorities for several hours. The proposed introduction of mobile weighbridges is therefore likely to facilitate movement of goods.

c) Physical escort of goods by police

The escort by police of goods from the Mombasa Port to the hinterland is both a hindrance to transport investments and to the owners of the goods. Business people feel that instead of their trucks doing 5-6 round trips per month for example, they instead found themselves doing perhaps 2-3 trips thereby reducing flow of goods and increasing costs. It also increases delay, and is expensive in terms of human resources. Revenue Authorities however justify the escorts to avoid situations of goods diversion which are common.

d) Road blocks

The East African region has roadblocks on almost all major roads and highways. It was noted that from Bukoba to Mutukula, one can find 5 barriers while a similar number are counted between Arusha to Nairobi. Other roadblocks are



also found on the Horo-horo-Mombasa road. Police claim road blocks are erected to protect the citizens but in essence they still hamper trade through unnecessary bureaucracy.

Many problems are realised when clearing goods from Malaba to Sudan through Luwero, Pakwach and Pobogo areas. A URA sign post exists at the Pakwach road block exists but the actual location of the URA office is not visible. Traders complain that whenever they pass the area, Revenue Authorities penalize and fine them for a fault not of their own making. They are not issued with receipts. The proper offices need to be demarcated immediately.

e) **Photographing of the containers in the Mombasa port**

This is a new NTB recorded recently. Although not all Revenue officials were aware of this, it is a big impediment and a time consuming exercise. It was stated that there is only a single camera in use for the photography exercise. The new rule is not uniformly applied and the traders are not clear about the rationale behind the new move. Equipment also needs to be modernized and the right capacity put in place to avoid unnecessary delays.

6. Corruption and Bribery

Many cases of corruption and bribery at all border posts and entry points were reported and these included both: corrupt custom officers demanding bribes as well as traders inducing customs officials to accept bribes. There is general concern that corruption affects trade and the implementation of the Customs Union.

In some instances, this occurred due to lack of awareness of the law and fundamental rights by the citizens at the border points. Small traders at the Mutukula border were made to part with certain amounts of cash at the discretion of Immigration and/ or Customs officers.

In cases where animals strayed at the border points, the owners were fined astronomical fines that at times exceeded market prices of the animals!

7. Computerization

The EALA Mission found out that the Partner States have two different systems at the Revenue Authorities. Kenya uses the SIMBA system while Uganda and Tanzania have adopted the ASYCUDA++ system. One of the weaknesses of the SIMBA System is that it has failed to capture the internal tariffs but only captures the external tariffs thereby posing problems for in capturing statistical information. It is however a more recent software compared to ASYCUDA ++.

Delays in the SIMBA system were acknowledged by KRA who have promised to ensure efficiency is improved. The business community is also being challenged to attend trainings organized by KRA so that they understand and become more proficient with the system.

A positive finding is that integration of both systems is possible. Uganda and Kenya are already piloting integration and compatibility of the two systems. This needs to be realized immediately as it would speed up the movement of goods and can enable proper the management of tracking systems.

EALA contends the issue of integrating computer systems has being delayed far too long. EALA is of the opinion that the integration of systems should be speeded up. The Partner States should also jointly seek funding for the interconnectivity projects. The speed of implementation should be uniform and Tanzania needs to come on board and join Kenya and Uganda in piloting the joint systems.

Customs authorities should also ensure they are networked as a step towards promoting E-commerce and facilitating electronic tracking.

8. Poor Infrastructure

Poor roads and rail transport systems mean the goods take longer to get across the border. There is also poor air communication including aviation compounded by disparity of freight charges, passenger charges and lack of a common airspace.

There is no electricity at the border points of Namanga and Mutukula and this means that manual systems continue to be the *modus operandi* hampering efficiency.



9. Bonds

The return and cancellation of Bonds by the Revenue Authorities takes a long time to be done owing to poor tracking systems and the use of manual systems to clear goods. Challenges in Computer software often results in failure by the authorities to capture vital information including location of the transit goods on the highways across borders and their arrival to final points of destination.

10. Unilateral Decisions by Partner States without consulting stakeholders

Partner States do sometimes agree to change the bands of the CET. Whereas this is recognized, there is need for more predictability in the regime to enable the business community plan and transact their business. This should be in consultation with all stakeholders including the business community. Recently, the introduced change of a 10% import duty on crude palm oil in Tanzania during the Budget day speech occurred without consultations with the business community. Because of this, companies with operations in the Partner States such as BIDCO with huge investments will certainly feel the costs. Although on the face of it, the proposal is meant to protect farmers producing seeds, in reality it is likely to hurt the edible oil companies. This means the edible oils

could become uncompetitive since the price of the finished products will be prohibitive. Other examples include the move by Kenya on the pharmaceuticals, and the mitumba case in Tanzania.

There is need for on-going consultation between the Partner States and the business community when such changes occur.

11. Legal Issues

The current laws in place do not seem to promote trade but are more geared towards revenue collection. Several cases in the Act are cited by business persons including:

Section 138 – regarding duty drawbacks and procedures for collection of excess revenue. It is noted that the process for redress in the CMA is too lengthy

Sections 161-175 - dealing with manufacture under bonds should be reviewed.

Section 122 which gives flexible provisions for the Act but many do not follow it.

The Business community feels that various sections of the Act need to be amended so that Revenue Authorities clearly move towards trade facilitation as opposed to revenue collection which was their main mandate a number of years back.

12. Differences in codes and applications in Tariff Bands

Classification of coding systems differs in the Partner States hence attracting different tariffs. A good example is the cables which come in different sizes and

which are classified under a different tariff codes in Kenya and Uganda. There is also a tendency by business people to assign and fraudulently so, codes which attract lower tariffs.

An example of difference is mentioned in the coding of speed governors are coded under 9230 in Kenya and 8532 in Uganda. Such discrepancies cause problems and the coding systems need to be synchronized in time before the integration of the computer systems. Harmonization of codes is also necessary.

The EAC also needs to give guidelines on the constituents of raw materials with regards to certain goods. Sugar, edible oil and iron sheets are typical examples of goods which can be termed as both a raw material and finished good and this has repercussions on tariffs.

13. Import Declaration Forms

On Duty Inspection fees, the continued use of the IDF form constitutes an NTB. This should have already been abolished as was agreed upon by the Partner States following the introduction of the CET. In any case, there are two problems associated with its usage. Firstly that there are differences in charging on the IDF forms within the Partner States, and secondly currency convertibility poses problems for importers.

14. The Ports

The issue of delaying containers in the ports owing to poor communication and clearing systems by the ports is a cause of concern among the business community. Besides the delays, demurrage charges are often levied on the delayed cargo affecting business and punishing the cargo owners.

The decision by the Kenya Ports Authority to stop forthwith the additional charges by Sept 1, 2006, on cargo at the port after 21 days is therefore a welcome initiative.

There are efforts to establish both the ports of Mombasa and Dar es Salaam to international requirements and be competitive although at the same time, they lack the capacity to process and clear cargo through the ships. However, ports authorities defend the delays saying that business persons are never in a hurry to clear their goods. There is further need for improvement in the hinterland infrastructure to improve efficiency

The system of joint verification is yet to be instituted although KRA, URA and Rwanda revenue authority have embarked on piloting a regional community based project and once implemented, container tracking will be made possible and shipping agents can also benefit from the notification process.



15. Immigration issues

Cross border movement by ordinary people at the Mutukula border is hampered by overzealous Tanzania immigration officers who tend to harass Ugandan citizens even when they have permits and certificates of residency in Tanzania.

It was also revealed that East African citizens of Somali origin faced more scrutiny at the Namanga border post and this amounts to discrimination. Immigration authorities have been asking East African citizens of Somali origin to produce their identity cards in addition to their passports.

The East African passport is slowly gaining acceptance by the Partner States. However, it has been stated that some immigration officers are yet to recognize the legal six month visa requirement and are not stamping the stipulated six

month visa on EAC passports. It could not be clarified whether this is as a result of lack of awareness or simply ignoring the law.

Generally, the issue of free movement needs to be encouraged at all the border points. The Law should likewise draw a balance between the cultural practices of border communities and regulations. Communities residing at our borders should be given consideration with regards to acceptable social and cultural activities and interactions. The Teso on the borders for example, live on both sides of Kenya and Uganda while the Haya reside across the two sides of the Mutukula border. They nevertheless face challenges when going to visit their relatives or having wedding ceremonies. Ideally it is not necessary to have their travel documents stamped on every occasion.

16. Standards of goods

There is still concern about the quality of goods for both export and import crossing the borders. It is understood that no substandard goods cross either side of the borders. The Certification process is however lengthy and causes delays at the border points. Certain business people are also not aware of the exact requirements.

Standard issues appear under Standardisation Quality Management and Testing (SQMT) Act and although this has been passed by EALA, the process of implementation is slow. There are still many people who are neither aware of its existence nor the process.

17. Multiple memberships

The issue of multiple memberships to different blocs is still a sensitive one to Partner States. While EAC has a Customs union, SADC and COMESA are yet to have Customs Unions' in place. Continued membership to the different regional blocs hampers the integration process at the EAC. CMA Article 112 stipulates



that all 3 Partner States should relinquish their positions and the EAC subsequently seeks membership elsewhere as a bloc

RECOMMENDATIONS

As CTI, the following recommendations will improve the operationalization of the Customs Union.

1. Dismantling Non Tariff Barriers

NTBs should be abolished as stipulated in Article 13 of the Protocol on the Customs Union. The tour has revealed that all NTBs are commonly applied as restrictive barriers to trade employed by Partner States and that as soon as one NTB is resolved and removed, another is put in place. There is need to have in place a mechanism to monitor and dismantle NTBs. Sanctions need to be put in place in order to avoid the re-appearance of NTBs. Further on, a regulations handbook needs to be published so that once a business person fulfils all the requirements; he/she can carry out his/her business uninterrupted.

2. Enhanced Computerization

Computerization is important to enable the Customs Union to be more efficient. More effort is vital to ensure that the systems within the three countries become compatible and are immediately integrated. This will come in handy when pursuing a central collection unit for revenue collection.

Computerisation at the Namanga border post is a necessity since the volume of persons handled is in excess of 300,000 persons per year. Attempts should be made to ensure computerization at all other border points as well. Customs Authorities should also ensure they are networked as a step towards promoting E-commerce and facilitating electronic tracking.

Training is necessary as ICTs are very dynamic. EALA will look into the possibility of enacting an ICT regulation to ensure connectivity.

3. Improved Infrastructure

EALA recommends that improvement in infrastructure be carried out in the following areas – roads, railway, ICT, ports, aviation network, and energy. Priority needs to be given to all border centres. There is also need to speed up construction of a joint verification centre for Customs officials, Police, Immigration, and Bureau of Standards officials to ease flow of goods and revenue collection.

Better infrastructure will make the Customs Union more functional.

4. Centralised Revenue collection

As the Customs Union becomes fully operational, there is need to work out modalities of central collection of revenue at the ports of entry because it serves to ensure efficiency and reduce fraud, improve economies of scale, and eventual erasure of the bonds systems. It must however be in tandem with computerization and tracking systems, internal tariffs and harmonization of taxes. Because this may not be realized instantly, the authorities may need to collaborate by setting up Partner States' desks at their counterparts' offices towards initializing the process. The Revenue Authorities may for example set up desks at the Mombasa and Dar es Salaam ports to assist in collection of revenue for goods destined for the hinterland.

The Revenue authorities need to work very closely to help realize common objectives.

5. Intra-regional trade

Increasing intra-regional border trade goes a long-way in improving the economic growth and development and regional integration. As we increase intra-regional trade, there is need to promote production and fair competition based on competitive advantage. Future policy of the EAC should take into consideration the small scale traders. One area that EALA would like more attention given to is in livestock trade at the border areas. It is anticipated that the opening of the Kenya Meat Commission (KMC) in Athi-river, Kenya, will stimulate trading of livestock in the region. There is also a need to have a Livestock Policy in East Africa.

6. Rules of Origin

Article 14 of the Protocol establishing the Customs Union dealing with the Rules of Origin supports the adoption of the Rules of Origin. The EAC Certificate of Origin therefore needs to be in place immediately.

The Uganda List needs to be resolved immediately to promote fair competition.

7. Collaborative Immigration procedures

Free movement of persons is a fundamental tenet of the Common Market and this should at all times be enhanced.

Immigration authorities should synchronise activities at all border posts. Regulations need to be clear and applied equally by all. The East Africa Passport must be seen to be supporting the integration process. The immigration officers at the border posts need to be trained to understand the law better. It is also necessary that the discrimination of East Africa nationals for example, those of Somali origin be brought to an end.

In addition:

-EALA recommends the need for good neighborliness and brotherhood among the Sister states.

- EAC secretariat needs to speed up the availing of all documents related to the Customs Union to enhance public awareness. The Secretariat could work closely with national government printers to realize this goal.
- There is an urgent need to build mutual trust at all levels within the different stakeholders
- The formation of regional and national bodies related to trade by various stakeholders should be encouraged
- There is a need to institute regular training at the border posts of Customs officials, Agents, other government officials such as Security forces and enforcement personnel on procedures of the Customs Union

8. Anti-corruption measures

Government officials charged with revenue and customs issues should have integrity and be corrupt-free. Education and training on anti-corruption should be held. Business people on the other hand should co-operate more with the revenue authorities and be honest in declaring the value of goods. Fraud is largely mentioned as the genesis for and the continued escort of goods across borders by the authorities.

9. Documentation

The EAC needs to provide adequate copies of publications at all border posts. The Government Printers could prove useful in mass production of necessary EAC documents for circulation to the publics. The use of websites to download information is also vital although this is linked to availability of power at the border posts.

CONCLUSION

The Mission proved to be very useful and did show that there are some notable achievements of the Customs Union. However, certain impediments still hamper its very progress. Although this report was prepared by the EALA Parliament, it should be disseminated widely to stakeholders including the Revenue Authorities, the EAC, the Council of Ministers, EABC and national business associations.

All stakeholders have a vital part to play towards resolving the challenges stated in this paper in ensuring that the fully fledged Customs Union becomes a reality.

ANNEXE 1

Leg 1 – **Mombasa – July 18th, 2006**. The team made paid a courtesy call at the Provincial Commissioner's office and held discussions with the deputy Provincial Commissioner. It later visited the Mombasa Port for discussions with the Kenya Ports Authority. A Public Hearing was also held.

Leg 2 – **Nairobi – July 20th, 2006**. A public hearing was held at the Nairobi Safari Club and attended by Government officials, Customs officials, Business Stakeholders and representatives of the Civil Society.

Leg 3 – **Malaba-Tororo – July 21st, 2006**. Meetings with Customs and Immigration officials at the Malaba border post. A public hearing was later held at Tororo (Uganda) and attended by officials of revenue from both countries, business representatives, public officials and the media.

Leg 4 – **Entebbe and Kampala – July 22nd, 2006 and July 24th, 2006**. The team visited the Uganda Revenue Authority headquarters in Nakawa and the cargo department at the Entebbe international airport. It also held a Public hearing.

Leg 5 – **Mutukula – July 25th, 2006**. 250 km south-west of Kampala on the Uganda-Tanzania border where it held its third public hearing.

Leg 6 – **Dar es salaam – July 27th, 2006**. Where the entourage visited the Dar es Salaam port and held discussions with port officials. A public hearing was also held.

Leg 7 – **Namanga border post – July 29th, 2006**. EALA held the last public hearing in Namanga.

ANNEX 11

LIST OF PARTICIPANTS

MEMBERS OF EALA AND CTI COMMITTEE

Hon George Nangale –Chairman of CTI

Hon Abdirahin H.H Abdi

Hon Calist Mwatela

Hon Isaac Abraham Sepetu

Hon Irene Ovonji-Odida

Hon Mabere Marando

Hon Sarah Bagalaaliwo

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MEDIA REPRESENTATIVES

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Mr Francis Ayieko – East African, Kenya

Mr Pascal Mayalla – Independent Producer, Tanzania

Ms. Angela Mazulla – Express, Tanzania


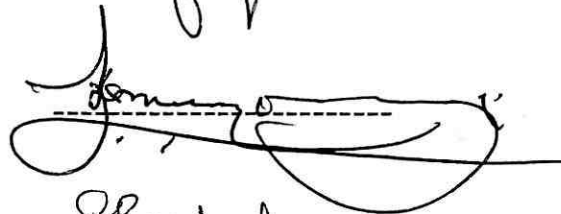
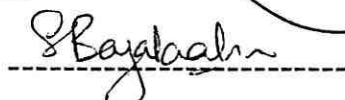



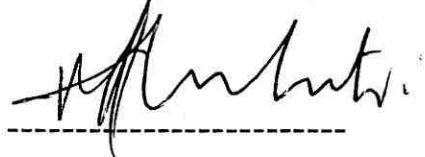

OTHER REPRESENTATIVES

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Mr. Wilman Kapenjama – FES, Tanzania

Mr. Bobi Odiko – EABC, Tanzania

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1. Hon. Dr. George F. Nangale	
2. Hon. Yonasani B. Kanyomozi	
3. Hon. Sarah Nanziri Bagalaaliwo	
4. Hon. Mabere Nyauchó Marando	
5. Hon. Irene Ovonji-Odida	
6. Hon. Amb. Isaac Abraham Sepetu	
7. Hon. Mohammed Abdullah Zubedi	
8. Hon. Rose Wairimu Waruhiu	
9. Hon. Haithar A. Haji Abdi	