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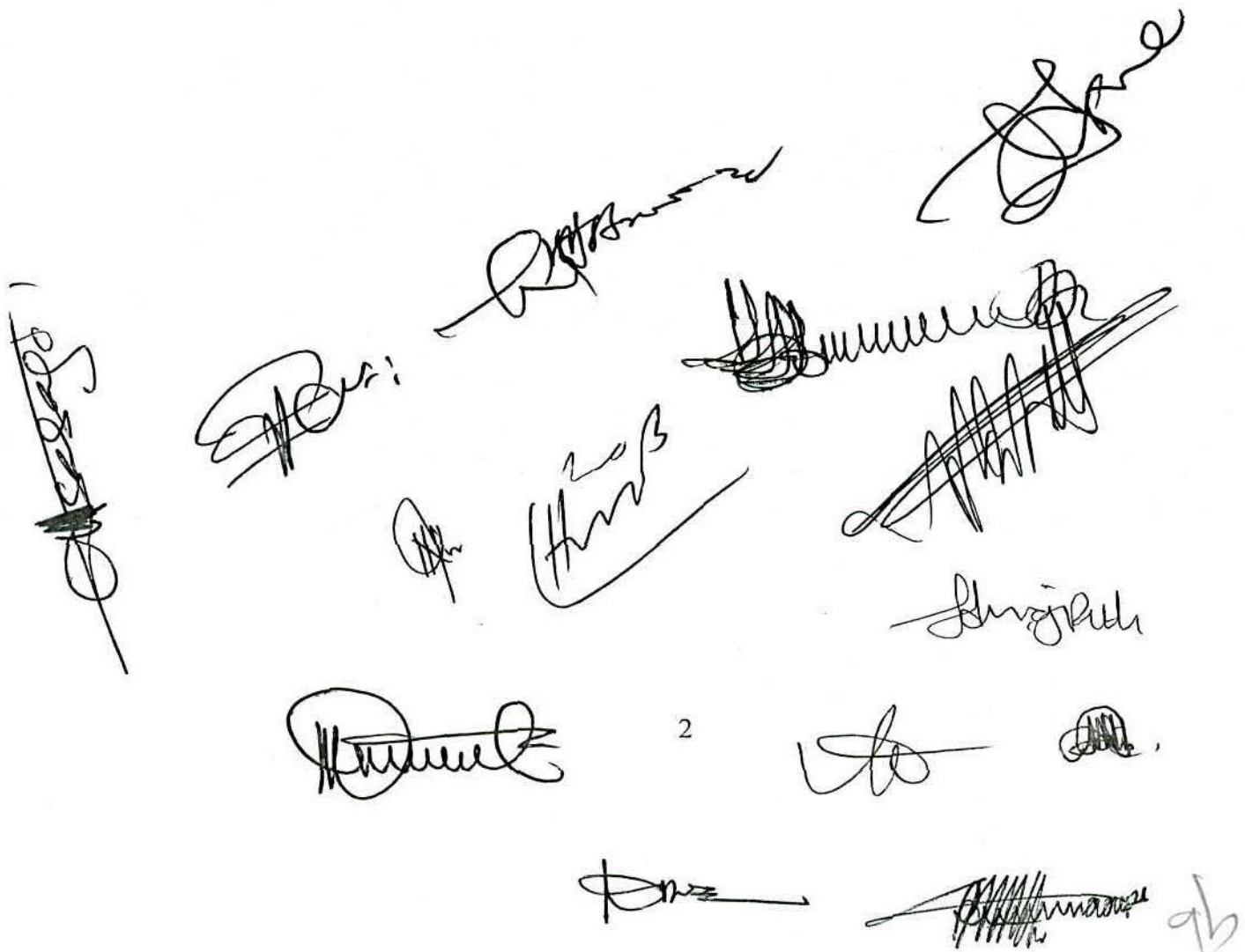
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A collection of approximately 15 handwritten signatures and scribbles in black ink, scattered across the lower half of the page. Some signatures are highly stylized and illegible, while others are more legible, such as 'Humb' and 'Suzuki'. There are also several large, dense scribbles that obscure any text underneath.

# THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2013

## 1.0 INTRODUCTION

The Rt. Hon. Speaker and Hon. Members, permit me to present the report of the Committee on Finance, Planning and Economic Development on the East African Development Bank (Amendment) Bill, 2014. As you will recall, the Bill was read for the first time on 10<sup>th</sup> September 2014 and was referred to the Committee on Finance, Planning and Economic Development for scrutiny. The Committee has examined the Bill and now presents its findings to the House.

## 1.1 METHODOLOGY

The Committee held a consultative meeting with the Ministry of Finance, Planning and Economic Development and the East African Development Bank.

The Committee also reviewed the East African Community Treaty and the Charter of the East African Development Bank.

## 1.2 THE OBJECTIVE OF THE BILL

The objective of the Bill is to amend the East African Development Bank Act Cap. 52; to provide for giving effect to the Charter approved at the Summit of the East African Heads of State meeting.

## 1.3 BACKGROUND TO THE PROPOSED AMENDMENT

At the 43<sup>rd</sup> meeting of the Governing Council of the East African Community held on 15<sup>th</sup> March 2012, the Governing Council approved amendments to articles 3, 4, 24, 45 and 46 of the Charter of the East African Development Bank<sup>1</sup>. The amendments to articles 3 and 4 of the Charter sought to allow Class B shareholders to subscribe to callable capital<sup>2</sup>. Article 24 of the Charter was equally amended at the meeting to establish the status of the Bank.

<sup>1</sup> See the detailed amended Articles 3, 4, 24, 45 and 46 of the Charter of the East African Development Bank specified in the Schedule.

<sup>2</sup> Callable capital is that portion of subscribed capital stock subject to call only as and when required by the Bank to meet its obligations on borrowing of funds for inclusion in its ordinary capital resources or guarantees chargeable to such resources. In the event of a call, the shareholder must make payment in the currency required to discharge the obligation of the Bank for which the call was made. (Wikipedia)

*[Handwritten signatures and scribbles at the bottom of the page, including a large signature on the right and several smaller ones below.]*

functioning of such organizations free from the unilateral interference by individual governments.<sup>3</sup>

3.2 Pursuant to the 1980 Treaty, the East African Development Bank Act (the Act) Cap. 52. was enacted, for the purpose of:-

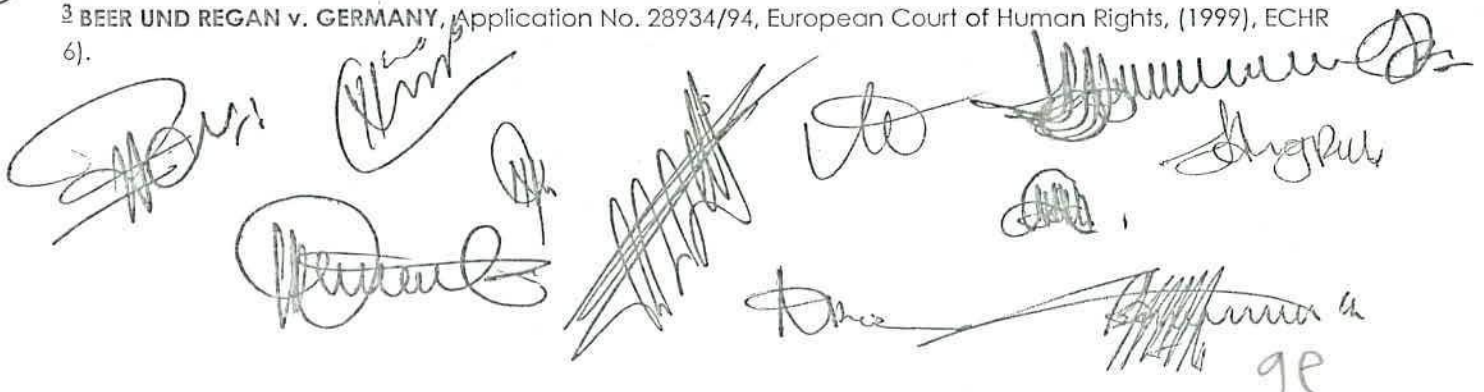
**"...carrying out the obligations of the Government of the Uganda under the Treaty amending and re-enacting the Charter of the East African Development Bank and to provide for related matters."**

3.3 The Committee notes that, section 3 of the East African Development Act, cap. 52 provides that; "The provisions of the charter annexed to the Treaty of 1980 and set out in the Schedule to this Act have the force of law in Uganda". It is important to note that the only provisions that had the force of law then were the following;

- Article 24—Use of Currencies.
- Article 25—Maintenance of Value of Currency Holdings.
- Article 43—Purpose of Chapter.
- Article 44—Legal Status.
- Article 46—Immunity of Assets.
- Article 47—Immunity of Archives.
- Article 48—Freedom of Assets from Restriction.
- Article 49—Personal Immunities and Privileges.
- Article 50—Exemption from Taxation.
- Article 52—Waiver of Immunities.

Clause 1 now seeks to amend section 3 of the Act, by replacing section 3 to incorporate the entire text of the Charter, the effect of which is to domesticate all the articles of the Charter in Uganda. (Clause 2 of the Bill seeks to replace the existing schedule with a new one). The Committee observes that this is desirable since Uganda is a state party to the entire treaty.

<sup>3</sup> BEER UND REGAN v. GERMANY, Application No. 28934/94, European Court of Human Rights, (1999), ECHR 6).

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The amendments to Article 45 (*Judicial proceedings*) and Article 46 (*Immunity of assets*) enhanced the protection to the Bank against specified judicial proceedings and certain actions against the Bank for example requisition, by executive or legislative actions.

The protection afforded by the above mentioned articles were found to be inadequate in an appeal case *East African Development Bank v Blueline Enterprises Ltd (Civil Appeal No. 110 Of 2009) [2011] TZCA 1* . Arising out of this case, the Partner states amended the relevant articles to enhance the Bank protection as well confers on the Bank immunity from every form of legal process with necessary exception.

The Bill therefore seeks to give effect to all these amendments.

## 2.0 THE CURRENT STATUS OF THE BANK

The East Africa Development Bank was established by the sovereign states of Kenya, Uganda and the United Republic of Tanzania vide Article 21 of the Treaty for East African Co-operation dated 6th June 1967. The Bank's Charter was set out in Annex VI of the said Treaty. The East African Development Bank survived the collapse of the original East African Community. However, the three states by a Treaty signed on 23rd June 1980, amended and re-enacted the Charter of the EADB. Pursuant to the 1980 Treaty, the Parliament of Uganda passed the East African Development Bank Act of 1985 (Cap. 52), for the purpose of implementing the Charter.

## 3.0 COMMITTEE OBSERVATIONS

3.1 The East African Development Bank is an international organisation established by an international agreement to which Uganda is party. It is therefore created by state parties, its legal capacities and status are clearly defined in the agreement establishing it. The agreement as is the case, in respect of other agreements creating such organizations, contains provisions granting it immunity from judicial, executive, legislative, administrative etc processes. This emanates from the recognition by sovereign states of the fact that "the attribution of these privileges and immunities...is an essential means of ensuring the proper

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- 3.4 Furthermore Clause 1 grants the Minister power, with the approval of Cabinet, by Statutory Instrument, to amend the schedule (which contains the Charter) to reflect future amendments if any.
- 3.5 However, the Committee notes that whereas, the proposal may ensure timely domestication of any future amendments, the status quo should be maintained. Parliament should approve any amendments to the Charter if the provisions are to have the force of law in Uganda.

The Committee therefore recommends that the proposed subsections (2), (3), and (4) of clause 1 be deleted.

#### 4.0 COMMITTEE RECOMMENDATION

The Committee recommends that the Bill be passed subject to the proposed amendments.

I beg to report.

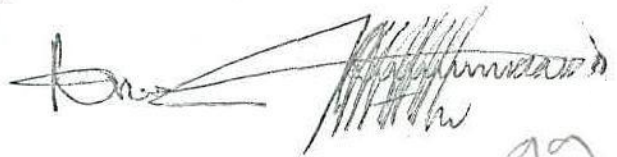
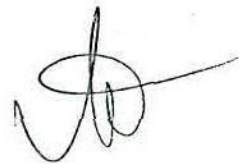
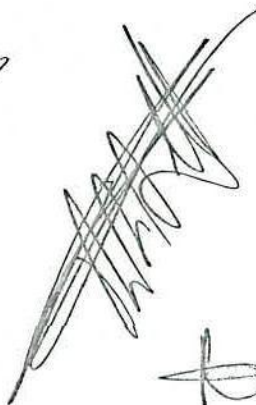
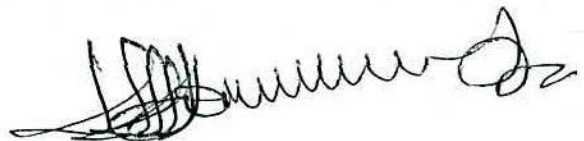
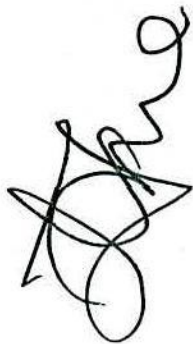
**PROPOSED AMENDMENTS**

**Clause 1. Amendment of section 3 of Cap.52**



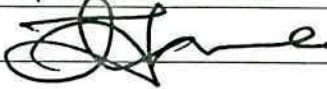
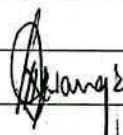
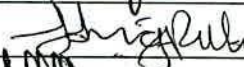
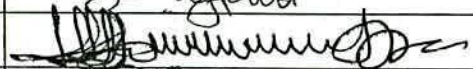
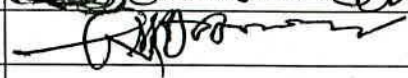
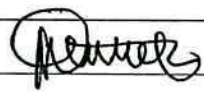

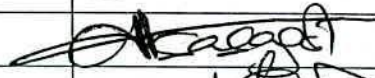
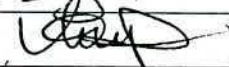



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**Justification**

Parliament should approve any amendments to the Charter if the provisions are to have the force of law in Uganda.



**MEMBERS ON THE COMMITTEE ON FINANCE, PLANNING & ECON DEV'T**

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2.	Hon. Okello Anthony	
3.	Hon. Musasizi Henry Ariganyira	
4.	Hon. Kyooma Xavier Akampurira	
5.	Hon. Akol Rose Okullu	
6.	Hon. Sejjoba Isaac	
7.	Hon. Lwanga Timothy Mutekanga	
8.	Hon. Adong Lilly	
9.	Hon. Ochwa David	
10.	Hon. Amos Lugolobi	
11.	Hon. Emma Boona	
12.	Hon. Ayepa Michael	
13.	Hon. Capt. Suzan Lakot	
14.	Hon. Kakooza James	
15.	Hon. Katoto Hatwib	
16.	Hon. Ekanya Geoffrey	
17.	Hon. Ssasaga Isaiah Johny	
18.	Hon. Odo Tayebwa	
19.	Hon. Mathias Nsubuga	
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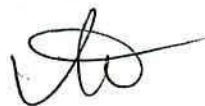
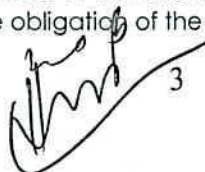
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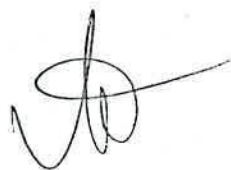
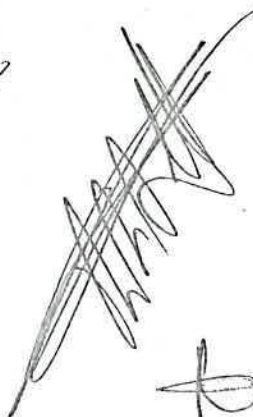
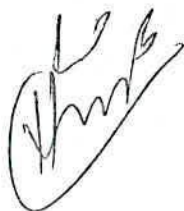
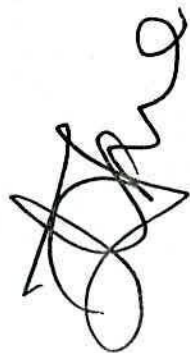
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**Clause 1. Amendment of section 3 of Cap.52**


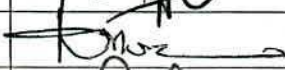


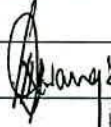
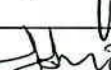
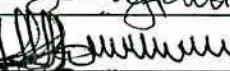
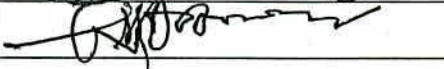

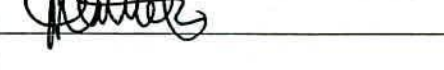
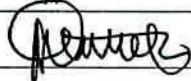

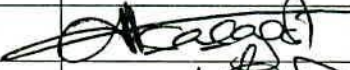


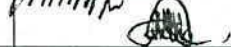

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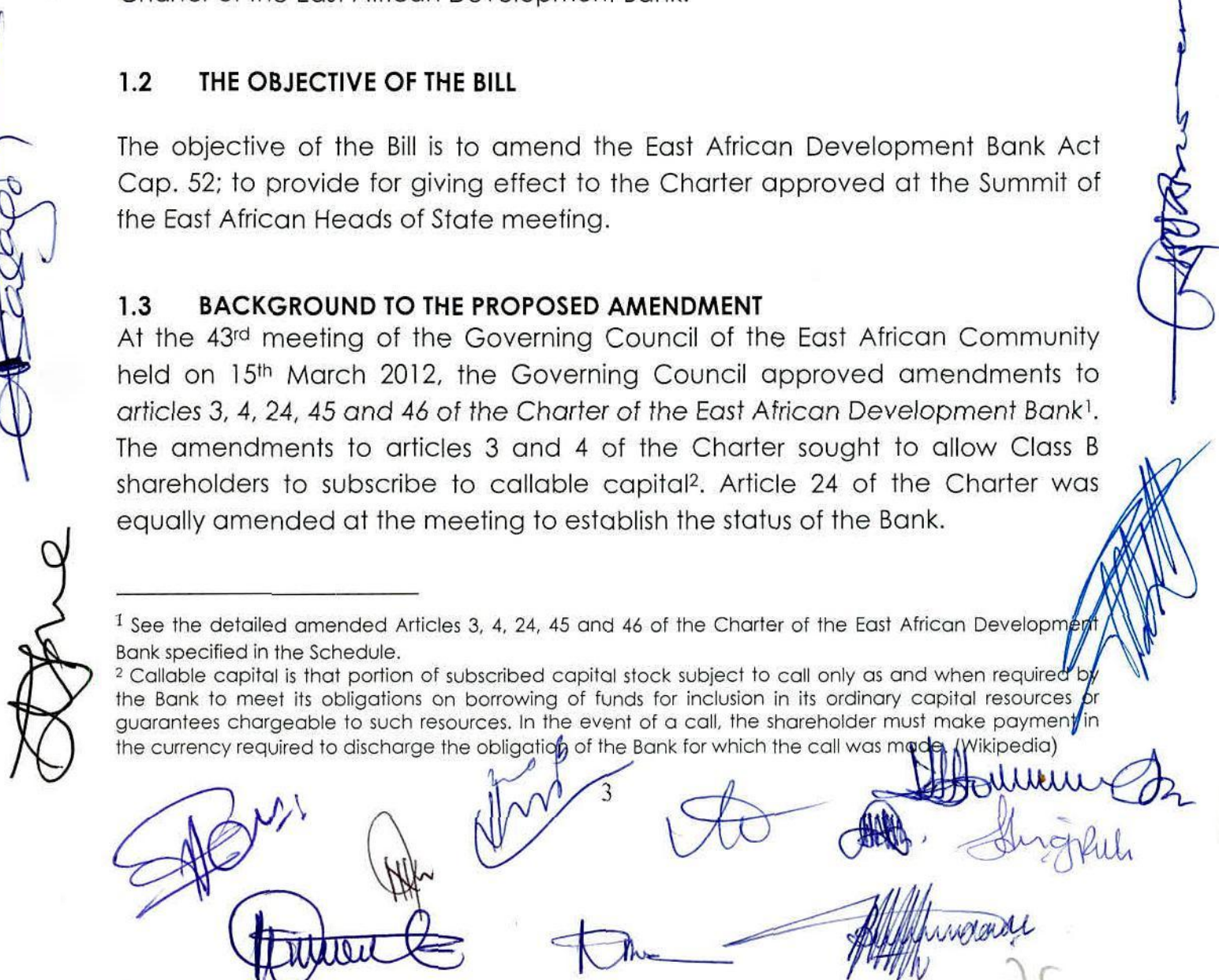
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<sup>2</sup> Callable capital is that portion of subscribed capital stock subject to call only as and when required by the Bank to meet its obligations on borrowing of funds for inclusion in its ordinary capital resources or guarantees chargeable to such resources. In the event of a call, the shareholder must make payment in the currency required to discharge the obligation of the Bank for which the call was made. (Wikipedia)



The amendments to Article 45 (*Judicial proceedings*) and Article 46 (*Immunity of assets*) enhanced the protection to the Bank against specified judicial proceedings and certain actions against the Bank for example requisition, by executive or legislative actions.

The protection afforded by the above mentioned articles were found to be inadequate in an appeal case *East African Development Bank v Blueline Enterprises Ltd (Civil Appeal No. 110 Of 2009) [2011] TZCA 1* . Arising out of this case, the Partner states amended the relevant articles to enhance the Bank protection as well confers on the Bank immunity from every form of legal process with necessary exception.

The Bill therefore seeks to give effect to all these amendments.

## 2.0 THE CURRENT STATUS OF THE BANK

The East Africa Development Bank was established by the sovereign states of Kenya, Uganda and the United Republic of Tanzania vide Article 21 of the Treaty for East African Co-operation dated 6th June 1967. The Bank's Charter was set out in Annex VI of the said Treaty. The East African Development Bank survived the collapse of the original East African Community. However, the three states by a Treaty signed on 23rd June 1980, amended and re- enacted the Charter of the EADB. Pursuant to the 1980 Treaty, the Parliament of Uganda passed the East African Development Bank Act of 1985 (Cap. 52), for the purpose of implementing the Charter.

## 3.0 COMMITTEE OBSERVATIONS

3.1 The East African Development Bank is an international organisation established by an international agreement to which Uganda is party. It is therefore created by state parties, its legal capacities and status are clearly defined in the agreement establishing it. The agreement as is the case, in respect of other agreements creating such organizations, contains provisions granting it immunity from judicial, executive, legislative, administrative etc processes. This emanates from the recognition by sovereign states of the fact that "the attribution of these privileges and immunities...is an essential means of ensuring the proper

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functioning of such organizations free from the unilateral interference by individual governments.<sup>3</sup>

3.2 Pursuant to the 1980 Treaty, the East African Development Bank Act (the Act) Cap. 52. was enacted, for the purpose of:-

**"...carrying out the obligations of the Government of the Uganda under the Treaty amending and re-enacting the Charter of the East African Development Bank and to provide for related matters."**

3.3 The Committee notes that, section 3 of the East African Development Act, cap. 52 provides that; "The provisions of the charter annexed to the Treaty of 1980 and set out in the Schedule to this Act have the force of law in Uganda". It is important to note that the only provisions that had the force of law then were the following;

- Article 24—Use of Currencies.
- Article 25—Maintenance of Value of Currency Holdings.
- Article 43—Purpose of Chapter.
- Article 44—Legal Status.
- Article 46—Immunity of Assets.
- Article 47—Immunity of Archives.
- Article 48—Freedom of Assets from Restriction.
- Article 49—Personal Immunities and Privileges.
- Article 50—Exemption from Taxation.
- Article 52—Waiver of Immunities.

Clause 1 now seeks to amend section 3 of the Act, by replacing section 3 to incorporate the entire text of the Charter, the effect of which is to domesticate all the articles of the Charter in Uganda. (Clause 2 of the Bill seeks to replace the existing schedule with a new one). The Committee observes that this is desirable since Uganda is a state party to the entire treaty.

<sup>3</sup> BEER UND REGAN v. GERMANY, Application No. 28934/94, European Court of Human Rights, (1999), ECHR 6).

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3.4 Furthermore Clause 1 grants the Minister power, with the approval of Cabinet, by Statutory Instrument, to amend the schedule (which contains the Charter) to reflect future amendments if any.

3.5 However, the Committee notes that whereas, the proposal may ensure timely domestication of any future amendments, the status quo should be maintained. Parliament should approve any amendments to the Charter if the provisions are to have the force of law in Uganda.

The Committee therefore recommends that the proposed subsections (2), (3), and (4) of clause 1 be deleted.

#### 4.0 COMMITTEE RECOMMENDATION

The Committee recommends that the Bill be passed subject to the proposed amendments.

I beg to report.

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**PROPOSED AMENDMENTS**

**Clause 1. Amendment of section 3 of Cap.52**



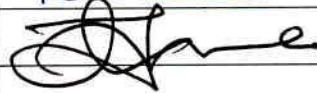

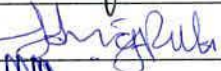
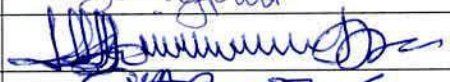
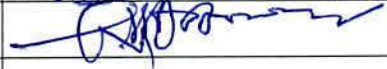







Delete proposed subsections (2), (3), and (4)

**Justification**

Parliament should approve any amendments to the Charter if the provisions are to have the force of law in Uganda.

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**MEMBERS ON THE COMMITTEE ON FINANCE, PLANNING & ECON DEV'T**

S/N	NAME	SIGNATURE
1.	Hon. Kasule Robert Ssebunya	
2.	Hon. Okello Anthony	
3.	Hon. Musasizi Henry Ariganyira	
4.	Hon. Kyooma Xavier Akampurira	
5.	Hon. Akol Rose Okullu	
6.	Hon. Sejjoba Isaac	
7.	Hon. Lwanga Timothy Mutekanga	
8.	Hon. Adong Lilly	
9.	Hon. Ochwa David	
10.	Hon. Amos Lugoloobi	
11.	Hon. Emma Boona	
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13.	Hon. Capt. Suzan Lakot	
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26.	Hon. Taaka Kevin	

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