

EACSOE E-Newsletter

September 2008

Dear Readers,

Welcome to the third edition of the East Africa Civil Society Organisation Forum (EACSOE) E-newsletter. This month, we bring you briefs on the outcome of the 16th EAC Council of Ministers Meeting that took place in Arusha from the 8th –13th September as you will read elsewhere, the recently concluded EAC Common Market negotiation that took place in Nairobi, and the upcoming Steering Committee meeting in Nairobi at the end of September 2008. Other areas of interest include the report on the draft law that threatens to criminalise Ethiopian civil society and the briefs on the courtesy visit to East African Trade Union Council by the EACSOE Secretariat.

The Access to Justice Network section this month focuses on the swearing of the new Judges of the African Court on Human and Peoples Rights as well as a synopsis on the ruling pitting East Africa Law Society & 4 Others Vs. The Attorney General of the Republic of Kenya & 3 Others, EACJ Ref. No. 3 of 2007.

I wish you a happy reading.

Newsletter Editor.

NEWS MAKING HEADLINES

EACSOE HOLDS THE 1ST STEERING COMMITTEE MEETING 2008.

The 1st Steering Committee meeting 2008 is scheduled to take place at the Silver Springs Hotel, Nairobi, Kenya from the 28th –29th September 2008. The Steering Committee meeting will

seek to continue discussing parameters of how best to achieve the resolution of the 2nd Annual Forum and plan for the financial year 2009.

The objectives of the meeting shall include but are not limited to: -

- Registration of EACSOE as a Society, at the Societies' Registry in Dar es Salaam, United Republic of Tanzania.
- Holding of in-country mobilization, training and dissemination seminars in the five (5) EAC States.
- Fundraising and Resource mobilization for the Forum.
- Discussion on the viability of holding a tripartite Forum.
- Convening of a third regional training and dissemination meeting (3rd EACSOE).
- Continuing engagement with the EAC, especially in the evolving process towards an EAC Common Market, which is scheduled to kick off on 1st January 2010.
- EACSOE 2009 Plan of action.

The meeting will feature a presentation on the EAC Common Market now in negotiation.

The Steering Committee meeting met thrice last year and was supposed to meet twice this reporting period. The Steering Committee meeting 2008 has been delayed due to financial deficiencies to handle the activities of the Forum. The eighteen Steering Committees of the Forum are elected from the five countries of the East African States with a special provision for Zanzibar. The Steering Committee is the interim governing council of EACSOE. They are responsible for policy formula and running of the day-to-day business of the EACSOE Secretariat as well as implementing policies and programmes of the organisation.

For more information concerning the meeting and the report, contact Ms. Joyce Kevin Abalo at the following address, Jabalo@ealawsociety.org

EACSOFF PAY COURTESY VISIT TO THE EAST AFRICAN TRADE UNION COUNCIL (EATUC)

The EACSOFF courtesy visit to the East African Trade Union Council (EATUC) took place on the 5th/09/2008 at the EATUC office in Arusha. Mr Bobi Odiko represented EALS while Ms. Joyce Kevin Abalo represented the East African Civil Society Organisation Forum.

The meeting was the first formal interaction between the two organisations and it marked the beginning of formal coordination and cooperation between the two especially on the EAC policy and programme lobby and advocacy to deepen regional integration and influence EAC to be people centred and private sector driven as envisioned in the EAC Treaty of 1999.

The Executive Secretary of EATUC Mr. Emmanuel T. Nzunda appreciated the EALS and EACSOFF initiative of paying EATUC a courtesy call. He promised that EATUC would work closely with EALS and EACSOFF by focusing on issues to be addressed at the EAC, which are pertinent to the EAC citizens and civil society.

Areas of identified for close collaboration between EACSOFF, EALS and EATUC as discussed include but are not limited to the following,

- Information sharing on EAC related issues that affect the citizens of the EAC.
- Joint participation at the EPA negotiation process to have the social charter of the citizens of the

EAC included in the policies and programmes negotiated at the EPA.

- Harmonisation of laws particularly on labour laws among others.
- Joint public interest litigation at the EACJ for aggrieved workers in the EAC should such a need arise.
- Effective participation of EATUC at the EACSOFF networking meetings and activities.
- Pre-lobby and advocacy meeting between the organisations to have a common ground to negotiate at the EAC/EPA meeting.

In conclusion, the meeting marked the beginning of the long-term collaboration of EATUC and the EALS, as has been the tradition of the EALS with other Regional Organisations and Institutions with a permanent programmatic focus at the EAC. The two organisations perform very similar activities and mandates with similar structure, which creates a conducive avenue for effective cooperation. The difference however lies in the mandate as EATUC concentrates much on the workers rights in the EAC while EALS is concerned broadly on human rights, good governance, constitutionalism and Democracy for all the people in the EAC region.

THE EAC COMMON MARKET NEGOTIATION COMPLETES SECOND ROUND.

High Level Task Force (HLTF) on the Negotiations of the EAC Common Market Protocol concluded its Second Round of the Negotiations in Nairobi on 23 August 2008 after making significant progress with agreements on a large number of issues on the right of Establishment and the Right of Residence under the proposed Protocol.

The meeting also agreed on the need for national consultations on the Protocol with key stakeholders. Country Coordinators will work closely with the Secretariat to arrange stakeholders' workshops. The meeting also noted the need for dedicated workshops for capacity building for members of the HLTF. The next such dedicated workshop will take place in Bujumbura, Burundi from 18th – 19th September 2008 on Services, Competition and Transport Policy.

The meeting considered comments and issues raised by Tanzania. Specific to these issues were consensus on the following; mutual recognition of academic and professional qualifications which should be a transitional measure before Partner States harmonize the curricula; that of enabling EAC citizens to access diplomatic protection in third countries in which some Partner States may not be represented; the proposed Protocol should have articles on Sanitary Phytosanitary measures (SPS), Technical Barriers to Trade (TBT), agriculture and industrialisation; the proposed Protocol should have a clause on respect for gender, human rights, good governance and rule of law; and a provision for the Council of Ministers to adopt a general program for abolishing of existing restrictions on the free movement of workers in the Community.

The HLTF considered the provisions in the model Protocol that will govern the Rights of Establishment, Residence and Free Movement of Persons within the EAC Common Market whereby consensus was reached on some issues while others were bracketed to be considered at the next meeting of the HLTF scheduled for 20th – 27th September 2008 in Bujumbura, Burundi. Among the highlights of the

right of Establishment, the HLTF provided that the Partner States shall guarantee the right to free movement of persons who are citizens of the Partner States, within the Community and abolishing of any discrimination based on nationality; the right to move freely within the territory of a Partner State; Partner States shall effect reciprocal opening of border posts and keep the posts opened and manned for 24 hours; and that the movement of refugees within the Community shall be governed by relevant international conventions.

The meeting considered and agreed on the provisions in the draft Protocol that would govern the free movement of capital within the EAC Common Market. The HLTF agreed that on Free Movement of capital and related payments/ transfers these would apply to: direct Investment; equity and portfolio investments; bank and credit transactions; payment of interest on loans and amortization; dividends and other income on investments; repatriation of proceeds from the sale of assets; and other transfers and payments relating to investments flows.

The agenda for next meeting scheduled for 20th to 27th September 2008 in Bujumbura, Burundi; shall include outstanding issues on:

- Tanzania's comments;
- Rights of Establishment;
- Consideration of sub-committee report on the Right of Residence;
- Free movement of Services; and
- Transport Policy.

For more information about this Report, please visit the EAC website.

EAC COUNCIL OF MINISTERS MEETING IN ARUSHA

The 16th Council of Ministers meeting

took place in Arusha on September 8th –13th 2008. The Partner States were represented by delegations consisting of honourable ministers, officials, experts and professionals. A good number of civil societies also attended the meetings as observers. Hon. Monique Mukaruliza, Minister of the EAC, Rwanda chaired the meeting. Rwanda took over as chair of the EAC at the 9th Ordinary Heads of State Summit in Kigali on 26th June 2008, making history as the first chairperson from outside the three founding Partner States.

The EAC Secretariat congratulated Rwanda on becoming the new chair of the Council of Ministers and pointed out that the challenges they face this term include; finalizing the negotiation of the EAC Common Market; operationalising the extended Jurisdiction of the East African Court of Justice and generally the monitoring of the amendment of the EAC Treaty.

The main area of discussion of the meeting was the delay in signing and ratification of EAC Protocols. Reasons cited for these delays included the unavailability of the relevant ministers during the signing ceremonies and the politics and bureaucracy in the governments. The EAC Secretariat promised to keep urging and reminding the States to ratify the protocols. For detail information regarding the Council above meeting, please visit EALS website on www.ealawsociety.org

ACCESS TO JUSTICE NETWORK SECTION.

THE AFRICAN COURT SWEARS IN TWO NEW JUDGES

The African Court on Human and Peoples Rights held their first ever session that was open to the public for

the swearing in of two new Judges of the Court; Judge Joseph N. Mulenga who was previously the President of the East Africa Court of Justice and Judge Githu Muigai who has been a prominent Human Rights Lawyer and had been nominated as the United Nations Special rapporteur on racism, xenophobia and related intolerance. Justice Mulenga and Justice Muigai join the bench of 11 eminent Judges from various Member States. The Bench as it now is includes: Judge Fatsah Ougergouz (Algeria); Judge Gerard Niyungeko (Burundi); Judge Sophia A.B. Akuffo (Ghana) Vice President; Judge Kellelo Justina Masafu-Guni (Lesotho); Judge Hamdi Faraj Fanoush (Libya); Judge Modibo Tounty Guindo (Mali); Judge Jean Mutsinzi (Rwanda) President; Judge El Hadji Guisse (Senegal); Judge Bernard Ngoepe (South Africa); Judge Joseph N Mulenga (Uganda); Judge Githu Muigai (Kenya)

The Court thereafter in their tenth session elected a new President and Vice President. Justice Jean Mutsinzi takes over the mantle of Presidency from Justice Gerard Niyungeko and Justice Sophia Akuffo takes over as Vice President of the Court from Justice Modibo Tounty Guindo. The President and Vice-President are elected for a term of two years and may be re-elected only once.

The Protocol establishing the Africa Court on Human and Peoples' Right's came into force on 25 January 2005 after receipt of the 15th instrument of ratification of the Comoros on 25 December 2004. The Court is not yet functional but has its seat in Arusha, Tanzania. The African Court on Human and Peoples' Rights (ACHPR) is the most recent of the three regional human rights judicial bodies. Envisioned by the African Charter on

Human and Peoples' Rights concluded in 1981, its structure was not planned until the Organization of African Unity (OAU) promulgated a protocol for its creation in 1998. The Protocol to the African Charter on Human and Peoples' Rights Establishing the ACHPR entered into force on January 25, 2004 upon its ratification by fifteen member states.

East Africa Law Society & 4 Others Vs. The Attorney General of the Republic of Kenya & 3 Others, EACJ Ref. No. 3 of 2007

In May 2007, The East Africa Law Society together with the four National Law Societies of Kenya, Uganda and Tanzania filed a reference at the East African Court of Justice to challenge the 2006 amendments to the Treaty (Ref. No. 3 of 2007). The reference came for judgment on 1st September 2008 where the Court ruled *inter alia* that: –

- The Applicants, being residents in the Partner States, were vested with a right of access to the Court and challenge any infringement of the Treaty;
- The fact that the process of amending the Treaty was expedited, without adhering to a stipulated 90 day consultation period, did not in itself infringe the provisions of the Treaty on amendment; however, to the extent that the amendment process did not meet the requirements for as widespread consultation as possible in a people-centred integration process, this process was not proper and lawful;
- No cogent evidence was adduced to prove that the amendments were carried out by the Partner States in

collusion, in bad faith, and/or in reaction to the decision in EACJ Application No.1 of 2006 therefore the presumption of fact that states act in good faith was not rebutted.

- The Court concluded that the lack of people's participation in the amendment process was inconsistent with the spirit and intendment of the Treaty in general and that in particular; it constituted an infringement of the principles and provisions in Articles 5(3)(g), and 7(1)(a) and 38(2) of the Treaty.
- The Court therefore decided in favor of the Applicants and awarded them costs. However, invoking the doctrine of prospective annulment, the Court declined to invalidate the amendments, which have since entered into force. The Court also pointed out the need to amend.

DRAFT LAW THREATENS TO CRIMINALISE ETHIOPIAN CIVIL SOCIETY.

The government of the federal democratic republic of Ethiopia has issued three consecutive drafts of the Charities and Societies Proclamation over the last few months. While the recent draft, due to be introduced to Parliament in October 2008, makes some improvement on the last two, it retains many draconian provisions.

The government has stated that the intention of the bill is to increase civil society organisations' (CSOs) transparency and accountability to stakeholders, but local and international groups have expressed concern that it will instead serve to silence dissent according to the media source.

The following are the number of concerns regarding the law, including:

- The Proclamation prevents CSOs that receive more than 10% of their income from foreign sources from working on issues of public importance, including human rights, gender and religious equality, children's rights, the rights of the disabled, conflict resolution and judicial reform. Given the lack of domestic fundraising opportunities, most organisations rely on funds from abroad.
- The Proclamation permits excessive government interference in the functioning of CSOs, through the power to carry out random investigations at will. Among other requirements, CSOs must provide the government with seven days notice of any general meeting.
- By creating a web of exhaustive reporting procedures, the Proclamation gives the government a convenient way to intimidate CSOs. Mandatory annual reporting, requirements to keep meticulous financial records as well as re-registration every three years, leaves ample room for possible procedural delays and intimidation by the authorities.
- Once a CSO is denied registration, or fails to apply, the organisation is then declared unlawful. If members and supporters continue their involvement with the CSO, they risk severe punishments, including three to fifteen years in prison. According to international standards, the decision to officially register should be voluntary not imposed by the government. Such harsh repercussions for breaching the provisions of the law could deter

the free participation of individuals in civil society activities.

- CSOs have limited rights to appeal against decisions taken under the Proclamation. For example, if a CSO is denied registration, it will not be able to ask for a judicial review of the facts on which the government has based its assessment. Aside from amounting to a denial of justice, it could also allow authorities to arbitrarily silence independent groups and individuals.

If the current draft of the Proclamation is passed, the already narrow space for civil society in Ethiopia could be even further restricted. In recent years, political opposition, media and civil society activists have been systematically harassed and even imprisoned because of their criticism of the government.

The Proclamation, if permitted to pass, would violate Ethiopia's commitments to international and regional human rights agreements, as well as its own constitution. Article 31 of the Constitution specifically guarantees, *"Every person has the right to freedom of association for any cause or purpose"*.

An analysis of the Proclamation is available at http://www.civicus.org/csw_files/AnalysisEthiopiaCharitiesProc140808.pdf For more information, visit www.civicus.org or contact Julie Middleton at +27 82 403 6040 or cswatch@civicus.org.

EACSOF would like to thank you as part its wider membership and welcomes your comments if any. For more information contact EACSOF Coordinator, Ms. Joyce Kevin Abalo at JAbalo@ealawsociety.org.