

THE ROLE OF THE LEGAL PROFESSION IN FOSTERING THE EAC INTEGRATION

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Launch of the Uganda Law Society - East Africa Community Cluster

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Word of Thanks

- Thank you for the invitation to officiate at the launch of the Uganda Law Society – East Africa Community Cluster.
- Given my duo appointments, kindly accept greetings from the East African Court of Justice and the Court of Appeal / CC of the Uganda Judiciary.

Background to the Conference

The overall theme of this conference: *“Future - Proofing the legal profession in EA”* is very relevant to the current times, and as the Chinese say; *“may you live in interesting times”*, indeed what is happening in East African Community (Community) and the world at large is interesting. The question is *“Whether the legal profession is ready for these times and beyond?”*

The integrity of regional integration is also being tested on the world scene with Slogans such as: *“Brexit”*, *“America First”*, brings back memories of the 1970’s and the collapse of

the former Community which led each country to undertake its own legal training and construct barriers to legal practice.

With the re-establishment of the Community with six Partner States (Uganda, Burundi, Kenya, Rwanda, South Sudan and Tanzania), the question arises “*Whether we are future-proofing the legal profession in light of these developments?*” It is important that the region hedges against the possibility of redrafting another Partner States divorce Bill.

The Uganda Law Society-EAC Cluster and its counterparts can play a vital role in forging co-operation that impacts the region through unified and harmonised laws.

The legal profession and integration in the East Africa Community (EAC)

In 2009 the EAC Partner States signed The Common Market Protocol which guarantees: the free movement of people; workers; capital; services; and goods plus the rights of residence and establishment across the region. It also *inter alia* has the objective of integrating the professional services and mutual recognition of academic and professional qualifications. This is where the legal profession comes in. The question is what has been achieved in this area over the last 7-8 years in terms of integration of legal services?

In 2014, Hon. Dora Byamukama tabled *The EAC Cross Border Legal Practice Bill* at the East African Legislative Assembly (EALA). The aim of the Bill was to provide for the conduct and regulation of cross border legal practice in the Community. Whereas the Bill was debated its finalisation was adjourned due *inter alia* to; reservations of National Law Societies of increasing competition; and qualms of swamping certain jurisdictions with lawyers from other jurisdictions.

Before the joining of the Republic of South Sudan, the region has a population of about 180 million people and a GDP of \$ 163 bn. This is a big opportunity for the absorption of legal services.

However a 2010 World Bank report on *“Reform and Regional Integration of Professional Services”* paints a dismal picture which still largely holds true today: - The survey found that the number of lawyers per 100,000 people in the region stood at

- 2 for Tanzania
- 4 for Uganda
- 5 for Rwanda and
- 19 for Kenya

This is low when compared with figures from some other developing countries.

The number of qualified lawyers in the region according to the report at the time stood at:-

- 450 for Rwanda
- 850 for Tanzania
- 1,131 for Uganda
- 7,100 for Kenya

The reasons for this relatively poor performance in the provision and absorption of legal services in the region has been attributed to:-

- Variant legal training
- Restrictive domestic entry regulations for the legal profession
- Differential pricing for legal.
- Lack of legal innovation among other factors.

In line with the EAC Common Market Protocol, attempts were made to negotiate a mutual recognition agreement between Competent Authorities of Advocates, establishing conditions for registered and licenced Advocates to provide legal services in other jurisdictions, without much success.

This means that integration in professional services is still work in progress. It is hoped that someday, Mutual Recognition Agreements on Cross Border Practice could form a building block for an enforceable legal mechanism obliging the legal profession to harmonize legal services while mindful of the civil, common law and other legal existing in EAC Partner States.

The East African Court of Justice as Beacon for Professional Integration

Established under Article 9 of the EAC Treaty as the principal Judicial Organ of the Community, headquartered in Arusha, Tanzania, with Sub-Registries in the Partner States, the East African Court of Justice (EACJ) presents an array of practice areas and opportunities for legal practitioners in Uganda and the EAC at large. Uganda's sub-registry is at the Supreme Court of Uganda.

The EACJ has a pedigree from the East African Court of Appeal which to date had the highest level of integration in East Africa because:-

- i. It was Court of Appeal for all Partner States with a bench comprising of Judges from all Partner States rotating from one Partner State to another.
- ii. Its decisions were binding on the affected Partner State.
- iii. Its decisions were widely circulated in reports like EACA and EA Law Reports.
- iv. All advocates in their home countries had audience at the court with nearly complete mobility.

The East African Court of Appeal allowed for harmonised standard of law and legal practice within East Africa and the region prospered as a result of this. Having achieved this in the past there is no reason why this standard of integration cannot be relived or for that matter exceeded.

The EACJ has hallmarks of the former East African Court in that:

- i. Justices are drawn from Partner States though the jurisdiction now is limited to treaty interpretation. This can be extended by Protocol of the Partner States [Art 27 (2)].
- ii. The EACJ Judgments are enforceable domestically [Art 44] and are precedence setting.
- iii. Licensed Lawyers from Partner States can appear in the Court whereas that is restricted in domestic courts [Art 37 of Treaty].
- iv. It has powers to sit as a court of Arbitration [Art 32 of the Treaty] without limitations as to professional representation.

Lawyers in the Community should take advantage of this professional integration window to develop a basis for unification and harmonisation of the profession like in the days of the East African Court of Appeal.

The Uganda Law Society - East African Community Cluster (ULS-EAC Cluster)

The EACJ welcomes the formation of the ULS-EAC Cluster which, together with the East African Law Society can accredit other associations so that a Bar- EACJ Bench Committee can be created for a smoother unified and harmonised practice at the Bar. This will open doors to integrated domestic practice in the long run.

This model is recommended to other Law Societies in the Community to replicate and develop active clusters that can interface with legislators on matters of integration.

Greater regional integration can only be achieved through advocacy with Partner States to activate Art 27 (2) of the Treaty to extend the operation of the EACJ in the areas of

Human Rights and other areas. There is already a decision to extend EACJ's jurisdiction to areas of commerce but a protocol is yet to be ratified by Partner States to give it effect.

Outstanding Issues

The following are a few accelerators to possible professional integration in the EAC:-

- i. Training and qualification standardization. This used to be possible during the "O" and "A" level exams under the old East African Certificate of Education and East African Advanced Certificate of Education system
- ii. Training in East African Community Law
- iii. Opening up East Community Law practices within Law firms
- iv. Starting inter law firm collaborations within the region as a way of mitigating the barriers to cross border practice
- v. Use of ICT in legal and judicial practice.

Official launch of the ULS EAC Cluster

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