

**UNIVERSITY OF NAIROBI**

**SCHOOL OF LAW**

**CARVING THE NATION OF EAST AFRICA: AN IN-DEPTH SURVEY OF THE ROLE OF  
THE EAST AFRICAN LEGISLATIVE ASSEMBLY**

**BY**

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**MASTER OF LAWS (LLM)**

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## DECLARATION

### **Declaration by the Candidate**

This thesis is my original work and has not been presented for a degree in any other University. No part of this thesis may be produced without prior permission from the author and/or University of Nairobi.

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### **Declaration by Supervisor**

This thesis has been submitted for Examination with my approval as the University Supervisor.

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**Date**

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## DEDICATION

This thesis is dedicated to my family for supporting me physically, emotionally, financially and spiritually; to my dad Jack, I am the grown version of the girl whom you taught to *learn* to listen, to pay attention to detail and to endeavor to be the best in everything, this I have ventured to do; to my mother, Isabella, you made me believe that with God's grace, it is possible to achieve all things. My sisters Lillian and Shakabetty, my strength and inspiration, and finally to beloved Theodore, this is for you.

May this mark a new beginning for a greater common vision, within the will of God.

Thank you

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I also wish to recognize the officers at the EAC Secretariat who allowed me access to papers, reports and other useful material held at the secretariat and all individuals who took time to speak to me, the Emeritus Speaker of EALA, Hon. Abdirahin Abdi, whose insights inspired me to write on the East African Legislative Assembly (EALA), the former Minister for East African Community Hon. Musa Sirma for his timely advice and for opening the right doors for me. My son, Theodore Albert for his patience during the endless hours of working on this project and finally, to the many others, whom I cannot personally recognize, that encouraged and supported me as I undertook this project.

Above all, I give glory to the Almighty God, who granted me life, good health and wisdom during the period of the study.

## **ABSTRACT**

Due to institutional and policy impediments, the East African Legislative Assembly (hereinafter referred to as “EALA”) remains ill equipped to drive the much anticipated process of integration of East Africa. The Treaty establishing East Africa Community (referred to as ‘EAC’ hereafter) fails to provide for clear linkage between the people of East Africa and the EALA, a fundamental organ that ought to be at the center of the project of amalgamating the Nations of East Africa. EALA ought to play its rightful role by shaping and enlarging the democratic space in the region through its legislative, deliberative and representative functions.

Specific study objectives include; assessing the contribution made by EALA to the process of regional integration, identifying and analyzing the existing gaps and opportunities in the mandate of EALA, assessing EALA’s linkages with National Parliaments of partner states, examining how other regional Assemblies and blocs have addressed emerging challenges, and making recommendations on how EALA can be customized to best deliver successful integration for East Africa.

A Review of academic papers, journals, books, annual reports of EALA and information from persons affiliated with the Assembly helped identify key issues about the operations and management of EALA in relation to the EAC.

One major recommendation from this work is that the Secretary General of the EAC recommends to the Council of Ministers the formation of a multi-sectoral taskforce that will undertake a wholesome review of the legal and institutional foundation of EALA and prepare a policy and legislative framework on the strategic shift towards a political federation for EAC and to specifically look at how best EALA can be structured to make it more assertive and effective in the integration process with the capacity to exercise greater oversight over the summit of Heads of States and the East African Court of Justice (the “EACJ” hereafter); The taskforce will further explore the possibility of EAC partner states conducting direct elections for EALA members by universal suffrage and suggest mechanisms to promote greater appreciation of the integration process by the citizens of East Africa. Finally, the taskforce ought to recommend a system of linking partner state national legal and Governance systems with those of the EALA and how to effectively monitor and evaluate the regional integration progress. Alternatively, a member of EALA may initiate this process by way of a motion introduced in the Assembly that would culminate into a resolution urging the formation of such a taskforce by the Council of Ministers

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**LOCATION MAP OF EAST AFRICA**  
**EAST AFRICAN COMMUNITY ROAD NETWORK PROJECT**  
(Including Proposed Additional Road Links)



The East African Community (EAC) infrastructure map, from EAC website at <http://www.eac.int/infrastructure/index.php>, last updated on Tuesday 25<sup>th</sup> January 2011. The map illustrates the Countries making up the wider East African Community. By studying it, a reader is able to have greater appreciation of the thesis and can understand the vision of integration through enhanced joint infrastructural ventures among EAC member states, particularly in the transport sector.



## 1 Introduction and Background

Regional integration is a process where nations make joint decisions or move political activities to a new center instead of undertaking foreign and domestic policies independently. Certainly, in the face of a highly competitive 21<sup>st</sup> century, the isolation of any single nation and region in the world ultimately leads to a path of its decreased influence and relevance in the global arena. The rationale behind this situation is that at one end of a continuum lies social and economic relations and networks which are organized on a local or national basis while on the other end lies socio-economic relations and networks which culminate in a wider scale of regional and global interactions that contribute to the increasing ease with which somebody on one side of the world can interact, for mutual benefit, with somebody on the other side of the world.<sup>1</sup>

This obtaining global situation magnifies the incidence of relatively low economic and social interaction among African Nations and has ignited the renewed enthusiasm for the integration of the greater East African region. The East Africa Community (hereafter referred to as “EAC”), which is the precursor of the East Africa Federation, is comprised of five Countries, these are the Republic of Kenya, the Republic of Uganda, The United Republic of Tanzania, the Republic of Rwanda and Burundi. The EAC proposes to remodel member states to a single, supra national organization, with a common market for goods, services, labour and capital, a common currency, various harmonized community laws in between and one President.<sup>2</sup>

The planned tripartite free trade area incorporating EAC with the Common Market for Eastern and Southern Africa (COMESA) and Southern African Development Community (SADC), makes the union between the East African Nations all the more crucial. Undoubtedly, the realization of this larger regional bloc with a combined population of more than 130 million people, land area of 1.82 million sq kilometers and a combined Gross Domestic Product of \$74.5 billion, bears great strategic and geopolitical significance and prospects of a renewed and reinvigorated East African Community.<sup>3</sup>

Despite the fact that the objective to attain the political federation had a timeline of the year 2015, evidence on the ground points to the fact that the integration process is seriously threatened if not headed for a possible deadlock. Speaking to the Parliament of the United Republic of Tanzania in Dodoma on 7<sup>th</sup> November 2013, The President of Tanzania H.E. Jakaya Mrisho Kikwete decried the apparent union of the Presidents of Kenya (H.E. Uhuru Muigai Kenyatta), Uganda (H.E. President

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<sup>1</sup> Held, David, et al. (1999). *Global Transformations* Cambridge: Polity Press. ISBN 9780745614984 [please align your footnotes to the OSCOLA system of referencing]

<sup>2</sup> ^ a b c "FACTBOX-East African common market begins". *Reuters*. 1 July 2010. Retrieved 1 July 2010. both the Preamble to the 1999 Treaty establishing the EAC at paragraph 7 and Article 5 (3 ) envisioned a community with greater socio-economic cultural and political synergy

<sup>3</sup> <http://www.eac.int/current> status

Yoweri Museveni ) and Rwanda (H.E. President Paul Kagame) into an apparent “coalition of willing states” and refuted claims that Tanzania was slowing the progress of integration.<sup>4</sup> Hon. Kikwete was unhappy with the fact that his counterparts, as highlighted above, had a meeting where they discussed crucial issues affecting the Community including the question of travel by identity cards across EAC borders for its citizens, the idea of issuance of a single tourist visa of EAC to tourists visiting the Community, the creation of the EAC region as a single Tourist Territory and the issue of forging ahead with the Political Federation without having invited him for the said meeting. This example, among others, best signifies the existence of discord among the partner states, an almost grim reminder of the reasons behind the collapse of the initial EAC in 1977. Notably, The Republic of Burundi was also not represented in the meeting held by the said “*coalition of the willing states*”

In a bid to avoid the pitfalls that occasioned the collapse of the inaugural EAC, the structure and mandate of EALA should be reviewed to give it expansive capacity and power to undertake its envisaged role as an independent Legislative Assembly for the region.

An enduring challenge to enhanced integration has been the current structural make-up of the EAC partnership that does not allow for seamless channeling of socio-economic and political concerns by EAC citizenry through an organ with both requisite powers and capacity to determine those concerns equitably and decisively, in uniform legislation to the satisfaction of the different Countries making up the EAC. It is the view of the writer that because of the unique roles of legislatures in exercising sovereignty on behalf of citizens, a more empowered, well-structured East African Legislative Assembly (EALA) is able to fill this vacuum and lead to faster and beneficial integration. Further, to achieve improved Governance by checking on the excesses of the Executive and Judicial arms of EAC, the Assembly ought to be given the power to impose or propose imposition of sanctions upon rogue partner states together with the power to pass no confidence motion votes against senior EAC public and state officers.

Relaxing of controls or reigns over the question of state sovereignty and ceding some power to EALA by state parties will make EALA a supranational legislative Organ of EAC and the benefits of supranationalism including the fact that countries cannot just pull out of the union on whimsical grounds and that laws passed at the regional level would supersede national laws would be integral to improved Governance and expedient integration. Further, leaders within a supranational union are held more accountable because the legislature would be backed constitutionally as well as by a Treaty.

Finally, the necessary policy and legislative framework to provide for direct elections of EALA members by universal suffrage in all of the EAC partner states should be explored as a way of giving it more legitimacy and acceptance by the peoples of East Africa.

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<sup>4</sup> Benard Oginga, in the article, “President Jakaya Kikwete is concerned about land, immigration, employment and acceleration of the political federation, (7<sup>th</sup> November 2013), Standard Digital Newspaper, [www.standard.co.ke](http://www.standard.co.ke)

The objectives of the study include assessing the contribution made by EALA to the process of regional integration, identifying and analyzing the existing gaps and opportunities in the role of EALA, examining how other regional assemblies have addressed emerging challenges and finally, an attempt will be made at making recommendations on how EALA can best be customized to deliver successful integration.

### **1.1 Basic structure of the East African Community (EAC) Regional Integration**

As a geographical region, East Africa comprises thirteen (13) nations namely Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania, Uganda and, as of 9 July 2011, the newly independent Republic of South Sudan. The region accounts for about 26 % of Africa's population (264 million), 22% of the continental landmass (6.3 million km<sup>2</sup>) and 16 % of the combined GDP in 2009 current prices. The region reflects a diversity of culture, language, ethnic and religious identities as well as specific geo-economic characteristics with four landlocked countries, two island states and the remaining with access to the sea.<sup>5</sup> As a Regional Economic Organization, the East African Community is comprised of only five (5) of the thirteen (13) East African Countries, that is; Kenya, Uganda, United Republic of Tanzania, Burundi and Rwanda. These five partner states have under their strategic vision, an intention to transform into a formidable supra-national political federation by the year 2015.

Article 3 of the Treaty Establishing the East African Community<sup>6</sup> provides for expansion by way of membership of the community where at article 3(2) partner states may, upon such terms and in such manner as they may determine, negotiate with any foreign country the granting of membership to or association of with the Community or participation in any of the Community's activities. South Sudan<sup>7</sup> and Sudan<sup>8</sup> have already applied to be considered for membership and there are proposals at the summit level to consider incorporating the Comoros, Democratic Republic of Congo, Ethiopia and Somalia.<sup>9</sup>

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<sup>5</sup> ADB Group (2011), *Consolidating the Present and Shaping the future*: Report by the African Development Bank Group in East Africa, ADB Publishers... This rich diversity is also reflected in the region's immense potentialities, such as arable lands, water basins, minerals, varied energy sources, exotic wildlife and beaches. Alongside, this richness and potential, sits poverty, pockets of instability, fragility, governance and environment and climate change challenges across the countries, but not to the same extent.

<sup>6</sup> East African Community (EAC),(1999) (amended 14<sup>th</sup> December 2006 and 20<sup>th</sup> August 2007) The Treaty Establishing the East African Community, EAC Publication 1

<sup>7</sup>Randa Rugangazi (July 2011) *South Sudan: Big trading potential for EAC*". IGIHE. 8 July 2011. Retrieved 10<sup>th</sup> September 2011

<sup>8</sup> Ihucha, Adam (18 September 2011). "EAC split on Khartoum's bid to join community". The East African. Retrieved 18 September 2011.

<sup>9</sup> East African Community: EAC Treaty 1999

Organs of the EAC include the Summit of Heads of State and Government, the Council of Ministers, the Co-ordination and Sectoral Committees, the East African Court of Justice (the EACJ), the EALA and the EAC Secretariat. The Summit consists of the Heads of State or Government of the Partner States meets at least once a year and may hold extraordinary meetings at the request of any member of the Summit<sup>10</sup>. The tenure of office of the Chairperson of the Summit is one year and the office of the Chairperson is held on rotation among the Partner States and decisions are arrived at by consensus. The Summit gives general directions and impetus as to the development and achievement of the objectives of the Community, considers reports submitted to it by the Council as provided for by the Treaty, it also reviews the state of peace, security and good governance within the Community and the progress achieved towards the establishment of a Political Federation of the Partner States.

The Council of Ministers is established under article 13 of the EAC Treaty and consists of Ministers responsible for EAC affairs of each of the partner. The Council is the main policy organ of the Community. The Co-ordination committee consists of permanent secretaries responsible for EAC affairs in partner States and it is charged with the responsibility of submitting to the Council reports and recommendations on matters relating to the EAC particularly with respect to the implementation of the EAC Treaty. Sectoral committees are ad-hoc in nature and are established by the co-ordination committee on need basis. The EACJ is the main EAC Judicial organ of EAC while the secretariat and staff of EAC<sup>11</sup> headed by the Secretary General (the principal accounting officer of EAC) is responsible for the day to day management of EAC affairs. The EAC also has a Counsel, who is the principal legal adviser of the Community. Finally, EALA<sup>12</sup> is the main legislative organ of EAC and it will form the main focus of this thesis.

## **1.2 Scope and Utility of Regional Integration In Africa**

Africa has at least twelve (12) regional and sub-regional economic blocs<sup>13</sup> the main ones including the Southern African Development Community (SADC) , Southern African Customs Union Common Monetary Area, Preferential Trade Area for Eastern and Southern African States (PTA), The Common Market for Eastern and Southern Africa (COMESA), Economic Community of West African States

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<sup>10</sup> Chapter 4, article 12 of the charter establishing the East African Community

<sup>11</sup> Articles 66 to 73 of the EAC Treaty

<sup>12</sup> Articles 45 to 66 of the EAC Treaty

<sup>13</sup> Ulf Terlinden,– *“African Regional Parliaments; Engines of Integration and Democratization*, (September 2004) African Regional Parliaments, Bonn Information from annex 1 to the book, they include the African Union (AU), Communauté Economique et Monétaire de l’Afrique Centrale (CEMAC), the Arab Maghreb Union (AMU), The East African Community (EAC), the Common Market Protocol for Eastern and Southern Africa (COMESA), the Economic Community of Western African States (ECOWAS), The Southern African Development Community (SADC), The West African Economic and Monetary Union (UEMOA – French acronym Union Economique et Monétaire Ouest -africaine) Southern African Customs Union (SACU), The Economic Community of Central African States (ECCAS), The Indian Ocean Commission (IOC), The Community of Sahel Sahara States (CEN-SAD) and the Mano River Union (MRU),

(ECOWAS), Union Douaniere et Economique de l'Afrique Centrale (UDEAC) (Customs and Economic Union of Central Africa) and the East African Community.

There are at least six Regional Assemblies which include the SADC Parliamentary Forum<sup>14</sup>, the ECOWAS Parliamentary Assembly<sup>15</sup>, the Pan African Parliament (PAP)<sup>16</sup>, the Network of Parliamentarians of the Economic Community of Central African States (REPAC)<sup>17</sup>, the Inter-Parliamentary Forum for the Intergovernmental Authority for development (IGAD) member states (IPU-IGAD)<sup>18</sup> and the East African Legislative Assembly (EALA)<sup>19</sup>

The gradual increase in number of Regional Legislative Assemblies is a positive indicator that the work of Legislatures is getting the requisite appreciation in Africa. Often, governance in the continent has been characterized by an overbearing and domineering executive arm with weak legislative and judicial structures, leading to lack of openness, accountability and abuse of the rule of law, a situation replicated in the character of Regional legislatures throughout Africa.

Among all the Legislative Assemblies in Africa, only EALA has powers to adopt legislation with a binding force upon national Governments<sup>20</sup>, the rest have mandates that are relatively weak in comparison, often limited to adoption of resolutions and giving of Advisory opinions. For instance, despite the Pan African Parliament, (PAP) being the main Parliament of African under auspices of the African Union, it only offers policy and legislative advisory guidance to Members states.

### **1.3 Role of the Legislature in EA Regional Integration**

The East African Legislative Assembly (EALA), which is the successor of the East African Central Legislative Assembly (EACLA, 1948) or The Legislative Council under the East Africa High Commission (EAHC) was formed as a substantive organ and legislative arm of the community and has been in existence for just over a decade. EALA is established at Chapter 9 of the Treaty establishing the

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<sup>14</sup> Launched in July 1996 and the oldest regional integration legislature in Africa

<sup>15</sup> The Treaty establishing the Parliament was signed in March 2000

<sup>16</sup> Inaugurated on 18<sup>th</sup> March 2004

<sup>17</sup> Founding protocol adopted in the year 2002

<sup>18</sup> IPU-IGAD Treaty was signed in 2004, it consists of the Countries in the Horn of Africa namely Djibouti, Eritrea, Kenya, Ethiopia, South Sudan, Sudan, Somalia, Uganda, information from IGAD portal at <http://igad.int/index.php>

<sup>19</sup> The East African Legislative Assembly (Assembly) is an organ of the East African Community; established under Article 9 of the Treaty for the Establishment of the East African Community. The Treaty was signed on 30<sup>th</sup> November 1999 and entered into force on 7<sup>th</sup> July 2000 by the Partner States of The Republic of Uganda, The Republic of Kenya; and the United Republic of Tanzania

<sup>20</sup> This apparent “automatic” binding force of community laws as provided for at article 8 (5) of the EAC is encouraging although in practice partner state’s national Parliaments are the ultimate determinants of what the law “is” in their respective countries. See for instance article 94 (5) of the Kenyan Constitution, meaning partner states’ constitutions may have to be amended to give way to EAC laws.

EAC and has 17 articles (from article 48 to 65) of the treaty. Under article 48 of the Treaty, EALA membership is comprised of 45 elected members from each partner state and five ex-officio members. Under article 51 of the Treaty establishing the EAC (the “EAC Treaty” hereafter) the National Assembly of each Partner State shall elect, not from among its members, nine (9) members of the Assembly, to reflect the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in that Partner State, in accordance with such procedure as the National Assembly of each Partner State may determine. The Secretary General and the Counsel for the Community are also members of EALA. The fact that the procedure of electing EALA MP’s was to be determined by each state party points to the unrelenting focus by National Governments on the concept of State Sovereignty and an apparent lack of political will to pave way for an independent regional Parliament with legislative authority.

It is appreciated that the process of regional integration is multifaceted and that thirteen years of existence is a reasonably short period for judging the EAC Assembly. However, sight cannot be lost to the fact that integration attempts for the EAC Region have been at play for about a century, starting from the time when the colonial regime was at the helm of administration to independence and post-independence East Africa where the key strategic objective was economic development under the East African Development strategy, with the original union as the East African Common services Organization which lasted between 1961 and 1967 and then the East African Community (between 1967-1977).

That said; little will be achieved out of the integration process without putting in place a robust, independent, properly structured and effective EALA that has financial freedom, legislative and representative power and that has mechanisms for ensuring harmonization of community laws. Without such a Parliament, we might as well forget the dream of *One People One Destiny* – the logo of the EAC<sup>21</sup>. This study is of absolute importance for the Governments, the Secretariat of EAC, analysts and historians keen on the evolution of EAC; EALA has at its disposal the potential to herald the East African Community to the long awaited integration, however, a combination of a fairly weak mandate, poor internal democratic culture, a lack of structured interaction with partner states’ national governments, a lack of adequate resources, have culminated in making the Regional Assembly fall short of expectations with respect to its contribution to the EAC integration journey.

The EALA has a fundamental function in the furtherance of the objectives of the East African Community as provided for at article 49 of the Treaty and is mandated to be the legislative organ of the Community, as such, it liaises with the National Assemblies of the Partner States on matters relating to the Community, deliberates and approves the budget of the Community; consider annual reports on the

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<sup>21</sup> <http://www.eala.org>, EAC portal, [http://www.eac.int/index.php?option=com\\_content&view=frontpage&Itemid=1](http://www.eac.int/index.php?option=com_content&view=frontpage&Itemid=1), accessed on 4<sup>th</sup> April 2013

activities of the Community, the annual audit reports of the Audit Commission and any other reports referred to it by the Council. EALA also discusses all matters pertaining to the Community and makes recommendations to the Council as it may deem necessary for the implementation of the Treaty. EALA has powers to establish any committee or committees for such purposes as it deems necessary; recommend to the Council the appointment of the Clerk and other officers of the Assembly and to make its rules of procedure and those of its committees<sup>22</sup>, EALA is however handicapped in so far as it appears to lack institutional mechanisms of channeling into the assembly and deliberating upon important matters touching on the community that have been discussed in National Parliaments, without this vital linkage, EALA loses relevance and remains out of touch with important community affairs, reacting to issues after occurrence instead of being active and/or pro-active in shaping the landscape of EAC community affairs.

A case in point is the manner of engagement of EALA in Kenya's 2007/2008 post-election violence situation that saw approximately One thousand three hundred (1300) Kenyans dead and another estimated six hundred thousand (600,000) displaced and the indictment by the ICC of four prominent Kenyans namely: the then Deputy Prime Minister, Hon Uhuru Kenyatta, (current President of the Republic of Kenya) the former head of the Civil Service, Amb Francis Muthaura, former Minister and former Member of Parliament for Eldoret North, Hon William Ruto (Current Deputy President) and a radio journalist, Joshua Arap Sang for war crimes and crimes against humanity under the Rome Statute. The EAC Assembly only got actively engaged in the matter on 26<sup>th</sup> April, 2012, soon after the conviction of Mr. Charles Taylor, former President of Sierra Leone for war crimes by the International Criminal Court (the ICC herein after) after a motion by Hon. Dan Ogalo, a Ugandan Representative urging the Council of Ministers to implore the ICC to transfer the cases to EACJ and to reinforce the EAC Treaty by amending Article 27 of the EAC Treaty, which deals with the jurisdiction of the EACJ, by giving it retrospective effect. A move that was hurried, alarming and reactionary particularly giving that both EALA and EACJ were in existence at the time of Kenya's post election violence

Despite the foregoing challenges, EALA has had a number of achievements as follows; firstly, since its first sitting on 30<sup>th</sup> November 2001 in Arusha Tanzania, the Assembly has passed approximately twenty five (25) pieces of legislation the bulk of which are already Acts of the Community while a few are awaiting assent<sup>23</sup>. The Assembly has also passed four (4) key Resolutions, The first in November 2009, on ending of violence against women in the region and in partner states, another one in June 2010 urging EAC partner states to halt signing of the European Union-EAC Economic Partnership Agreements, yet another resolution in April 2012 Seeking to transfer the Kenyan cases before the ICC to the East African Court of Justice (EACJ) and finally one urging the European Union (EU) to conclude

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<sup>22</sup><http://www.eala.org/component/content/article/26-overview/13-welcome-to-the-east-african-legislative-assembly.html>, as accessed on 21<sup>st</sup> June 2013

<sup>23</sup> See EALA 'Acts of the Assembly' [http://eala.org/oldsite041111/component/docman/cat\\_view/45-key-documents/43-acts-of-assembly.html](http://eala.org/oldsite041111/component/docman/cat_view/45-key-documents/43-acts-of-assembly.html)

EAP Negotiations in May 2012. To date, integration remains more of a mirage as most of the Acts and resolutions are reactionary and the bulk of them are yet to be harmonized, -adopted by National Assemblies and/or implemented.

Such potential and achievements give the East African citizenry the assurance that that the revival of the Community will eventually have a positive impact on their livelihoods socially, politically and economically. Indeed there is generally a majority support for the eventual integration of the Community. Much as the citizens of East Africa have patiently waited for, and in their own right, worked towards integration, it is not in doubt that any further delays would cause most of them to get gradually but cumulatively anxious at the pace of the process. Ultimately, the creation of the EALA is seen as a marked improvement to the potential and resolve of the party states towards successful integration. It is an opportunity that cannot be lost.

EALA offers, perhaps, the only engine that will drive the integration process to fruition. It has been argued that there can be no democratic system of government without transparency and accountability, therefore, through the oversight function, EALA can effectively hold East African Governments (EAC Executive & Judiciary) to account on behalf of its citizenry, ensuring that Government's policies and actions are both efficient and commensurate with the needs of the public and in particular, with the tax that they pay. A proper legislature ought to be socially and politically representative of the diversity of the people, ensuring equal opportunities and protections for all its members especially the most marginalized and vulnerable among them with respect to gender, language, religion, ethnicity, economic strength or other political or economic significant characteristics. Unrepresentative legislatures risk the danger of leaving out segments of the community and eliciting feelings of disadvantage in the political process. In terms of Representation, EALA ought to be the organ that actually represents the people of EAC, in the EALA Assembly and committees and through the office of the Speaker and internationally, acting as trustees of the will of the people and their ultimate mouth piece in regional and international affairs.

This paper will call upon the partner states of the EAC Community to form a taskforce that will be coordinated by the EAC Secretariat composed of experts from each EAC Nation whose mandate would be to conduct research and explore the merits of reviewing the status and mandate of EALA with the goal of strengthening it. The team of integration experts will then be required to prepare policy papers on relevant issues regarding EALA in the integration process including its role in the negotiation of international instruments by the EAC. The taskforce will further propose deliberate measures to expand the mandate of EALA so that it can occupy its rightful seat in East Africa as an autonomous body, with the sole legislative, representation and oversight mandate. Finally the taskforce will examine the possibility of conducting elections by universal suffrage for members of EALA and suggest place proper mechanisms to enable greater EAC citizenry participation in EAC Governance through the operations of EALA to ensure greater appreciation and legitimacy



#### 1.4 Statement of the Research Problem

There is no meaningful grass root political and socio-economic integration in East Africa. Thirteen years later, the people of East Africa are yet to enjoy the fruits of the re-birth of the community. Studies on the integration process indicate that the possibility of achieving a social, political and economic integration faces multiple barriers, fundamental among them being the linkage of EAC citizens with decision making organs of EAC; this has continued to remain a pipe dream. the results of a 2008 comprehensive opinion survey financed by the EAC- GTZ programme and themed ' *support to the EAC integration process*' on the outlook of ordinary citizens with respect to the East African integration process generally shows that while the optimism for integration remains among the people of East Africa, skepticism abounds and there is still not much to show of the revival of the community<sup>24</sup>.

Despite having passed the Customs Union protocol in 2005 and the Common Market Protocol in 2010, member states are yet to benefit from free movement of labour, capital, goods and services. On the ground, the common market protocol is yet to be implemented; data provided by the EAC secretariat in Kenya indicates that of all the member states, only Rwanda is moving with speed to implement it. Speaking on 8<sup>th</sup> October 2010 at the EAC Secretary General's forum, Dr. Patrick Mwesigwa, the Secretary General, EA Local Governments Association based in Arusha, Tanzania decried the pace of integration and outlined challenges facing the process including poor information flow, language barriers, immigration problems and cross-border crimes. Further, although the need for visas and work permits has been dispensed with for EAC citizens, these documents are still being required when travelling within the Community. Further, there is little or no capacity building and education to the citizens about EAC objectives, vision and activities.

As a melting pot of all the peoples of the EAC, EALA is best placed to harmonized and reconcile all the varied concerns of the different partner states, however, a combination of both the structure and legal framework of EALA have proven a handicap to enable it properly seize itself of its role and push the integration process to fruition. As a regional Assembly, EALA ought to have the ultimate legislative mandate however, the obtaining position is that this responsibility is still with the Summit of Heads of States, for instance article 63 effectively allows any single head of state to "kill" an EAC bill by refusing assent thereto. A Properly constituted EAC Parliament would be vested with the residual power to pass laws notwithstanding any failure to assent or withholding of assent by any single head of state. This proposed mandate could prove fundamental in moving forward the integration process. Further, EAC laws and Policies are poorly co-ordinated and hardly ever harmonized with partner state national laws and policies. Holding on to the concept and principle of national sovereignty is responsible for this situation; so far, partner states have been slow to cede power to key EAC organs. A good example is the fact that while under article 8 (4) of the EAC Treaty provides that community organs, institutions and

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<sup>24</sup> EAC-GTZ, The EAC, Report on the Survey on *Benefits Experienced by Ordinary Citizens from East African Community (EAC) Regional Integration*. (2009) GTZ

laws shall take precedence over similar national ones on matters concerning the implementation of the EAC Treaty, EAC partner states' Parliaments are the supreme law making organs in their nations and therefore EAC laws have to be adopted by them and their national laws amended and/or repealed in conformity with EAC laws. Therefore, without a strong, autonomous and decisive community Assembly, with proper oversight, advisory, legislative and representation mandate, the integration dream of "*one people one destiny*" may either have to wait awhile longer, or be forgotten altogether. This research argues that enhancing the mandate of the regional legislature provides a meaningful legal route to wider political and economic integration for the benefit of East African citizens.

### **1.5 Research questions**

1. What is the legal nature of EALA with respect to exercise of sovereignty within the EAC functions?
2. What contributions has EALA made to the regional integration process of the East African community so far?
3. Why is there a discrepancy between the envisaged role of EALA as EAC's regional assembly and EALA's actual performance?
4. How can the legal mandate of EALA be modified to enhance the exercise of sovereignty and improved economic, social and political integration of the East African Community

### **1.6 Objectives of the Study**

*The main objective* of the study is to illustrate how the reorganization and review of EALA, a process that will involve the deliberate ceding of sovereignty to EALA by EAC national states, is likely to place it on a pedestal as the engine oil of integration of the East African Community (EAC).

*The Specific* of the study objectives will be to;

- (a) examine the legal nature of EALA with respect to its exercise of sovereignty in the East African Community organization.
- (b) identify contributions made by EALA in the process of EAC integration
- (c) analyze existing gaps between EALA's current performance and its expected and envisaged performance

- (d) explore ways in which EALA's legal mandate can be enhanced in order to ensure effective and efficient exercise of sovereignty for improved economic, social, cultural and political integration of the EAC

## 1.7 Theoretical Framework

In highlighting how EALA can significantly contribute to the success of the integration of East Africa and thereby better the lives of its people, the thesis intends to operate within the theory of effective use of the traditional roles of Parliament. Like any other Parliament, the core functions of the EALA ought to be deliberation and passing (legislating) of laws that are useful to the peoples of the entire community and that enhance its development and sustenance, Oversight, that is acting as a check and balance of any excesses by the Executive and Judiciary Organs (The Summit of Heads of State and the EACJ); this oversight role will also include an active role in the budget making process of EAC member states.

In terms of Representation, the people of EAC must make an unequivocal move to delegate this power (representational) to its members at EALA. One way to do this is to ensure that all EAC states review their constitutions to ensure that sovereignty is specifically ceded to the regional assembly, and by extension, regional executive and judiciary. Aside from giving EALA requisite legitimacy, this process of constitutional review, which will involve having referendum in all partner states, is likely to popularize EAC integration and to create greater awareness about the process

The contribution of the Assembly towards the Integration of the East African Community must therefore be viewed within the context of the mandate of a properly instituted regional Parliament, in most countries, the executive presents proposals of changes in laws or new laws and policies to Parliament for consideration which Parliaments may approve amend or reject.<sup>25</sup> Relevant Community laws would foster faster and more meaningful integration. The oversight role of Parliament is said to arise from the "democratic" culture of accountability and transparency developed in the west and practiced and/or understood as such globally. The primary responsibility in this field ordinarily falls squarely on the shoulders of Parliament. Through the oversight function, legislatures hold governments to account on behalf of the people, ensuring that government policy and action are both efficient and commensurate with the needs of the public and with the tax paid. It goes without saying that this role will highlight, if not enhance the age old principle that sovereignty belongs to the people and is invariably delegated by them to Governments to act in their interest.

The Kenyan constitution of August 2010 supplies a good illustration of this principle of the collective aspiration and delegation of power to the State by the people. Chapter one, article 1 (1) provides that all Sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the

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<sup>25</sup> Godfrey Musuka & Innocent Chingombe, *'Building Equitable, People-Centered National Health Systems: The Role Of Parliament And Parliamentary Committees on Health in East And Southern Africa'* (2003) A literature review commissioned by the Health Systems Knowledge Network

constitution. Article 1(2) provides that, “*the people may exercise this sovereign power either directly or through their democratically elected representatives*”. Parliamentary oversight is thus crucial in checking excesses on the part of the Executive and Judiciary and extends to every field of public endeavour. It is now generally accepted that governance, both nationally and internationally, can only stand to gain legitimacy from the growing prominence and scope of parliamentary oversight.<sup>26</sup>

The representative role of Parliament is equally important; a proper legislature ought to be socially and politically representative of the diversity of the people, ensuring equal opportunities and protections for all its members especially the most marginalized and vulnerable among them both economically, culturally, socially or politically.<sup>27</sup> Affirmative action is specifically required and is practical in representation through EALA, a fundamental action point for consideration by the said Parliament and the summit of Heads of States when considering a review of the EAC Treaty.

A representative parliament should first reflect the popular will as expressed in the choices electors make of their representatives and for the political parties in whose name they stand; a Parliament that is significantly unrepresentative in this respect, whether through deficiencies in electoral procedures, weak political parties or the electoral system, will to that extent, forfeit legitimacy, and be less able to reflect public opinion on the important issues of the day. Further, an unrepresentative legislature risks the danger of leaving out segments of the community and eliciting feelings of disadvantage and inequity in the political process, with possible consequences of diminished popularism, social cohesion and with possible results of popular political revolutions, upheavals or coup d'états.

Some scholars have argued that beyond the three customary roles of Parliament also exhibited by Regional Parliaments, the latter in most cases also takes up an additional advisory role which is more or less a mutation of the legislative role. The advisory competencies range from debates, consultations, recommendations, proposals, resolutions and inquiries.<sup>28</sup>

Further theoretical concepts on the foundations of Parliament and the issue of sovereignty will be discussed in chapter 2.

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<sup>26</sup> Hironori Yamamoto, *Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments*, (2007) IPU

<sup>27</sup> IPU, , *Parliament and Democracy in the 21st Century : Preliminary Report by the Inter-Parliamentary Union* (2005)

<sup>28</sup> See article by Ulf Terlinden Bonn, *African Regional Parliaments –Engines of Integration and Democratization?* (September 2004)

## 1.8 A review of Literature:

### 1.8.1. Genesis of disintegration of the Original EAC

The first EAC disintegrated in 1977 due to several documental reasons among them persistent market iniquities, lack of strong political will to support actual integration, lack of trust among the Heads of State and lack of strong participation by citizenry, private sector and civil society<sup>29</sup>. None of the causes includes a lack of an autonomous and effective legislative assembly to support the role of the Heads of State, a reason we are advancing as fundamental for the collapse of the initial EAC that existed between 1967 to 1977. In order to make meaningful contribution to the process of integration, a process devoid of the pitfalls of the inaugural EAC Organisation that crumbled in 1977 should be envisaged and pursued.

To date there is still apprehension as to the economic leverage of Kenya and other differences in the socio-economic ideologies of the partner states. This does not auger well for the Community and even if the integration was achieved eventually, it will rest on shaky grounds. Policy and legal measures to address problems that may arise would be best put in place by an independent organ with the potential of shaping the individual governments' positions towards integration. Such a responsibility can best be achieved by use of the only engine trusted with legitimacy of representation of the peoples of East Africa, the East African Legislative Assembly. Another objective of this thesis will be to review the mode of elections of members of EALA and assess whether the current mode is satisfactory as a crucial engine for popular representation and genuine integration.

Undeniably, it is prudent to familiarise ourselves with mistakes made in the earlier process and endeavour to avoid them while improving on the positive attributes that we can deduce from that same undertaking; only then can we rightfully set out on the right path to successful integration. It has been argued that the collapse of the inaugural East African Community in 1977 was precipitated by socio-political as well as economic differences between the partner states.<sup>30</sup> It is apparent that even though the treaty establishing the first EAC was concluded in 1967, the three partner states pursued different ideological paths in early 1960s as follows; Kenya, through the Sessional *Paper No. 10 of 1965 on African Socialism and Its Application in Kenya* incorporated socialist-capitalist prescriptions, laying foundation for an open liberal and mixed economy. The objectives of Kenya in adopting the above mentioned sessional Paper no 10 as its blue print on Africanization of the economy included ensuring equal opportunities for all citizens, enhanced democracy, sustainable use of resources for the benefit of society and its members, to encourage ownership of property and to promote freedom of conscience and human dignity.

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<sup>29</sup> A fact recognized in the preamble of the Treaty establishing the EAC at stanza 4 as the “..Continued disproportionate sharing of benefits of the community among partner states due differences in levels in their levels of development and lack of adequate policies to address this situation.”

<sup>30</sup> <http://www.trademarka.com/will-new-eac-learn-from-old>, accessed in August 2012

Tanzania's *Arusha Declaration of 1967* ushered in a purely socialist era; The objectives of the Arusha declaration were as follows: to consolidate and maintain the independence of Tanzania and the freedom of its people, to safeguard the inherent dignity of the individual in accordance with the Universal Declaration of Human Rights, to ensure that Tanzania shall be governed by a democratic socialist government of the people, to co-operate with all political parties in Africa engaged in the liberation of all Africa; to see that the Government mobilizes all the resources of Tanzania towards the elimination of poverty, ignorance and disease; to see that the Government actively assists in the formation and maintenance of co-operative organizations, to guarantee that wherever possible the Government itself directly participates in the economic development of Tanzania, to see to it that the Government gives equal opportunity to all men and women irrespective of race, religion or status, to ensure that the Government eradicates all types of exploitation, intimidation, discrimination, bribery and corruption, to see to it that the Government exercises effective control over the principal means of production and pursues policies which facilitate the way to collective ownership of the resources of Tanzania to ensure that the Government co-operates with other states in Africa in bringing about African unity and finally to make certain that Government works tirelessly towards world peace and security through the United Nations Organization.<sup>31</sup>

Uganda on the other hand, embraced a middle ground *Common Man's Charter of 1969*<sup>32</sup>, as the driving engine for the country's economic-political development. The Common Man's Charter of 1969, advocated for a<sup>33</sup> "Move to the Left" stating that "political and economic power must be vested in the majority". Socialism was however not activated in Uganda because of political turbulence. Yash Tandon observed that Obote did not consider that he was sufficiently strong politically to embark on radical economic policies.<sup>34</sup> Again a split in the Cabinet between leftists and rightists neutralized all efforts to "*Move to the Left*"<sup>35</sup> In 1970, Obote in his *Nakivubo Pronouncement* proposed that the government takes control of 60% of all banks, insurance companies, manufacturing and mining industries, plantations and transport undertakings in Uganda. In addition, government monopoly would be enforced in Uganda's import-export market. The Cabinet had no prior warning about the declaration and implementation of this policy was chaotic, consequently, the government never took control of Uganda's major industries. Obote's subsequent overthrow by the forces of Idi Amin ended hopes of

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<sup>31</sup> <http://www.marxists.org/subject/africa/nyerere/1967/arusha-declaration.htm>

<sup>32</sup> A policy document submitted to the Ugandan People's Congress by Ugandan President Milton Obote, forming a part of the country's so-called "Move to the Left". In it, he asserts several key principles of his vision for Uganda, including a commitment to democracy in the country. It built on agreements from the June 1968 conference, and was signed into law on the 24 October 1969, in an emergency meeting in Kampala.

<sup>33</sup> Ryan, Selwyn D.. "Economic nationalism and socialism in Uganda".(1973) *Commonwealth & Comparative Politics* **11**: 140–158. Retrieved 15 August 2010.

<sup>34</sup> Tandon, Yash. *The People*. (1 June 1970) Cited by Ryan.

<sup>35</sup> Akena Adoko, *Work for Progress, Uganda's Second Five-Year Plan 1966-71 (Entebbe, 1966)*, 15

Uganda's full move to socialism. Indeed, one could argue that in Uganda there lacked the political will as well as human resource know-how to turn Uganda into a nationalist state.

On a practical level, the actual collapse of the old EAC was occasioned by different levels of economic development, with Kenya allegedly taking the lion's share of the EAC benefits and the other partner states only importing from Kenya.<sup>36</sup> Other issues that led to the demise of the EAC include centralization or perceived centralization of power -Kenyan officials questioned the relevance of the East African Railways and harbours being headquartered in Dar es Salaam, and the East African Posts and Telecommunications being in Kampala, while they had substantive ministries in Kenya in charge of these sectors, the East-West bipolar system particularly during the cold war era where some countries in the community became allies to the East while others preferred to align themselves with the west and finally, personality differences between Tanzania's President Julius K. Nyerere and President Idi Amin Dada of Uganda<sup>37</sup>. These were key dividing factors escalating the initial collapse of the community. The Kampala agreement that sought even distribution of industries across the region in order to ensure balanced development and mutual benefits from the community was not ratified by all the member states, a move that pushed the final nail into the head, leading to the collapse of the EAC in 1977.

### **1.8.2 The road to revival of the East African Community (EAC)**

Undoubtedly, there exists a lacuna in historical texts and studies of the collapse of the initial EAC, a position that may be attributable to a lack of proper interrogation of the impact of a weak Assembly, with limited legislative power and almost, no or doubtful representation and oversight functions and also, perhaps there was also negligible interest by members of the academia from East Africa in this area of study. Delupis (1970:29) writes that<sup>38</sup> prior to tabling of legislation before the Assembly of EAC, the draft bills had to be sanctioned by the Governors in charge of Kenya, Uganda and Tanzania. The bills were therefore submitted for scrutiny by the three of them and later had to be assented to by them, clearly making the Executive arm of Parliament, "the supreme organ" of the EAC, an easy task given that the legislation have been generated and sanitized by them. Perhaps the only commendable aspect of the law making practice as existed under the EAHC (1948-1961) East African Common Services Organization (EACSO) (1961-1967) and first EAC was the fact the laws of the Assembly, once passed, became automatically the laws of the community. This practice was carried forth as the new EALA was re-created in 1999.<sup>39</sup>

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<sup>36</sup> <http://www.trademarka.com/will-new-eac-learn-from-old/>

<sup>37</sup> For the historical evolution of the EAC and the factors that led to its collapse see, for example, Korwa G. Adar and Mutahi Ng'uni, (1993). *"The Politics of Integration in East Africa since Independence"*, in Walter O. Oyugi, ed. *Politics and Administration in East Africa* (Nairobi: Konrad Adenauer foundation, 395-325. Victor Umbricht who was appointed by the three East African heads of state submitted his reports for the division of Assets and Liabilities in March 1980 and October 1981

<sup>38</sup> Delupis, Ingrid Diomi, *The East African Community and the Common market*, (1970) London Longman

<sup>39</sup> See foot note number 19 above

The Community in its quest for unity, embarked on a revival journey in the 90's with efforts from the then presidents of Kenya, Uganda and Tanzania to set a road map towards true unification of the East African Region. East African Co-operation efforts began in earnest on March 14, 1996 when the Secretariat of the Permanent Tripartite Commission was launched at the Headquarters of the EAC in Arusha, Tanzania. East African Heads of State, at their second Summit in Arusha on 29 April 1997, directed the Permanent Tripartite Commission to start the process of upgrading the Agreement establishing the Permanent Tripartite Commission for East African Co-operation into a Treaty. The Treaty for the Establishment of the East African Community was signed in Arusha on 30 November 1999 and entered into force on 7 July 2000 following the conclusion of the process of its ratification and deposit of the Instruments of Ratification with the Secretary General by all the three Partner States. The EAC was inaugurated in January 2001.

The Treaty calls for a customs<sup>40</sup>, a common market<sup>41</sup> and monetary union<sup>42</sup> and sets the ultimate objective as the birth of a political federation of East African states.

The desire for a central legislature to enact legislation on behalf of member states of EAC was carried forward through the third (3<sup>rd</sup>) paragraph of the treaty establishing the EAC. Further, at Article 8 of the Treaty, it is provided the "Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of the Treaty."<sup>43</sup> Acts of the Assembly are expected to be laid on national, state parliaments for information purposes only. This move invariably touches on the sovereignty of the EAC nations' undivided jurisdiction over all persons, laws and property within their territories; the sovereign right to regulate each nation's economic affairs without regard for its neighbours is therefore threatened by the integration process.<sup>44</sup> As a concept however, the description of a sovereign state is challenged by those who argue that international law is binding because states are limited by treaties and international obligations key among them the United Nations Charter.<sup>45</sup>

An apparent loophole emerging from the Bill making process under the 1999 Treaty Establishing the EAC is the fact that under Article 63 (4), if a Head of State (*any one of them*) withholds assent to a re-

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<sup>40</sup> EAC Summit signed the Protocol for Establishment of the EAC Customs Union on 2 March 2004 and the same became operational in January 2005

<sup>41</sup> Protocol for the Establishment of the EAC Common Market signed on 20<sup>th</sup> November 2009 at the peak of observance of EAC 10th Anniversary celebrations; laying of foundation stone for EAC headquarters in Arusha, it becomes operational on 1<sup>st</sup> January 2010 EAC's fully-fledged Customs Union takes effect following the end of a five-year transitional period.

<sup>42</sup> The negotiations for the East African Monetary Union, commenced in 2001

<sup>43</sup> With the Establishment of the East African Court of Justice (EACJ), disputes regarding interpretation of the constitution or other advisory opinions could now be given independently and directly from the EACJ (see Article 23 of the Treaty)

<sup>44</sup> The Columbia Encyclopedia, 6th ed. Copyright© 2013, The Columbia University Press.

<sup>45</sup> Krasner Stephen *Sovereignty: Organized Hypocrisy* (1999) Princeton University Press New Jersey United Kingdom



submitted Bill, the Bill lapses automatically. One of the deliverables of this thesis is to suggest relevant legislative amendments to laws affecting the EAC for consideration by EALA; this would be one such law. The process of integration will best be served if EALA was given the ultimate law making mandate, as it is, this authority still lies with the Summit of heads of States.

Sight should not be lost to the fact that the old EAC also ran into difficulties because of the lack of joint planning and fiscal policy, separate political policies and Kenya's perceived dominant economic position. One of the causes for the collapse included demands by Kenya for more seats than Uganda and Tanzania in decision-making organs.<sup>46</sup> In a supranational union, the problem of how to reconcile the principle of equality among nation states is resolved by taking a sectoral approach. This allows a democratic broadening the number of actors to be included. This can be done by introducing committees or commissions in a representational body such as EALA which as a supranational body, would be in a better position to manage most of the challenges that led to the initial collapse of the EAC.

Supranationalism therefore provides for a higher degree of institutional scrutiny both via the Parliament and through Consultative for a, Committees or commissions. Sovereignty on the other hand can be defined as the power to rule and make laws over a geographic area; the sovereignty of a nation is linked to its ability to guarantee the best interests of its own citizens. A supranational union is created through an agreement between sovereign states, based on international treaties where member states retain ultimate sovereignty, although part of it is ceded to the supranational body. Supranational agreements encourage stability and trust, because governments cannot break international accords at a whim.

Thirteen years on, East African Community integration process heaves slowly onward; however, the socio-economic costs of the delay in the integration process can no longer be overlooked. We are, hereby called upon to interrogate the entire exercise on a continuous basis, examine EALA, its accomplishment, if any, and put in place a proper monitoring and evaluation mechanism in order to determine the effectiveness and sufficiency of laws and Resolutions passed by it.

### **1.8.3 A Situational Analysis – The EAC**

A recent study by the Society for International Development (SID) on the state of East Africa<sup>47</sup> paints a grim picture of the well being of East Africans. Some of the findings of the Survey include the fact that East Africa's population grew by 24 million between 2005 and 2010 and it is estimated to reach 237 million by 2030, while ipso facto this is not negative in light of the overall resources of the region and in light of expanded trade markets in the region, the fact is that with an increased population and higher population density, the pressures on the region's natural resources will intensify further, calling for concerted efforts at ensuring equitable and proper management of resources including ensuring, through

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<sup>46</sup> Born in anonymity". Ms.dk. Retrieved 2010-07-01.

<sup>47</sup> Society for International Development (SID) *The report on the State of East Africa, 2012: Deepening Integration, Intensifying Challenges* (SID) publication (2012)

EALA that plunder by foreign firms and that by Government agencies and officials, is curbed. The report further states that malnutrition remains one of the greatest challenges facing the region as evidenced by that fact that one-third of Kenyan children are stunted as are over half of the children in Burundi and as is replicated in the rest of the partner states. Sight cannot therefore be lost to the abject poverty and dire deprivation that marks the existence of the people of East Africa.

Literacy levels are hampered by the fact that a majority of East Africa's students do not go on to secondary school. Additionally, many children are barely learning given alarmingly low results in reading English and Kiswahili and simple arithmetic; finally, East Africa's infrastructural deficit is a well documented challenge and infrastructure investment is critical if the region wants to receive the full benefits of regional integration. Through EALA's representation role, the people of the EAC can be assured of better living standards

Further, the study indicates that in the vast majority of East Africans, the issue of one Community, with one national Anthem, seems far removed from them as they do not clearly understand the impact of integration in their lives.

Indeed if redemption shall come through the instrument of regional integration, then more effort needs to be spared by all organs and functionaries of the Community, particularly EALA, to ensure standardization of common services, accessibility to goods and services, free movement of goods and services, complementarily in terms of equality of treatment, by all, all of which I will endeavour to demonstrate as essential integration tools, that can be harnessed by EALA, in order for it to be worthy of the peoples' power delegated to them.

## **1.9.1 The Role of Regional Assemblies in Regional Integration**

### **1.9.1.0 An Introduction**

Regional integration has different aspects ranging from economic development, political, social, cultural integration to broader security purposes. In Leon Lindberg's "*The Political Dynamics of European Economic Integration*", political integration was defined as:-

1. The process whereby nations forego the desire and ability to conduct foreign and key domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs (supra-national organs)
2. The process whereby political actors in several distinct settings are persuaded to shift their expectations and political activities to a new centre<sup>48</sup>

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<sup>48</sup> Lindberg, Leon N. *The Political Dynamics of European Economic Integration*. (1963) Stanford: Stanford University Press

In the 90s the definition of political integration had evolved to the point that it was also defined as by Karl Deutsch as: “*The attainment within a territory of a sense of community and of institutions and practices strong enough to assure dependable expectations among its population*”<sup>49</sup>

Regional integration is considered as an avenue to better compete in the world economy by opening up borders and eliminating tariffs and taxes on imports and exports between member nations and allowing the internal economic output within the regional block to increase. Other political and economic goals include regional peace and security, reduced social exclusion, development of joint environmental as well as infrastructural programs and strengthening of the region’s interaction with other regions worldwide.

The place of regional Legislatures in regional integration is an issue that has in the recent past received increased attention from scholars, writers and commentators alike although there are a few writers who have authored works that specifically touch on the efforts by the EALA in integration of the East African Community.

Nikki Slocum and Luk Van Langenhove, in their article titled *the Meaning of Regional Integration: Introducing Positioning Theory in Regional Integration Studies*<sup>50</sup> have argued that because of its global proliferation, regional integration has become one of the most prominent issues of study within the field of international relations<sup>51</sup> and European integration is arguably the most prominent case, no doubt due its comparative advantage gained through early establishment. The scope of integration, according to them, is wrapped within the following perimeter: a) how and why there is a gradual upward shifting of sovereignty from the state level to macro-regional structures, like the European Commission, the European Parliament and EU President (political integration); and b) why and how the elimination of economic frontiers between two or more economies occurs (economic integration).

In the scientific study of regional integration, social construction has recently become rather popular; a growing group of scholars use theories, ideas and methods related to the social constructionist movement to tackle problems of international relations and international law pertaining to political and economic integration. A central focus in this approach is to study the constitution of political identity<sup>52</sup>.

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<sup>49</sup> Deutsch Karl et al *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience*. (1957) Princeton, NJ: Princeton University Press

<sup>50</sup> UNU-CRIS: United Nations University *Comparative Regional Integration Studies*. U W (-2003-2005),

<sup>51</sup> Pelkmans, Jacques, *European Integration: Methods and Economic Analysis*, (2001) 2<sup>nd</sup> edition, Financial Times - Prentice Hall.

<sup>52</sup> Ted Hopf *The Promise of Constructivism in International Relations Theory* (1998) ,Journal: International Security - INT SECURITY , vol. 23

Another concept that is relevant and closely related to economic and/or regional integration is that of economies of scale; in microeconomics, this refers to the advantages that an enterprise obtains due to expansion and comprise of factors that cause a producers average cost of production to fall as the scale of output is increased<sup>53</sup>, in this regard, economic growth due from growth or increase in numbers resulting to comparative advantages to the region as opposed to individual national states is referred to.

The East African Community (EAC) has as its ultimate goal, the formation of a formidable political federation complete with a President who would, as an initial measure, be elected by the Summit of heads of States. The year Two-thousand-and nine (2009) marked a term of buoyancy for the bold East Africa, a year in which the Presidents of Kenya, Rwanda, Burundi, Tanzania and Uganda set the region on a new path of integration by signing the Common Market protocol at the conclusion of protracted negotiations. This step was a clear indication that the Region was now set for the ultimate political federation. The vision of the five-nation bloc is to transition to a political federation in 2015. This is set to be achieved through a five-pronged approach beginning with a Customs union, a common market, a monetary union and, finally, a full-fledged political integration.

According to Sheila Naturinda<sup>54</sup>, The East African Community summit that took place in the Burundian capital Bujumbura at the end of November 2011 revealed that the political leadership in the member countries is more optimistic about the federation than its citizens. The summit also revealed the existence of adequate political will to see that the federation is achieved by 2015 however, it highlighted primary challenges that the community is facing and calls for '*cautious optimism*'. It is agreed that optimism in itself is defensible because the EAC leaders have shown a consensus that trade and private sector investments are crucial inputs to sustained growth and development. At the meeting in Burundi, the private Sector community from each of the East African Community member States was invited and was represented, the caution with respect to what to expect from the EAC is informed by the collapse in 1977 of an earlier effort at regional integration, indicating therefore that the road ahead has road blocks to be overcome, the greatest in my view, being lack of proper checks and balances between the organs of the EAC, a weak EALA, differing political ideologies<sup>55</sup>, lack of a proper framework of implementation and harmonization of East African laws, lack of a proper institutional structure of engagement between the East African Parliaments and Individual State legislatures enabling those legislatures to interrogate

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<sup>53</sup> Gelles, Gregory M, and Mitchell Douglas W, "*Returns to Scale and Economies of Scale: Further Observations*" ( 1996 ) Journal of Economic Education, 27 , 259-261

<sup>54</sup> Sheila Naturinda *East Africa federation push looses Steam*, Business Daily, (2011) from the Trademark Southern Africa Website,

<sup>55</sup> In November 2011, Tanzania sparked fears over its commitment to the community when it did not only fail to attend two crucial meetings in Bujumbura, but also refused to sign the defense protocol. The pact mandates neighbours to provide support to a member at war. The East African reports that Tanzania fears to be dragged into wars which its neighbours have had— some on the basis of their leaders' personal difference. However, being a member of Southern African Development Community (SADC), Tanzania is at a crossroads, as each protocol requires it to assist a member who is at war with a non-member country. SADC is a southern African inter-governmental organization that aims at social-economic participation.

policies and laws of the community and create active citizen awareness thereby enhancing their domestication.

The 2012 demographic report of the East African Region indicates that it has 130 million people, a good opportunity for trade especially with open markets for manufactured goods, an opening that calls for all East Africans to embrace integration despite existing fears.

### **1.9.1.1 Legislatures and Regional Integration**

The importance of involving Parliamentarians both at the National and Regional level in regional integration efforts have been highlighted by Barney Karuuombe in *'The Role of Parliament in Regional Integration – The missing Link'*<sup>56</sup> which book gives an excellent account of the need to have Parliament as a front runner in regional integration. In the Article, Barney states that:

*The growing emphasis on the need for good governance and greater accountability has resuscitated researchers' and practitioners' interest in the institution of Parliament and its potential value and contribution to democracy and development, to this, I would add integration, especially in Africa. The article is premised on the hypothesis that Parliaments and Parliamentarians are not sufficiently included in the process of integration and development, and the Executive replicates its national dominance in that 'the ruling elite set [and approves] the integration agenda and implement the same with little involvement of other non-state stakeholders [including parliaments]*

Indeed, nothing can be further from the truth, and that summation aptly captures the development dilemma in terms of proper Governance. The ideal starting point in the present thesis would be to first fully appreciate the need to have Parliaments (both National and Regional) on board in the integration endeavors. The thesis will rely on the comments of other writers and commentators on the challenges that EALA will have to deal with in making its contribution to the integration. One of the critical factors that might hamper the eventual political federation includes a lack of a thriving, properly facilitated and mandated EAC legislature and the requisite support from the leadership of the community. The question of Sovereignty still plagues the Federation as it did in the 70's and a plausible reason behind this is that the first East African giants or founding members, — Kenya, Uganda and Tanzania, have different views on how the East African Federation should proceed. Rwanda, Kenya and Uganda appear more flexible and eager to embrace full integration as compared to Burundi and Tanzania.

Philipp Kiiver in his article National and Regional Parliaments in the European Union Constitutional Order<sup>57</sup> is of the view that the EU constitution confirmed the importance of subsidiarity as an integral part of the European project, as I believe it will be in the overall success of the East African

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<sup>56</sup> An Article published in the *Monitoring Regional Integration Yearbook 2008*

<sup>57</sup> Philipp Kiiver (ed). *Groningen National and Regional Parliaments in the European Constitutional order*, (2006) Europa Law Publishing, 2006.

Community's integration. This in essence is the idea, officially expressed in the Treaty on European Union that rules and actions within the European Union should be taken at the lowest feasible level, as close as possible to the ordinary *mwana* (citizen) as possible. This position is currently understood to require greater acknowledgment of and participation by national, local and regional legislative bodies in the activities of the community fundamentally in matters regarding proposed directives, regulations, and other legislation.

In the May and June 2010 issue of the Diplomat Magazine and in an article titled "*the Hurdles and path to the East African Political Federation*" by Dea Correspondent, the writer argues that section 4 Article 8 of the Treaty Establishing the East African Community States that the laws passed by EALA shall supersede similar or existing laws within individual State Nations<sup>58</sup>. This means that Community legislation passed at the East African Assembly ought to take precedence over similar or existing one's in state legislatures. A position that will prove useful for the eventual stamping of legislative authority by the EALA, however, a persisting hurdle with respect to implementation of this progressive provision is the lack of a framework for harmonization of community laws with national laws and a monitoring and evaluation mechanism.

A most definitive role of the Community's Assembly, as will be apparent in the text of the thesis, will be to spearhead the harmonization of laws of the EAC and addressing the disparity of laws within EA Member States. This is another opportunity for ensuring meaningful integration of EAC.

In terms of monitoring and evaluation, the lack of a framework or a structured follow up mechanism on implementation of EAC policies and legislation is a great handicap to the integration process. This gap can be best filled by establishing relevant structures within EALA which ought to work in a structured and institutionalized framework with State legislatures. This position was emphasized by Hon. Gervase Akhaabi, former Member of Parliament for EALA<sup>59</sup> who has often lamented about the lack of a proper follow up mechanism of EAC decisions and EALA laws in State Assemblies. According to him, it is left to individual states to implement EAC decisions and in case of default; there would be nothing that anyone could do.

In my view, this crack equally offers an opportunity for EALA to bring the community together by tying in the Community Legislature with National legislatures where we would explore in this report, the apparent profit in establishing EAC (integration) Committees to monitor EAC decisions and policies and ensure their ultimate and timely implementation.

A key area of contribution of Regional Assemblies such as EALA in improvement the lives of people in their regions is the promotion of human rights. With respect to this matter, Dr. Angela Meyer of the

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<sup>58</sup> EAC , The Treaty for the Establishment of the East African Community, EAC Publication 1

<sup>59</sup> EALA representative from Kenya

Organization for International Dialogue and Conflict Management in her article '*Regional Parliaments In Central Africa: A Difficult Birth*'<sup>60</sup> argues that within the regionalization processes, the promotion and protection of Human and minority rights as well as of fundamental freedoms is considered as a crucial part of the Parliamentary Assemblies' work. These principles are indeed included among the issues and subjects the Parliaments are supposed to give advice on. This circumstance could make the Regional Parliaments become central institutions for the communities and their members to show and demonstrate their commitment towards good governance and democratic values. They may thereby give the regionalization processes more credibility, especially towards external actors, the International Community and international donors. This position brings forth a novel albeit critical role of Regional Parliaments, that is setting standards and securing Fundamental Human Rights and Freedoms within the Region and requiring National Governments to recognize, uphold and respect those Rights and Freedoms.

This aspect is vital even as EAC moves to political Federation and explores the possibility of incorporating other countries in the community, in reviewing and accessing both EAC membership and ascendancy to the Presidency of the federation, processes that ought to adhere to the laid down standards with respect to the threshold for Fundamental Rights and Freedoms and upholding the rule of Law ought to be adopted by EALA. As currently operating, EALA is yet to be seen to take up this very crucial mandate. The thesis will explore ways in which this particular role of EALA will ensure good governance and it will be a recommendation from this work that a law giving guidelines on minimum democratic standards and highlighting possible sanctions for abuses by state parties of those human rights and governance standards be prescribed in an Act of the Assembly.

Other authors have also made effort in highlighting the manner in which integration can contribute to development for example David Booth, Diana Commack et al who in their book titled *East African Integration: How Can it contribute to East African Development?*<sup>61</sup> Suggest that the integration process of the East African Community does have potential to improve the prospects for poverty-reducing economic growth, according to them the potential is greatest in two main areas namely co-operation in infrastructure and other public-goods provision projects and in growth-enhancing institutional change.

According to them, progress on institutions will happen if business pressure groups and other stakeholders interested in rule-governed policies participate strongly in negotiations on the formation of an East African common market as that has the potential to result in institutions favouring investment

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<sup>60</sup> Presentation Garnet Conference, Bordeaux, "*Mapping Integration and Regionalism in a Global World: The EU and regional governance outside the EU*" 17-19/09/2008

<sup>61</sup> A Briefing Paper based on a study and consultation exercise commissioned by the Africa Policy Department of the UK Department for International Development. It was undertaken jointly by staff of EPRC, ESRF, IPAR and ODI and published in February 2007.

getting 'locked in' by regional agreements, so that political favouritism and protection become progressively less significant factors in the development of each of the member states.

The thesis acknowledges that the problems facing EALA are not unique to it. It has been pointed out that such problems are generic for African Regional Parliaments. In his Article *African Regional Parliaments – Engines of Integration and Democratization*<sup>62</sup> Ulf Terlinden Bonn, is of the view that although African Regional Parliaments and Parliamentary Assemblies are intended to assume the legislative and democratic oversight functions of Regional integration organizations in the long run, they so far remain at an infant stage of organizational development and are far from exercising the roles that a proper Parliament ought to exercise.

With respect to regards the role of EALA specifically, Korwa G Adar has in *Federalism and East African Community Integration Process: the Role of the East African Legislative Assembly*<sup>63</sup> opined that Law-making legislative duties, and responsibilities of any legally constituted legislature, the EALA included, are critical, particularly because of the intended durability and legitimacy of Parliaments and their work. These functional powers and responsibilities would flow from the institutional and legal mandate of EALA in the sense that if properly constituted, EALA would be empowered by East Africans through the electoral process to exercise its duties inscribed in the EAC treaty. Yet, this cardinal and natural sovereign right of the citizens in East Africa is not provided for either in the EAC Treaty or in EAC legislation.

It is on the basis of the foregoing and other literature that the thesis shall build an argument that uniquely views the role of the EALA in the context of a parliament operating within a strict democratic atmosphere and that is bound by the recognized principles and essentials of a democratic Parliament.

Beyond the foregoing arguments and comments, the thesis shall illustrate that the true potential and opportunity for success in the EAC lies in pure democratization and independence of the Community's

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<sup>62</sup> Terlinden Ulf.; *African Regional Parliaments - Engines of Integration and Democratization?* Background Paper on International Development Cooperation, Africa Desk of the Friedrich-Ebert-Foundation. Bonn, September 2004. [http://www.ulf-terlinden.de/docs/Terlinden2004Reg\\_Parl.pdf](http://www.ulf-terlinden.de/docs/Terlinden2004Reg_Parl.pdf)

<sup>63</sup> Adar, Korwa G *Fast tracking East African political Federation: The role and limitations of the East African Legislative Assembly*, (2008) Africa Insight, Vol 37



legislature through an open process that will see the EAC member states ceding more ground (sovereignty) to EALA as a key EAC supra-national organ

### **1.10 Broad Arguments; Structure and layout**

Effective parliaments are characterized by:

#### **1.10.1 Accessibility: -**

That parliament shall be accessible and open to citizens and the media, subject only to demonstrable public safety and work requirements. It needs to have its own non-partisan media relations facility and works towards promoting public understanding of its working. One way to facilitate citizen participation is to have live broadcast of proceedings in committees and in Plenary.

#### **1.10.2 Independent, effective and non-Partisan Staff: -**

This is achievable by ensuring that the executive has no say in recruitment or control of parliamentary staff and that they are well governed by a code of conduct. Of equal importance is to ensure effectiveness through availability of appropriate work facilities including ICT.

#### **1.10.3. Self-control on procedure and sessions: -**

That Parliament should have the sole control of its own sessions, often achieved through adoption of own standing orders of practices and rules which include the exclusive power to call itself off and back into sessions and to manage its internal procedures

#### **1.10.4.Freedom of Association for its members:-**

That Parliament must adhere to principles and systems that allow members to choose their own political affiliations e.g. political parties. This should include Parliamentary grouping and cross party groupings.

#### **1.10.5 Committees system: -**

A good Parliament has an independent and effective committee system. The system should allow undeterred formation and operation of permanent and temporary committees in order to promote specialization and effective disposition of Parliamentary business.

#### **1.10.6 Election of members: -**

Election of Members into Parliament ought to meet international standards for genuine and transparent elections, usually by direct universal and equal suffrage in a free and secret ballot. There should be set term limits for membership of the House. This should be done in a manner that reflects the need for accountability through regular and periodic legislative elections.

#### **1.10.7 Ethical Governance:**

Legislators should maintain high standards of accountability, transparency and responsibility in the conduct of all public and parliamentary matters. Legislators should fully and publicly disclose their financial assets and business interests. There should be put in place mechanisms to prevent, detect, and bring to justice legislators and staff engaged in corrupt practices.

#### **1.10.8 Independence of Parliament**

This independence will be evidenced in the manner in which it will carry out its core functions, that is legislative, oversight and representation without interference. Parliament must among other safeguards be the last if not the only legislative authority and approve all expenditure of public funds, having said that, the public must at all times be given an opportunity to input in the legislative process.

#### **1.10.9 Parliamentary Powers and Privileges**

This protects or gives members of the Assembly immunity from legal action for any acts of omissions or commissions in the discharge of their functions under the law/ or Treaty Establishing the Assembly. This situation exists both in the Assembly plenary and at committee sittings. This allows members freedom of speech to deliberate and act on matters affecting the community.

Even though primarily these benchmarks are prescribed for self-assessment by national parliaments, as already demonstrated, there is not much difference between their operations and those of a regional parliament like EALA. However in recognition of diversity in practices based on regions, The Commonwealth Parliamentary Association (CPA), whose membership all the East African States subscribe to, is encouraging the development of regional versions of their Benchmarks. It is hoped that this will contribute to their evolution while ensuring the relevance to particular environments and the Commonwealth's regional diversity.<sup>64</sup>

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<sup>64</sup> Hironori Yamamoto, *Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments*, (2007) IPU

A review of the establishment of EALA against the above benchmarks indicates that EALA meets at least 50% of all the standards but has to work on a number of areas where it is significantly weak, this include the election of its Members, its Independence, Freedom of Association of the Members, Ethical Governance and accessibility. On a whole, there ought to be concerted efforts to ensure that EALA is strengthened to enable it improve Governance in East Africa.

### 1.11 Assumptions

The study proceeds from the assumption that there exists adequate political good will to permit the proposed reforms in the operations of EALA. It will be possible to reconcile the political ideologies of all the member countries and that changes in political leadership and relevant legislative regime, including constitutions of the individual members states, will not adversely affect the role of EALA the integration process.

### 1.12 Methodology

All pertinent aspects of EALA were considered and intensively investigated in order to gain a clear insight into the role of EALA in the process of East African Community integration. Attention was drawn to the role of each independent variable in relation to others.

Literature review assisted to identify key issues about how EALA performs. Sources included academic papers, books and documents like annual reports of parliament (EALA) and its committees.

The East African Community (EAC) is the regional intergovernmental organization of the Republics of Burundi, Kenya, Rwanda, the United Republic of Tanzania, and the Republic of Uganda, with a combined population of more than 130 million people (2010\*), land area of 1.82 million sq kilometers and a combined Gross Domestic Product of \$74.5 billion (2009\*).

Nine elected members from each country and seven *ex officio* members make up the membership of the East African Legislative Assembly. Members are elected by the legislatures of each country. To make sure there are women represented there are 2 female members from Kenya, 3 from Tanzania and 4 from Uganda. *Ex officio* members include the ministers from each country responsible for regional co-operation, a Secretary General, and a Counsel to the Community.

The elected member of the second EALA (2007–12) break down by political party is as follows:

Political party	Burundi	Kenya	Rwanda	Tanzania	Uganda	TOTAL
independents or unspecified		5	9		9	23

<u>Chama Cha Mapinduzi</u>				7		7
<u>CNDD-FDD</u>	4					4
<u>KANU</u>		2				2
<u>CNDD</u>	1					1
<u>FORD Kenya</u>		1				1
<u>FORD People's Party</u>		1				1
<u>MRC</u>	1					1
<u>United Democratic Party</u>				1		1
<u>UPRONA</u>	1					1
vacant?	2			1		3
<b>Totals</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>45</b>

A representative sample of members of the population was drawn from the research population.

There were key informant interviews with key government departments such as the Ministries responsible for East African cooperation and foreign affairs in the EAC. Officers and members of the EALA as well as officers and members of National Assemblies were interrogated to bring out the effectiveness of their integration with EALA and to find out how EALA Acts or legislation are processed. In selecting the interviewees, random sampling methods were used, but these were subject to adjustments depending on the needs that may arise in the course of the study. These were selected from each of the partner states. The researcher undertook focused group discussion with relevant persons who have either served in or are currently serving in the EALA and National Assemblies.

A number of stakeholder groups were interviewed, including the presiding officers of parliament, members of the private sector and civil society, parliamentary administration and management and leaders of political parties , Notably, they all offered useful insights and sound recommendations on steps to be taken address a number of the issues highlighted

### 1.13 Conclusion

This chapter sets out the working parameters of the intended thesis and erects the beacons upon which the objects of the paper are to be achieved. Firstly, it endeavours to give a background of the problem and explain the context within which the study is to be carried out. Thereafter followed a concise statement of the problem aimed at presenting in a summary manner, what the study is all about followed by a section on the theoretical framework of the study giving its jurisprudential basis. An extensive literature review of past works, writings and commentaries on the subject of the paper demonstrated the

distinctive path that this particular study intends to take. The chapter discloses the key and specific objectives of the study upon which a broad argument shall be laid out and is founded on exceptional assumptions or hypothesis which shall be set out expressly before presenting the key research questions. In conclusion, the issue of sovereignty emerged as central in the operation of EALA as a proposed supra-national organ of the EAC, which has been set out as an ultimate supra-national organisation.

Chapter 2 will delve into the theoretical and conceptual framework of supranational organizations, such as the EAC and will explore theories and concepts around sovereignty and supranationalism, specifically it will examine the following;- (i) theories of sovereignty – direct exercise at regional level (2) ceding of sovereign power to bodies outside territorial boundaries and whether this scenario is anticipated by constitutional framework (3) theories of supra-national bodies (executive, judicial, legislative) (4) whether EAC is a properly constituted supranational body (5) how parliamentary democracy functions in environment of ceded sovereignty and how it relates to national constitutional frameworks. From this analysis, the chapter will explore the key issues that EAC regional integration should bear in mind to achieve successful integration. In so doing, it will detail an analytical study of the key roles and principles of Legislatures, at both national and regional levels and will draw lessons from practice, rules and procedure in the region and beyond. Finally, the chapter will wind up with an analysis of how parliaments can contribute to regional development and integration.

Chapter 3 examines the East African Community Scorecard and highlights the gains made by the Community since its inauguration and then analyses in detail the specific contributions attributable to the creation of EALA. It will explore ways in which cohesion and community branding can be enhanced in the EAC and how a strong regional identity and spirit of nationalism can be cultivated among the peoples of East Africa.

Further; this chapter will focus primarily on EALA and examine in detail its mandate. The chapter will capture both EALA's current and envisioned roles, examine its functional and operational structures, the challenges inherent in the administration and structure of EALA that can enable it to be transformed to be an effective representation, legislative and watchdog organ of the Community so that it is placed in the best position to spearhead integration.

Chapter 4 will explore the gaps and opportunities inherent in the process of integration for EALA to explore, primarily focusing on the loopholes that have contributed to the failure of integration of East Africa and highlight the latent potential in the regional bloc that can be built on to fast track the process of integration. This final Chapter will collate the lessons from other countries, the uniqueness of the East Africa situation and propose a general model for using a strengthened EALA as the ideal vehicle for delivering East African integration.

The next chapter therefore undertakes a detailed and systematic examination of the theories and concepts that underpin the legal and conceptual framework of the existence and operations of

Supranational Organizations and their organs and how the concept of sovereignty applies with respect to such bodies in the context of regional integration. The study will include a detailed comparative analysis of EAC as a potential supra-national body and EALA, its legislative organ, with similar bodies regionally (in Africa) and globally

## **CHAPTER 2**

### **ASSESSING THE THEORETICAL FOUNDATIONS OF SOVEREIGNTY AND REGIONAL INTEGRATION THROUGH SUPRANATIONAL ORGANIZATIONS**

#### **2.0 Introduction**

This Chapter examines the concept of Regional Parliaments and the idea of parliamentary democracy and constitutional supremacy at a regional level, with illustrations and comparisons from other regions. This section seeks to bring to light, in a comprehensive manner, the key roles and principles of legislatures at both a national and regional levels. The chapter also highlights some renowned benchmarks for assessing the competencies of legislatures at both the national and supranational levels.

#### **2.1 EXAMINING THE THEORY OF REGIONAL INTEGRATION**

##### **2.1.0 Introduction to regional integration**

Regional integration is the cooperation through regional rules and institutions entered into by states of the same region.

The process of regional integration could have as its objective, political or economic development or in some cases, a holistic social, cultural, political and business initiative aimed at broader security and commercial purposes. Regional integration could have an intergovernmental or supranational organization outlook.<sup>65</sup> In terms of supranational organizations, it is a process by which states enter into a regional agreement in order to enhance regional cooperation through regional institutions and rules. The objectives of the agreement could range from economic to political to environmental, although most have typically taken the form of a political economic initiatives where commercial interests have been the focus for achieving broader socio-political and security objectives, as defined by national governments. Past efforts at regional integration have often focused on removing barriers to free trade in the specific region on enhancing the free movement of people, labour, goods, and capital across national borders, reducing the possibility of regional armed conflict (for example, through Confidence and Security-Building Measures), and adopting cohesive regional stances on policy issues, such as the environment, climate change, gender parity and migration.

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<sup>65</sup> Read more: <http://www.businessdictionary.com/definition/regional-integration.html#ixzz2hg15JamJs>, accessed on 12<sup>th</sup> September 2013

### 2.1.1 Theories on National Sovereignty

National sovereignty is a legal principle that defines nationhood. It is the reason why states need to consent to and domesticate International treaties and customary international law and it explains why nations respect territorial borders and honor diplomatic immunity.

The Peace of Westphalia Treaty signed in 1648 in which the Holy Roman Empire, Spain, France, Sweden and the Dutch Republic ended *the Thirty (30) years war* in Europe and agreed to respect the principle of territorial integrity is important in modern international relations theory. International relations theorists have identified three key principles from the Peace of Westphalia Treaty as follows;

1. The principle of sovereignty of states and the fundamental right of political self determination
2. The principle of legal equity between states
3. The principle of non-intervention of one state in the internal affairs of another state<sup>66</sup>

The Westphalian system has its limits. First, the principle of sovereignty on which it is based produces rivalry, exclusion and not integration.<sup>67</sup> In 2000, Germany's foreign Minister Joska Fischer argued in his Humbolt Speech that the system of European politics set up by Westphalia was obsolete. The proof was how European nations with common interests were uniting under the umbrella of the European Union.

Additional criticism of Westphalian sovereignty comes about in relation to alleged failed states. A failed state is perceived to have lost the basic conditions and responsibilities of a sovereign government. These include:-

1. Loss of control of its territory
2. Erosion of legitimate authority
3. Inability to provide public services
4. Inability to interact with other states as a full member of the international community<sup>68</sup>

In this case, it is argued that no sovereignty exists and international intervention is justified on humanitarian grounds and due to security threats the failed state poses to neighboring countries and the world as a whole<sup>69</sup>.

Article 2 of the UN Charter states as follows:-

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<sup>66</sup> Gross, Leo, "*The Peace of Westphalia*", (January 1948) *The American Journal of International Law* 42 (1): 20–41, doi:10.2307/2193560, JSTOR 2193560

<sup>67</sup> Solana, Javier, *Securing Peace in Europe*, (November 12, 1998) *North Atlantic Treaty Organization*, retrieved 2008-05-21

<sup>68</sup> ^ "*Failed States FAQ Number 6*". the Fund for Peace. Retrieved 2007-10-22.

<sup>69</sup> ibid



*The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.*

- 1. The Organization is based on the principle of the sovereign equality of all its Members.*
- 2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.*
- 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.*
- 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*
- 5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.*
- 6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.*
- 7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.*

Further Chapter 7 of the same Charter on intervention through Security Council states:

Article 39

*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*

Article 41

*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.*

## Article 42

*Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.*

Further, International cooperation is needed in order to resolve global environmental problems and this “coming together” involves ceding some sovereign authority, by each nation to the global common agenda: the Ozone treaty system /climate change is a good example.

**The Trail Smelter Case**<sup>70</sup> established this basic principle of International Law. The simple facts of the case are that there was a smelter in the city of Trail, in British Columbia, Canada. The US alleged that fumes from the smelter were carried downriver to Washington State causing pollution. A tribunal consisting of one Canadian member, one American member and a Belgian Chairman was set up to try this case. It concluded that Canada was responsible to the US for trans-boundary pollution and owed damages. The case in point:

*“States have a right to use resources how they want but must stop when it starts infringing on the rights of other states to use the same environment.”*

Due to economic globalization, advances in transportation and communications and the spread of international human rights law, a nation's power within its territory is no longer deemed “exclusive and absolute.”<sup>71</sup> Again, due to scarcity of resources and interdependence of actors, countries (in the case of this study; EAC member states) respond to the environment by pooling resources together.<sup>72</sup>

Regional integration therefore enables nations to forego the desire and ability to conduct foreign and key domestic policies independently of each other and seek instead to make joint decisions or to delegate decision making to new central organs<sup>73</sup>

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<sup>70</sup> US-Canada Mixed Arbitration Commission, in United Nations Reports of International Arbitral Awards (UNRIAA), 1947, Vol. III, p. 1905. UN, 1972. Trail Smelter Case, 1941.

<sup>71</sup> Goldsmith Jack. *Sovereignty International Relations Theory and International Law*. Stanford Law Review <http://www.jstor.org/stable/1229436>

<sup>72</sup> Jurupa Stefania Alina. *Reconciling Theories of Regional Integration: A Third Approach*. University of Ulster

<sup>73</sup> Lindberg, Leon N., *The Political Dynamics of European Economic Integration*. (1963) Stanford: Stanford University Press.

## **2.1.1 Classical Theories of Regional Integration**

### **2.1.1.1 Neo-functionalism**

Neo-functionalism puts forward the concept that spill over – economic integration would lead to political integration. The integration process would be led by technocratic elites and governance of the union would not be based on ideology but on satisfaction of economic interests. Political spill over would occur as a result of transfer of loyalty from the nation state to the higher authority (the summit of the EAC partner states). The summit was expected to give the integration process direction and was viewed as being ‘above’ the nation states. The result would be an integrated union of states and societies (The East African Community) with characteristics of political domestic systems.<sup>74</sup>

However, critics of neo-functionalism argue that economics and politics are relatively independent from each other and that mutual economic gains can be obtained without a supranational high authority. Criticism of neo-functionalism gave rise to yet another concept –Inter-governmentalism.

### **2.1.1.2 Inter-governmentalism**

Neil Nugent<sup>75</sup> defined Inter-governmentalism as “a system whereby nation states, in situations and conditions they can control, co-operate with one another on matters of common interest. The existence of control allows participating states to decide the extent and nature of this cooperation so that national sovereignty is not directly undermined.”

Inter-governmentalists view integration (governance) as a two level game – national level office holders build coalitions among domestic groups (in the EAC case, these would be ministers in charge of East African Affairs; interested parties include ministers of trade and industry as well as foreign affairs minister among others). At the regional level, they bargain in such a manner as to satisfy the demands of the interest groups at home (the domestic level). The EAC will be successful due to the will of partner states to satisfy their interests and in so far as it is instrumental for achieving member states objectives in the global arena to bargain strategic interests defined at national level.

### **2.1.1.3 Supra-nationalism**

Supra-nationalism involves states working together in a manner that does not allow them to retain complete control over national/domestic/local developments. States may be obliged to do things against

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<sup>74</sup> Rosamond, Ben *Theories of European Integration*, (2000) London: Macmillan Press Ltd.

<sup>75</sup> Nugent, N..*The Government and Politics of the European Union*. (2006) 6th Edition. Palgrave Macmillan. Online. Available at <http://books.google.ie/books?q=Neil+Nugent%27s+Government+and+politics+of+European+Union&lr=&sa=N&start=10>.

their preferences and their will because they do not have the power to stop decisions. Supra-nationalism takes inter-state relations beyond cooperation to integration and involves some loss of national sovereignty.<sup>76</sup> The process of policy-making is graduated with policies at the domestic/national level being separated from the regional policies. For the EAC, a commission at the EAC Secretariat would formulate policy to be discussed and adopted by the summit of Heads of states or to be passed by EALA and endorsed or assented to by the summit of heads of States hence forming the legal basis for superior regional policy, in light of which national/domestic state policies will give way. An Oversight Committee within EALA would then be charged with the responsibility of monitoring the implementation of these laws.

A supranational union is an international organization founded by several states for the purpose of integration which tends to evolve continuously. It accomplishes its integrative function primarily by carrying out a wide variety of tasks in the public sphere and by exercising public power in its member states. Supranational public power evolves in a two-step process. First, a supranational public authority is created. The founding states act collectively, in their capacity as “masters of the treaties”. No single state can create a supranational public power, nor sustain or extinguish such a power. The second step in the process falls within the purview of domestic public law; its nature is such that each member state must complete the step by itself. If supranational public power is to evolve it requires a national act which generally vests all its measures with binding force at the domestic level in at least two member states. This domestic legal act is part of national compliance with the founding treaty; article 8 of the EAC Treaty deals with general state party’s undertakings with respect to implementation of the treaty and provides for supranationalism of the EAC by stating that *Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of the Treaty.*

At sub-article 5 it goes to further provide that the Partner States undertake to make the necessary legal instruments to confer precedence of Community organs, institutions and laws over similar national ones.

Further article 16 of the EAC Treaty provides that Subject to the provisions of the Treaty, the regulations, directives and decisions of the Council taken or given in pursuance of the provisions of this Treaty shall be binding on the Partner States, on all organs and institutions of the Community other than the Summit, the Court and the Assembly within their jurisdictions, and on those to whom they may under this Treaty be addressed. The above are contained as deliberate provisions on supranationalism of EAC Organs, institutions and laws in the Treaty for the formation of the EAC.<sup>77</sup>

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<sup>76</sup> Nugent, N., *The Government and Politics of the European Union*. (2006) 6th Edition. Palgrave Macmillan. [Online]. Available at <http://books.google.ie/books?q=Neil+Nugent%27s+Government+and+politics+of+European+Union&lr=&sa=N&start=10>

<sup>77</sup> Schmitz Thomas *A New Form of Organisation: The Supranational Union* <http://lehrstuhl.jura.uni-goettingen.de/tschmitz/SupranUnion/Summary-2.htm>

Two central principles describe the status of the state in a supranational union; first, these basic duties of membership include the duty to respect primary and secondary union law, to co-operate with other member states and with the union's organs, to participate in those organs, and to evince loyalty and solidarity towards the union and other member states. The second key tenet states that state sovereignty is unaffected until such time, if any, as the union is transformed into a geo-regional unification state. Sovereignty is absolute; as conceived by international law. It can only be transferred as a whole, if the transfer is accompanied by member states' declaration concerning a transfer of statehood, such as the above mentioned ones.

Supra-nationalism could further be graduated into institutionalism<sup>78</sup> and proponents that advocate for formal 'rules of the game.' Constitutionalisation refers to the attempt to subject the exercise of all types of public power to the discipline of constitutional procedures and norms.<sup>79</sup> It involves efforts to subject all government action within a designated region to structures, processes, principles and values of a constitution. In the case of the EAC; a constitutional review process and a referendum where citizens of the partner states would be required to accept or reject the constitutional provisions relating to ceding of power to EAC as a supranational unit

Given the foregoing, it is apparent that at the moment, EALA is not a legal supranational Parliament; as a result, there is no structured link between the Parliaments of member countries and EALA. This makes harmonization of laws as well as election of members of Parliament to the Assembly and public participation in EAC affairs through EALA difficult. EALA is therefore not adequately supported by the Treaty, which merely provides for its existence and gives its mandate which as it stands, is a handicap to effective and efficient regional representation. There is need for legislation as well as political and legislative support by policy and requisite structures. Supranationalism offers a good method of doing this.

#### **2.1.1.1 National constitutional supremacy vis-à-vis supremacy of supra-national constitution and laws**

Constitutionalisation is a legal process by which the EAC treaties evolve from a set of legal arrangements binding upon sovereign states into a legal regime conferring enforceable judicial rights and obligations on all legal persons and entities with the application of the EAC law<sup>80</sup>

Just as will obtain in a federal constitution and Nation, supranational constitutions are characterized by:

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<sup>78</sup> Pollack, M. A. *International Relations Theory and European Integration*. (2001) Journal of Common Market Studies, 39 (2), pp. 221-44.

<sup>79</sup> Dobner Petra et al. *The Twilight of Constitutionalism* (2010) Oxford Scholarship Online ISBN – 13:9780199585007

<sup>80</sup> Weiler *The Reformation of European Constitutionalism*. (1997) Journal of Common Market Studies Vol.35 No. 1, 97 - 131

1. Two levels of government ruling the same land and people.
2. Autonomy of each government in its own sphere (constitutionally guaranteed)<sup>81</sup>

Federal states have:

1. A single market
2. A common commercial policy
3. A single currency
4. A minimum federal budget
5. A common foreign and security policy
6. A common army<sup>82</sup>

The European Union, an example of a supranational union, has a parliament with legislative oversight, elected by its citizens.<sup>83</sup> Other institutions of the EU include a Consultative Committee (a chamber representing civil society interests of enterprises, workers and consumers), Council of government ministers and a Court of Justice to decide disputes coming from governments, public or private enterprises, consumer groups, any other group interests or even an individual. Germany is an example of a federation, a political entity characterized by a union of partially self-governing states or regions under a central (federal) government. In a federation, the self-governing status of the component states, as well as the division of power between them and the central government, are constitutionally entrenched and may not be altered by a unilateral decision of the states or the federal political body.

Why constitutionalize? Possibly to create a higher authority whose decisions will be binding on member states of the EAC and further, to build a concrete foundation for the peaceful East African federation. Again, having a constitution for the community will make the EAC decision-making organs more accountable, increasingly transparent with enhanced problem-solving capability, in the case of EALA – making it more legitimate.

In coming together to form an intended formidable federation, the East African partner states sought co-operation at the sub-regional and regional levels in all fields of human endeavour in a bid to raise living standards of the people of East Africa, maintain and enhance the economic stability, foster close and peaceful relations and accelerate the successive stages in the realization of the proposed African Economic Community and Political Union; Section 8 (2) (b) of the Treaty establishing the East African Community<sup>84</sup> calls upon parties to confer upon the legislations, regulations and directives of the Community and its institutions as provided for in this Treaty, the force of law within their territories.

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<sup>81</sup> Riker *Federalism: Origin, Operation, Significance*. (1964) Boston: Little, Brown & Co.

<sup>82</sup> Laursen F *Theory and Practice of Regional Integration*. (2008) Jean Monnet/Robert Schuman Paper Series Vol. 8 No. 3

<sup>83</sup> Kiljunen, Kimmo. *The European Constitution in the Making*. (2004) Centre for European Policy Studies. pp. 21–26. ISBN 978-92-9079-493-6.

<sup>84</sup> An article dealing with general undertakings by parties as to implementation of the Treaty

Section 8(3) provides that each state shall designate a ministry in charge of EAC Affairs which will be the key link of the community through the office of the Secretary General.

More relevantly however, section 8 (4) provides in undoubtedly that Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of the Treaty.

Further, under sub- Article 5, partner states are urged to undertake to make the necessary legal instruments to confer precedence of Community organs, institutions and laws over similar national ones. This begs the question of which then is superior? National or supranational constitutions and/ or legislation?

### **2.3 Kenyan National law**

Under the Kenyan Constitution which underwent a comprehensive review leading to its promulgation on 27<sup>th</sup> August 2010, one of the key highlights is to refocus sovereign power as emanating from the people of Kenya who may exercise their sovereign power either directly or through their democratically elected representatives, curiously, regionally elected members are not included under the category of constitutional organs under whose mandate sovereign power can be mandated in Kenya<sup>85</sup>.

Another gaping and apparent anomaly is the fact that the constitution at article 4 (1) provides that sovereign power is exercisable in two levels, at the national level and county level. There is no mention of regional or global level and yet one cannot help but notice that today's governance realities transcend the national to the regional and international and that any one nation, Kenya included, would often be a key player in a lot of regional and global engagements, which in themselves are capable of impacting the lives of the citizens and which require proper representation of the position and will of those people.<sup>86</sup> It would be a recommendation in this paper that there be a constitutional amendment to recognize representation at the regional and global arena by duly appointed and/ elected representatives. It is important to note however that under the Kenyan Constitution, the general rules of international law, by law, form part of the law of Kenya<sup>87</sup> and that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution<sup>88</sup>. Therefore International treaties signed and ratified by Kenya now became Kenyan law and can be relied upon by Kenyan citizens to enforce their rights notwithstanding the fact that Parliament at the National and County levels in Kenya has the ultimate

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<sup>85</sup> Under article 1 (3) sovereign power is delegated to Parliament and County Assemblies , to the National Executive and County Governments, to the Judiciary and judicial Tribunals

<sup>86</sup> Kenya nominates representatives to the Pan African Parliament and the elects members to the East African Legislative Assembly (EALA) it also has membership in the European Union (EU) and the countries of the African, Caribbean and Pacific Group of States ACP-EU, the Inter-parliamentary Union (IPU) among others.

<sup>87</sup> Article 2 (5)

<sup>88</sup> Article 2 (6)

legislative authority as provided for at article 94 (5) of the Constitution of Kenya. This means that national legislatures may still embark on an exercise of assessing the international law to decide whether or not it is useful and can therefore by resolution of the house revoke such law and any of its constituent Acts if the national Parliament so resolves..

Under article one (1) of the constitution of Kenya<sup>89</sup> all sovereign power belongs to the people of Kenya to be exercised only in accordance with this Constitution and is delegated to the three organs of state , the legislature, the Judiciary and Executive at both the national and County level by the people

The people of Kenya ought to explore the possibility of revision of article 1(3) of the constitution to allow for a constitutional process through referendum where they would cede power to supranational organs of EAC and would provide that delegated power would be exercised at the National, County and EAC Regional level.

There are no similar provisions in other EAC Nations with respect to international law however article 28 ( XXVIII) of the Ugandan Constitution<sup>90</sup> which deals with Foreign Policy Objectives provides that the foreign policy of Uganda shall be based on the principles of promotion of the national interest of Uganda, respect for international law and treaty obligations, peaceful co-existence and non-alignment, settlement of international disputes by peaceful means, active participation in international and regional organizations that stand for peace and for the well-being and progress of humanity and promotion of regional and pan-African cultural, economic and political co-operation and integration. Under the Rwandan constitution of 2003, clause 9 of the preamble recognizes significant international laws and instruments and incorporates their observance, Article 2 Provides that all power is derived from the people who exercise it directly or through referendum or their representatives.

With respect to Burundi, although it recognizes the UN Charter and the Universal Declaration of Human Rights (UDHR 1948), provides that Sovereignty which belongs to the people is to be exercised directly, freely and democratically within conditions set out in the constitution and by the single ruling party referred to as the National Unity and Progress party “**UPRONA**” on behalf of the people of Burundi.

Finally, the United Republic of Tanzania has no provisions with respect to application of international or regional legislation and only talks of delegation of sovereign powers to the three organs of state and its agents. It is not clear if one of the “agents” is regional bodies or institutions such as those created under EAC. Notably, however, Tanzania is currently under a constitutional review period and it is hoped that it will seize this opportunity to mention the place of regional assemblies in terms of national sovereignty.

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<sup>89</sup> a (Chapter One on sovereignty of the people and supremacy of the constitution)

<sup>90</sup> 1995



In almost all other EAC Countries, any international legislation has to be domesticated by the National Parliaments. The same would be introduced to the Assemblies via motions culminating to committee reports and eventual plenary resolutions to either accept or reject the said laws, Finally, in spite of all the differences in constitutions, the main emphasis is in the fact that The Treaty Establishing the EAC mandates all state parties to ensure that national laws give way to Community Laws where there are similar laws.

This calls for a community environment where all EAC laws are harmonized, are acceptable and are therefore supreme to similar national laws.

## **2.3 Conclusion**

The EAC exists because it is able to create value and acceptable outcomes for its partner states. However, partner states compete over allocation of gains in order to maximize their interests and collaborate because they are interested in the survival of the community. Each partner state in the East African Community joins the community for its own interests and fights inside it to satisfy its self-interests. Divergent interests should be negotiated until a common position is agreed. It is therefore necessary in the integration process to develop devices and processes apart from the autonomous action by national government, to build consensus. The taskforce to be formed to inquire into the status of EALA would also ensure that EAC law is correctly applied by member countries. Before making proposals, the taskforce should consult widely so that stakeholders' views can be taken into account. In general, an assessment of the potential economic, social and environmental impact of a given piece of legislation ought to be published alongside the proposal itself. These will eventually be taken to EALA which will deliberate upon and pass them with or without amendments

## **2.4 The concept of Regional Parliaments**

### **2.4.1 Parliament generally**

What is a parliament? A seemingly rudimentary question; however in addressing the concept of a regional parliament, it is a question that is worth exploring at least by way of introduction. A parliament can be described in many different ways, depending on the jurisdiction, historical background and political system of a particular country, that is, whether the country follows a presidential or parliamentary system of government, or a combination of both or. The Commonwealth Parliamentary Association (CPA) defines parliament as.

*‘a lawmaking assembly constituted under the laws of a nation at...the national, state, province, territory or dependency level functioning within a parliamentary system’.*

## 2.5 The Concept and Advent of Regional Parliamentarism

This above CPA definition of parliament may be translated with little variance in a regional context to define regional assemblies. However, a number of pertinent questions may be raised as to the scope of application, the relevance, the place and even the usefulness of regional parliaments. Some of the issues that may need scrutiny are posed by Andrés Malamud and Luís de Sousa in their *Regional Parliaments in Europe and Latin America: Between Empowerment and Irrelevance* as follows.<sup>91</sup>

*First, why should region-makers take the trouble to establish a regional parliament when integration is first of all an economic endeavour? Second, are regional parliaments real parliaments, or do they fall short? Third, how are these parliaments different, especially regarding those that have taken root in Europe and Latin America?*

Establishment and the running of regional parliaments may be viewed as a phase or a facet of the multi-pronged process of regionalization or regional integration. The other components of regionalization include regional courts for example the East African Court of Justice and Economic arms such as the East African Customs Union. Examples from Africa show that the establishment of regional parliaments more often than not coincides with the establishment of regional blocs. Ulf Terlinden in her *African Regional Parliaments – Engines of Integration and Democratisation?*<sup>92</sup> gives a comparative analysis of some regional parliaments in Africa and their birthing.

In the paper she points out that a third phase of regional integration in Africa set in at the end of the 1990s,

*....when it became increasingly apparent that integration obviously required political understanding (not least as an environment conducive to economic development), too. The political dimension of integration experienced new emphasis, involving a strong call for good governance, accountability and transparency as well as the drive to establish regional parliamentary assemblies (RAs) 1 of different sorts.*

Ulf argues that, the move towards regional parliamentarism in Africa was further reinforced by donors' insistence on regional cooperation and parliamentary involvement, as expressed more recently in the framework of the Cotonou Agreement (ACP-EU 2000) and in the course of NEPAD<sup>93</sup> and the G8-Africa Action Plan. In particular, Cotonou stipulated the creation of the ACP-EU Joint Parliamentary Assembly and called for the strengthening of capacities of national parliaments in matters of regional

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<sup>91</sup> Published in Andrea Ribeiro Hoffmann and Anna van der Vleuten (eds.), *Closing or Widening the Gap? Legitimacy and Democracy in Regional International Organizations*. Aldershot: Ashgate, 2007

<sup>92</sup> Ulf Terlinden *African Regional Parliaments – Engines of Integration and Democratisation?* Bonn, September 2004. The earlier two phases according to the writer were the new thinking after the cold war and the mushrooming of international organizations which focused on economic partnerships.

<sup>93</sup> Denotes the New Partnership for Africa's Development (NEPAD)

integration. The G8 Action Plan<sup>94</sup> emphasizes effective parliamentary involvement in political decision-making processes.

Some writers caution that a supranational institution such as a regional Parliament should not be viewed simply as a common organ with some kind of formal powers at a higher level<sup>95</sup>; a sufficient understanding of a regional Parliament such as EALA would therefore be that as an institution it is constituted of norms, rules and values which are accepted as governing a particular order. Such norms are always not applied by or become embodied in particular organizations, which are thus better referred to as 'institutional arrangements' of the system<sup>96</sup>.

One may interrogate further the implication of a regional Parliament on the sovereignty of the national institutions and particularly parliament. Does a regional Parliament as a supranational institution take over the sovereignty of such national institutions? It has been argued, and rightly so, that it *does not*. In a basic legal definition, supranationalism means that sovereign states agree to abide by norms which are adopted at a higher level of organization.<sup>97</sup> However this does not mean that such a state transfers its sovereign power to the community law. The states in subscribing to the regional/community parliament have accepted, albeit not unconditionally, the supremacy of Community law. That is why in the event of conflict between a national law and Community law the former must be set aside. The member states accept the principle of direct effect, by which Community law creates rights and obligations directly for citizens. Together these principles mean that the legal system of the Community has a federal nature.

EALA and other regional parliaments should therefore be understood as institutions not intended to replace the important place of national parliaments or compete for power with national institutions but mechanisms by which the respective states pool their legislative sovereignty for common good.

## **2.6 The common Roles of Regional Parliaments**

Prof Wanyande, gives an incisive description of regional Parliaments especially in the context of the African region.<sup>98</sup> He argued that, the formal powers of all Regional assemblies (RAs) are quite limited. In some instances, their predominant role as advisory bodies includes weak functions of parliamentary oversight and budgetary control.

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<sup>94</sup> The Group of Eight (G8) is a forum for the governments of eight of the world's eleven largest national economies; not included are Brazil at 7th (IMF), India at 9th and China at 2nd. They meet annually to deliberate on matters of importance to them and have an Action Plan for Africa.

<sup>95</sup> Edward Best 'Supranational Institutions And Regional Integration' European Institute of Public Administration (EIPA), Maastricht, The Netherlands

<sup>96</sup> Ibid

<sup>97</sup> Ibid

<sup>98</sup> Wanyande, Peter,: *The Role of Africa's Regional Parliaments in Regional Integration*. 2004 Unpublished draft. Workshop on the Role of Regional Parliaments (ECOWAS, EALA and SADC-PF) in Regional Integration Efforts in Africa, Maasai Mara / Kenya, 09.-12.05.2004. Friedrich-EbertFoundation.

Some of the roles highlighted were as enumerated below:

### **2.6.1 Advisory:**

The scope of these functions is constrained both in terms of contents and competencies. All RAs have the right to consult on matters relating to the respective regional integration scheme, particularly if they concern the treaties and certain policy fields that usually form the supposed areas of cooperation and integration and are therefore outlined in the founding documents. The latter include issues such as human rights and fundamental freedoms of citizens, interconnection of energy networks and telecommunications systems, media cooperation, etc. Advisory competencies range from debates, consultations, recommendations, proposals, to inquiries. Set aside the wording, two questions determine the strength of these advisory rights: Is it obligatory for regional executives and the intergovernmental decision-making bodies (Councils and Summits) to consult the RAs, and will their opinion have to be observed? In fact, both EALA and the ECOWAS-Parliament need to be consulted in certain important areas (which the latter requested to be broadened). In addition, all RAs have the right to make recommendations to the executive level on their own initiative.

EALA in carrying out its advisory role is empowered to request the Council to submit proposals on matters that require action in the view of the assembly. However, and unfortunately, the executive bodies of the regional organizations are not obliged to pay attention to these different types of advice.

### **2.6.2 Investigative Powers:**

This power may be exercised in many forms for example by requesting and/or summoning community executive bodies and representatives to address the Assembly on the issues affecting the region/community, RAs can invite anybody to address their plenary<sup>99</sup>. They can also pose parliamentary questions to executive authorities. Ordinarily, a regional assembly may have power to set up ad hoc investigative committees or bodies.<sup>100</sup> In his analysis Ulf Terlinden<sup>101</sup> In the African context the ECOWAS-Parliament, IPU-IGAD<sup>102</sup> and the central Africa Parliamentary Network (REPAC) practically have no oversight roles. Similarly, the SADC-PF<sup>103</sup>, however the PAP can “request” officials of the AU to attend its sessions or to produce documents. Only EALA has the right to pose parliamentary questions to the executives. However, in case of conflict, EALA’s powers to investigate thoroughly and to hold

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<sup>99</sup> For example the Pan African Parliament (Article 11 & 15) can “request” officials of the AU to attend its sessions or to produce documents

<sup>100</sup> See for example the European Parliament as discussed below.

<sup>101</sup> *African Regional Parliaments / Parliamentary Bodies as Engines of Integration: Current State and Challenges*

<sup>102</sup> The Inter-Governmental Authority development –parliament

<sup>103</sup> Southern Africa Development Community Parliamentary Forum

the executive accountable remain very limited. None of the RAs the African region has the right to set up special investigation committees.

### **2.6.3 Oversight:**

The RAs as parliaments would ordinarily be meant to monitor the regional executives' activities. However, in the African set up, this relationship is usually not formalized so that RAs have very limited rights to hold executive bodies accountable. The regional executive staff tends to try and function as a guardian of the decisions of Summits and Councils for which they practically work. RAs – ultimately reflecting their relationship with the decision-making bodies and national governments – lack most means to provide effective checks and balances on the regional administrative bodies. Likewise, RAs' relationships with their respective regional decision-making bodies (Summits and Councils) are rarely formalized<sup>104</sup>. In absence of clearly defined working relationships, the RAs' dependence on the executive bodies hinders their effective parliamentary performance. Wherever RAs do possess rights vis-à-vis the regional decision-making bodies, these do not provide for effective accountability.

Parliaments are meant exert their influence by providing checks and balances on the executive's spending and guiding the allocation of funds. Among the African RAs SADC-PF has the right to scrutinize and make recommendations on the budget of SADC and the Executive Secretary's annual report, including SADC's audited accounts. However, none of these recommendations have to be taken into account. The EALA on its part is mandated to discuss and approve the EAC budget, and considers and debate on annual and audit reports. However, this does not include entitlements to draw up or revise budgets, which effectively reduces the assembly to a “rubber stamping institution”.

### **2.6.4 Law-making:**

EALA is currently the only African RA with a role in law-making<sup>105</sup>. However, its legislative mandate is seriously constrained; in practice EALA can only put forward and vote on motions and bills if they have no cost implications to any fund of the community. This gravely impairs the scope and relevance of potential laws. Furthermore, the Summit of Heads of State and Government have an effective veto right over EALA's legislation so that one head of state's action of refusal to assent can effectively “kill” a bill or piece of legislation and render the whole legislative process, futile.

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<sup>104</sup> However the EAC national ministers for regional cooperation (east African community affairs) sit in EALA, albeit without voting rights while the SADC-PF's executive committee holds an observer status in SADC Summits

<sup>105</sup> The ECOWAS-P has commenced reviewing, revising and amending the Revised ECOWAS Treaty so as to enable it to carry out legislative functions (Secretariat of IPU-IGAD 2004: 5). The PAP, too, shall be vested with certain legislative powers in the future, but these remain to be defined and will not be applied during its first term of existence (AU 2001: Art.11)

In the final summary however, legislative power is most potent for EALA in terms of coming up with relevant community laws that ought to be harmonized and that will bring the dream of a political federation closer to reality.

Articles 59 to 64 of the EAC Treaty deals with the law making mandate of the EALA

#### **2.6.5 Representative role**

The exercise of parliamentary role by regional parliament is highly dependent on the mode of ascension to membership of the RA. So far, all members of RAs are elected indirectly by national parliaments. Besides other advantages, these indirect elections are far cheaper than universal adult suffrage. Although the latter would clearly be preferable in terms of democratic participation, legitimacy and its “popularizing” effect, contemporary RAs in Africa so far cannot, and to some extent do not want to afford the financial implications. The ECOWAS-P is the only regional assembly whose founding document foresees such direct general elections for the future.

All RAs in the region except EALA have their members nominated and elected by and from the ranks of the national parliaments to serve on part time basis in those Assemblies. The East African MRAs are nominated by the parties represented in parliament, but the MPs themselves are excluded from candidacy. While this procedure is believed to broaden the political space and might allow the assembly to focus more on its regional mandate, other observers argue that the EALA set-up leads to a disconnection between the regional body and the national assemblies at the expense of the EALA possible opportunity to push the regional agenda at the national level.

The process also locks out potential representatives who may not be active parliamentary political Party members or otherwise enjoy the patronage of those parties and their leadership.

It will be a recommendation of the writer that the Charter establishing the EAC be amended with a view to allowing for direct elections of EALA representatives by universal suffrage thus promoting citizen involvement and participation and that one day be set aside each year as a public holiday in all EAC countries to focus on, promote and celebrate EAC and all it stands for. In order for EALA to be representative, the participation of the public ought to be made mandatory; this is the only way in which this crucial organ can gain legitimacy. First, their voice needs to be heard when they elect representatives to EALA, the schedule of EALA committee meetings ought to be availed to the public and finally, proceedings of EALA should be published, in live broadcast to allow citizens to appreciate and participate in EAC matters, in other words, in their own governance, a key tenet in democratic governance.

### 2.5.1 Parliamentary Democracy within the Regional Context

Regional parliaments like any other ordinary democratic parliament, serve the three traditional pillar roles of legislation, oversight and representation as discussed in Chapter One. To execute these roles it is incumbent that the parliaments be clothed in democratic values that are intended to protect them from external influence or interference especially from the executive organ. Having noted the skepticism with which federal integration of East Africa is met and the fears of sovereignty that tag along with it, it is important that EALA commands the confidence of the East African citizenry. This can only be achieved if EALA lives up to democratic principles and features of a modern democratic Parliament.

This comes from the background of Article 6 of the Treaty Establishing the East African Community which embodies the fundamental principles of the Community. Paragraph (d) of the Article lists them as follows:-

*good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;*

The Assembly's core values as set out in its 2010-2012 strategic plans include transparency, accountability, objectivity and impartiality; these are essentially democratic principles. EALA for instance ought to have sufficient teeth and mechanisms to recommend punitive sanctions, which may include social and/or economic sanctions, against state Government parties that fail to uphold the above enunciated principles.

## 2.8 The IPU Guidelines

The Inter-Parliamentary Union (IPU) established in 1889 is the leading<sup>106</sup> international organization of Parliaments established by Article 1 of the Statutes of the Inter-Parliamentary Union. The Union is the focal point for world-wide parliamentary dialogue and works for peace and co-operation among peoples and for the firm establishment of representative democracy.

Following a Convention held between 7<sup>th</sup> and 9<sup>th</sup> September 2005 at the United Nations headquarters, New York under the auspices of IPU participating countries came up with a guideline described as 'a Template for a Democratic' parliament. The summary of it is tabulated as below:

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<sup>106</sup> Currently 155 national parliaments are members and 9 regional parliaments have associate membership. European Parliament, 'Benchmarking for Parliaments: Self-assessment or minimum criteria?' 2012

<b>BASIC OBJECTIVES OR VALUES. A parliament that is:</b>	<b>REQUIREMENTS</b>	<b>POSSIBLE PROCEDURAL AND INSTITUTIONAL MEANS FOR THE REALISATION OF THESE OBJECTIVES OR VALUES</b>
<b>Representative</b>	An elected parliament that is socially and politically representative, and committed to equal opportunities for its members so that they can carry out their mandates	<p>Free and fair electoral system; means of ensuring representation of/by all sectors of society with a view to reflecting national and gender diversity, for example by special procedures to ensure representation of marginalised or excluded groups</p> <p>Open and democratic party procedures, organizations and systems</p> <p>Mechanisms to ensure the rights of the opposition and other political groups, and to allow all members to exercise their mandate freely and without being subjected to undue influence and pressure</p> <p>Freedom of speech and association; parliamentary rights and immunities, including the integrity of the Presiding Officers and other office holders</p> <p>Equal opportunities policies and procedures; non-discriminatory hours and conditions of work; language facilities for all members</p>



<b>Transparent</b>	Parliament that is open to the people and transparent in the conduct of its business	<p>Proceedings open to the public; due notice of business; documentation available in relevant languages; availability of user-friendly tools, for example using varied media, such as the world wide web; own public relations officers and facilities</p> <p>Legislation on freedom of/access to information</p>
<b>Accessible</b>	Involvement of the public, including civil-society and other peoples' movements in the work of parliament	<p>Effective modes of public participation in pre-legislative scrutiny; right of open consultation for interested parties; public right of petition; systematic grievance procedures</p> <p>Various means for constituents to have access to their elected representatives</p> <p>Possibility for lobbying within the limits of agreed legal provisions that ensure transparency</p>
<b>Accountable</b>	Members of parliament who are accountable to the electorate for their performance in office and for the integrity of their conduct	<p>Effective electoral sanction and monitoring processes; reporting procedures to inform constituents; ethical standards and enforceable code of conduct</p> <p>Adequate salary for members; register of outside interests and income; enforceable limits on election expenditure</p>

### 2.8.1 The Commonwealth Parliamentary Association Benchmarks for Democratic Parliaments

The Commonwealth Parliamentary Association (CPA) is an Association of Commonwealth Parliamentarians with an objective to promote the advancement of parliamentary democracy by enhancing knowledge and understanding of democratic governance among commonwealth member states<sup>107</sup>. It seeks to build an informed parliamentary community able to deepen the Commonwealth's democratic commitment and to further co-operation among its Parliaments and Legislatures.

In the year 2006, a study Group hosted by the Legislature of Bermuda on behalf of the Commonwealth Parliamentary Association and the World Bank Institute came up with a 10-point parliamentary assessment kit described as the CPA-Recommended Benchmarks for Democratic Parliaments<sup>108</sup>. The kit is seen as prescribing minimum standards that a democratic parliament must meet.<sup>109</sup>

The “Benchmarks” are phrased as standards rather than as questions and no system to code/categorize responses to these benchmarks is provided by the document itself. Indicators are divided into four main topical headings: general, organization of the Legislature, functions of the Legislature, and values of the Legislature, and there are additional subcategories listed within these main headings.<sup>110</sup>

The highlights of the benchmarks are as summarized as accessibility and promotion of public participation, having independent non-partisan staff, self control and regulation, freedom of association by Members of the legislature, having an open and effective committee system, election of members of Parliament to be done through a democratic and transparent manner by universal suffrage and equal suffrage in a free and fair ballot, ethical governance which will ensure that members exude high standards of character and ethics, an independent or autonomous Parliament:-

In recognition of diversity in practices based on regions, The CPA is also encouraging the development of regional versions of their Benchmarks. It is hoped that this will contribute to their evolution while ensuring the relevance to particular environments and the Commonwealth’s regional diversity.<sup>111</sup>

## **2.9 Lessons for EAC from other regional Parliaments**

### **2.9.1 The European Parliament (EP)**

The EP is the directly elected parliamentary institution of the European Union (EU). Together with the Council of the European Union (the Council) and the European Commission, it exercises the legislative function of the EU and it has been described as one of the most powerful regional legislatures

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<sup>107</sup> Originally former United Kingdom colonies but now open to states willing to accept their ideology e.g. Rwanda was accepted in the Commonwealth on 29<sup>th</sup> November 2009

<sup>108</sup> CPA, *Benchmarks for Democratic Legislatures: A study Group Report*, (2006) London, CPA

<sup>109</sup> European Parliament, ‘*Benchmarking for Parliaments: Self-assessment or minimum criteria?*’ 2012

<sup>110</sup> CPA ‘*Benchmarks for Democratic Legislatures: Self-Assessment Guidance Note*’, (2007) London CPA

<sup>111</sup> Ibid. examples are:- *Recommended Benchmarks for the CPA Caribbean, Americas and Atlantic Region’s Democratic Legislatures, Recommended Benchmarks for Asia, India and South-East Asia Regions’ Democratic Legislatures*

in the world, it is also one of the oldest.<sup>112</sup> The Parliament is currently composed of 754 Members of the European Parliament, who represent the second largest democratic electorate in the world (after the Parliament of India) and the largest trans-national democratic electorate in the world (375 million eligible voters in 2009)

The EP, like the national Parliaments of all EU member states, is elected by universal suffrage; however, unlike most European Parliamentary regimes, the 'European government' does not emanate from any majority represented in the EP. In other words, election to the EP is not intended as a reward or punishment for a 'European executive', even if the EP has the right to dismiss the Commission in a vote of censure by a two-thirds majority. The EP also has supervisory powers over EU bureaucrats and agencies, and decides on the adoption of legislation together with the Council of Ministers by means of the co-decision procedure. The EP can install inquiry commissions, question Commissioners on any issue relating to a common policy, pass resolutions, and hold hearings.

According to Andrés Malamud and Luís de Sousa<sup>113</sup> in *Regional Parliaments in Europe and Latin America: between Empowerment and Irrelevance* there are three factors that have helped transform the EP from 'just another international parliament' to 'a unique supranational parliament with real decisional powers and a central role in the process of European integration'. These are early supranationalism, extraordinary leadership and direct elections. According to the Corbett<sup>114</sup> the direct election of the European parliament in 1979 and the subsequent emergence of Euro-party formations were the turning point for the role the EP would play in the triangular institutional complex of the EC and in the integration process itself. Under the EC arrangements, sovereign authority is granted to EC Organs, including the EP

Since 1979, the EP has been elected by the European peoples every five years, according to a distribution of seats that roughly reflects the demographic weight of each state. A system of proportional representation for EP elections, The electoral dynamics, together with the progressive empowerment granted by each successive treaty reform and the spillover effects of qualified majority voting in the Council, transformed the EP into the only supranational parliamentary assembly in the world that enjoys simultaneous democratic legitimacy, decision-making competencies and the power to bring down a 'government' (the Commission). In it, European Parliamentarians have the chance of honing their political skills in an influential, supranational environment – even if they are frequently recruited from the ranks of elder politicians or party dissidents, either as a golden parachute for retirement or as a mutually convenient arrangement to take out internal opponents<sup>115</sup>.

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<sup>112</sup> Farrell, David; Roger Scully. *Representing Europe's Citizens?: Electoral Institutions and the Failure of Parliamentary Representation*. (2007) Oxford University Press. ISBN 978-0-19-928502-0.

<sup>113</sup> Ibid

<sup>114</sup> Corbett, Richard, *The European Parliament's Role in Closer EU Integration*. (1998) Basingstoke: Palgrave

<sup>115</sup> Bardi, Luciano, "Report: Transnational Trends in European Parties and the 1994 Elections of the European Parliament", (1996) *Party Politics*, 2/1: 99-114

### 2.9.2 The Latin American Parliament (PARLATINO)

The Latin American Parliament is a regional, unicameral assembly made up of members of twenty-two national parliaments of Latin America and the Caribbean<sup>116</sup>. Founded in Lima, Peru, in December 1964, it was later institutionalized by an international treaty signed in Lima in November 1987 and, since 1992, has been permanently located in the Brazilian city of Sao Paulo. Its main goals, as stated in its charter, are the defense of democracy, the promotion of regional integration and the strengthening of cooperation among Parliamentarians and parliaments across Latin America. It has legal personality and a budget provided by the signatory states. Its official languages are Spanish and Portuguese.

The PARLATINO Assembly is composed of national delegations sent by the member parliaments. Each national delegation may appoint up to twelve representatives in a proportion that reflects the weight of the national parliamentary groupings. If a delegation has less than twelve members, each of them can cast up to four votes without exceeding the overall number of twelve; this disposition grants all countries the same voting power regardless of country size. A quorum is obtained when more than half the national delegations are present, provided that their delegates represent at least one third of the overall votes. PARLATINO gathers once a year in its permanent location. It has no decisional authority and limits itself to passing agreements, recommendations and resolutions that are not binding upon any other body or organization.

PARLATINO has gained a certain international recognition notwithstanding its limited influence and competencies. In 1972, it agreed with the European Parliament –which at that time was also indirectly elected – to establish permanent contacts and convene a regular Inter-parliamentary Conference. The first was held in Bogotá in 1974, and since 1975 they have taken place every two years without exception, the debates and resolutions produced as a result of the conferences have constituted a testimony to the dominant issues of the trans-Atlantic agenda, as well as to the evolution and shortcomings of the Conference.

The Parliament's main historical merits have been to provide a beacon for democratic aspirations and Parliamentary procedures during the dark era of Latin American dictatorships; its main shortcomings have possibly originated in its not belonging to any significant, more encompassing organization. PARLATINO has however been discredited for being a mere symbolic rather than operative parliament much like EALA<sup>117</sup>. It is capable of hosting deliberation on regional and inter-regional affairs but has no prospect of ever becoming a decisional organ. It lacks both political significance and social roots.

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<sup>116</sup> The signatory countries are Argentina, Aruba, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, The Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, the Netherlands Antilles, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela.

<sup>117</sup> Andrés Malamud and Luís de Sousa *ibid*

### 2.9.3 The Central American Parliament (PARLACEN)

PARLACEN was signed by the Central American presidents with a view to putting an end to traditional rivalries and foster democracy and peace in the region. The presidential summit, strongly supported by the Contadora Group, its Group of Support<sup>118</sup> and the then European Community, took place in May 1986. In a later Declaration known as Esquipulas II, made in 1987, the presidents agreed that the Parliament should be the symbol of freedom, independence and reconciliation for the region, which had been devastated after years of bloodshed and political instability. Between the end of 1987 and early 1989, Guatemala, El Salvador, Costa Rica, Nicaragua and Honduras successively signed and ratified the PARLACEN Constitutive Treaty.

The Parliament was established in October 1991 when its assembly first met in Guatemala City, which would become its permanent location. Costa Rica eventually declined to participate, while the Dominican Republic joined the process in 1999.

Members of the Parliament are referred to as Deputies and are directly elected every five years by the people of the member countries, each country having the right to elect 20 representatives. In addition, each country has the right to send two appointed deputies, namely their former presidents and vice-presidents. On top of the full member countries, other parliaments send representatives with observer status: among them, PARLATINO, the Andean Parliament and the European Parliament.

The legislative competencies of PARLACEN are limited to proposal, analysis and recommendation. However, the treaty also confers it with the ability to elect, appoint and remove the highest executive official of all the institutions that belong to the SICA. Strangely enough, this parliamentary organ is not able to pass laws but it is (formally) empowered to nominate and hold accountable a myriad of technical administrators (article 5c). It is also allowed to request information and reports from every SICA organ and to make recommendations to them, but not to interfere in their functioning. As for voting procedures, PARLACEN makes decisions by absolute majority, except where establishing or amending internal statutes is concerned: in this case, a qualified majority is required. The country members provide for the parliamentary budget on an equal basis.

After more than a decade of operation, the record of PARLACEN is mixed: while it can boast sound achievements in enlarging its membership, it has made no progress regarding the deepening of its competencies. If, on the one hand, it has effectively contributed to pacification and growing

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<sup>118</sup> The Contadora Group, founded in 1983, was made up of Mexico, Colombia, Venezuela and Panama, whereas its Group of Support, established in 1985, was made up of Argentina, Uruguay, Brazil and Peru. The goals of both groups were to contribute to a negotiated solution to the Central American conflict, and their principles included self-determination, non-intervention, demilitarization and democratization. In 1986 the two groups merged into what came to be known as *Grupo de Rio*

interdependence among the societies it represents, it has at the same time failed to become a decisive actor in the feeble process of Central American integration.

From the above examples, it can be noted that all Parliaments though regional are linked to their national Parliaments and decisions made at regional level are felt at the national level. One reason is because representatives at the regional Assembly have roots in the National Assembly. Again these decisions at regional level are negotiated by representatives of respective national assemblies and not superimposed. They therefore are not 'fought' at the domestic level and as such the harmonization of regional laws is successful, though not without challenges. EALA should also adopt such systems to ensure greater legal and policy harmony at the EAC supranational level

## **2.10 Conclusion**

The question of whether or not an institution such as the EALA that purports to be a Parliament is actually, in deed a parliament can be qualitatively answered if EALA is assessed against the benchmarks discussed above. The benchmarks could be condensed to three essential factors, namely its impact on policy, the degree to which it independently sets its own agenda and the extent to which interests outside the formal decision-making institutions work to influence it. These three factors provide reasonable criteria to assess not only whether a parliament is a rubber stamp institution or not, but also whether the work that it does resonates with the general sentiments of the population it is intended to serve. The limited powers of EALA and other RAs in the African region reflect the general approach and attitude that most national governments tend to take towards political integration and in particular, the role of parliament, ordinarily seen as subordinate. Structures of contemporary African regional organizations remain primarily inter-governmental rather than supra-national.

National governments are not or are hardly willing to give up national sovereignty rights to regional levels, be it in the executive sphere or in the legislative domain. In other words, what is generally described as regional "integration" would often merely qualify as an institutionalized form of inter-governmental co-operation, which is hardly compatible with strong and independent RAs. In regions seeking political federation like EAC, the move to supra-nationalism, involving complete legislative and policy changes, and ceding of national sovereignty to regional organs is inevitable.

The current state of affairs demonstrates that EALA like its peers in the African region in many ways is at an infant stage of development and is far from exercising the roles that full-fledged Legislatures play in democratic setups. In order for EALA to attain its maximum potential, its links to the Parliaments of member states should be strengthened. Deliberate efforts by member states to cede power to EALA constitutionally would result in EALA mandate being constitutionally entrenched. This has worked for the European Parliament. The European Union has a legislative arm (the European Parliament), an executive (the European Commission) and a Judiciary. On the other hand, the Parlacen and Parlatino are

more or less ceremonial Assemblies but play a big part in the cultural aspect of the integration of the regional blocs they represent. Deliberate efforts should be made to make EALA more participative and events involving all member states should be sponsored and attended by members of EALA as well as EAC Summit members. A good example is football tournaments or other sporting events or even music and cultural festivals.

Another commendable attempt at coordination is the instituting of the EAC partner state Speaker's forum, comprising of the five speakers of EAC and who meet to deliberate ways in which they can enhance integration from the perspective of the National Parliaments. They seek to formalize their meetings into an EAC Speaker's forum to be included in an amended EAC Treaty. At these meetings, the Speaker of EALA is always invited to attend and participate.





## CHAPTER THREE

### 3.0 THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA) IN CONTEXT: GAPS, CHALLENGES AND OPPORTUNITIES

*“Integration proceeds by just the opposite route: a deliberate heightening of every organic function; a release of impulses from circumstances that irrationally thwarted them; richer and more complex patterns of activity; an esthetic heightening of anticipated realizations; a steady lengthening of the future; a faith in cosmic perspectives.”*

Lewis Mumford (1895 - 1990)<sup>1</sup>

The above quote accurately captures the reversed nature of regional integration. To bring the scenario in perspective, while the region of East Africa was divided as it was by operation of colonialism and the theory national sovereignty, the vision of integration seems to cut through the entire notion and bring it to disarray, so that integration somewhat appeals to creative and artistic picturesque inclinations, and goes against concepts of national boundaries, autonomy and self sufficiency, calling for closer ties that have hitherto been broken, taking us back to, in a cosmic sense, the pre-colonial era in terms of one East Africa.

Now more than ever, the East African Legislative Assembly (EALA) comes into sharp focus given the ongoing efforts to attain a socially, politically and economically integrated East African Community (EAC). The entire paper is dedicated to an elaborate discourse on the EALA as the core legislative organ of the Community against a background of the challenges faced and achievements made in the past in an effort to attain socio-economic and political integration of the region. This chapter takes critical look at the evolution of the EAC and its decision making organs over the years starting with the inaugural Community which collapsed in the year 1977. In laying basis for the propositions on the role of EALA in the process of integration, the chapter links the past problems to the current challenges that the EAC faces. The highlighted challenges will then form the background for an in-depth analysis of how the EALA as a legislative organ can be strategically applied to help realise the hitherto elusive dream of integration.

### 3.1 Historical background to the East African Community

According to Korwa G Adar<sup>2</sup> institutionalized East African Cooperation through a legislative Assembly alongside other organs began during colonial rule and has gone through five phases. He argues that the completion of the Uganda Railways (as it was originally known) from

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<sup>1</sup> American author, critic and architect with immense contribution to city and regional planning, history, literature and public service.

<sup>2</sup> Korwa G. Adar ‘*The East African Community*’ Centre for Studies of Federalism, 2010

Mombasa (Kenya) to Kampala (Uganda) by the British colonial administration (1895-1903), set the stage for Phase I (1903-1947) of the formal socio-economic and political cooperation and integration in the region. A number of institutional mechanisms were established with the objective of promoting and institutionalising the colonial administration's project on cooperation. They included, among others, the East African Posts and Telegraphs (EAPT-1890), the East African Currency Board (EACB-1905), the Customs Union (1917), the East African Income Tax Board (EAITB-1940), and the East African Airways (EAA-1946).

However, a more structured cooperation was realised with the formation of Phase II (1948-1961) of East African cooperation under the framework of the East African High Commission (EAHC), the corporate judicial body, by the colonial Office for the three Governors of Kenya, Tanganyika and Uganda as well as with the creation of the East African Central Legislative Assembly (EACLA-1948), also known as the Legislative Council (LEGCO), as the main decision-making body<sup>3</sup>. The common services thereafter gradually acquired a centralised feature, with the EAHC and the EACLA as the key decision-making bodies with functional responsibilities in the region.

Phase III began between 1961 and 1962 when the EAHC was again restructured into the East African Common Services Organization (EACSO) thereby broadening the scope for the administration and operationalisation of the common services. The persistence of the market inequalities coupled with the centralisation of most of the headquarters of the common services in Nairobi, Kenya, continued to pose structural challenges to the EACSO, creating a centre-periphery relations in the region. As Newlyn<sup>4</sup> observes:

*the gains from East African common market were unevenly distributed between the participating countries. This was a result of the fact that the industry [...] tended to cluster in Kenya*

These enduring historical structural challenges, among other reasons, necessitated the reconceptualization and restructuring of the EACSO into the East African Community I (EAC I, 1967-1977). The treaty establishing Phase IV of the East African regional cooperation signed by Kenya, Tanzania and Uganda in 1967 broadened the scope of the economic and political integration responsibilities of the EAC I. The EAC I however disintegrated in 1977 giving way to Phase V which constituted the present EALA- the subject matter of this thesis.

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<sup>3</sup> Tulya-Muhika, Sam.. *Lessons from the Rise and fall of the East African Community: Summary*. 1995 East African Cooperation Forum. Kampala: Friedrich Ebert Foundation

<sup>4</sup> Newlyn, William.. in Peter Robson (ed.) *"Gains and Losses in the East African Common Market," International Economic Integration*. 1971 Middlesex: Penguin Books: 348-361

### 3.1.1 Historical challenges

The process of rebuilding the East African Community has the benefit of learning from the mistakes made by the founders of the inaugural community which collapsed in 1977. The collapse of the initial East African Community in 1977 was precipitated by socio-political as well as economic differences between the partner states. Key among these differences was ideological differences. Way before the establishment of the first EAC in 1967 the original three partner states i.e. Kenya, Uganda and Tanzania had followed different ideological paths. Kenya, in her *Sessional Paper No. 10 of 1965 on African Socialism and Its Application in Kenya* incorporated socialist-capitalist prescriptions, laying foundation for an open liberal and mixed economy. Tanzania's *Arusha Declaration of 1967* ushered in a purely socialist era, while Uganda on the other hand under President Milton Obote embraced a middle ground incorporated in the *Common Man's Charter of 1969*<sup>5</sup>, as the driving engine for the country's economic and political development.

Divergence in socio-political ideology was not the only problem that dogged the community. Other central issues that led to the demise of the EAC included, centralization of power, initiatives and knowledge within the EAC Authority; lack of political will and mistrust among the flag bearers (Heads of State); the East-West bipolar system particularly during the cold war era; personality differences between Tanzania's President Julius K. Nyerere and President Idi Amin Dada of Uganda; and Kenya's perceived and real economic dominance.<sup>6</sup> All these issues led to the inevitable capitulation of the integration idea before it could mature and crystallize.

### 3.2 The Beginning of the Reconstruction Process and the Birth of Present Day EALA

The Community and the road towards integration were revived in the 90's as an initiative by the then presidents of Kenya, Uganda and Tanzania. The three countries ratified the Treaty Establishing the East African Community (the Treaty) on 30<sup>th</sup> November 1999 setting stage for renewed efforts towards a federation. The founding partners, the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania were subsequently joined on the 1<sup>st</sup> day of July 2007 by the Republic of Burundi and the Republic of Rwanda as members of the East African Community.

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<sup>5</sup> A policy document submitted to the Ugandan People's Congress by Ugandan President Milton Obote, forming a part of the country's so-called "Move to the Left". In it, he asserts several key principles of his vision for Uganda, including a commitment to democracy in the country. It built on agreements from the June 1968 conference, and was signed into law on the 24 October 1969, in an emergency meeting in Kampala.

<sup>6</sup> For the historical evolution of the EAC and the factors that led to its collapse see, for example, Korwa G. Adar and Mutahi Ngunyi, 1993. "The Politics of Integration in East Africa Since Independence", in Walter O. Oyugi, ed. *Politics and Administration in East Africa* (Nairobi: Konrad Adenauer Foundation, 395-325. Victor Umbricht who was appointed by the three East African heads of state submitted his reports for the division of Assets and Liabilities in March 1980 and October 1981

The Treaty paved the way for the creation of various EAC bodies – the Summit of Heads of State, the Council of Ministers, the Co-ordination Committee, Sectoral Committees, the East African Legislative Assembly, the East African Court of Justice and the EAC Secretariat. It creates the EALA at Article 49 as the independent, legislative arm of the Community. Under the Article, the key mandates of the Assembly are to liaise with National Assemblies on the issues of the Community, debate and approve the Community Budget; consideration and audit of Reports and make recommendations to the Council. From its inception, the Assembly served as the main link between the Institutions of the East African Community and the people of East Africa. The Assembly also provides a forum for Civil Society and other non-state actors within the region to advocate for the promotion of democracy, rule of law and respect for human rights. In its 2010-2012 strategic plan, EALA has declared its mission as to legislate, oversight and represent the people of East Africa in a bid to foster economic, social, cultural and political integration. By that statement, it has expressed the need for a review of its mandate to include expressly legislative, oversight and most crucial, representation to enable it foster more meaningful integration. This way it's role will be more appreciated by the people of East Africa.

EALA was formally inaugurated by the Heads of State of the original three EAC Partners States at its first sitting in Arusha, Tanzania on the 30<sup>th</sup> day of November 2001 with Hon. Abdurrahman O. Kinana of Tanzania elected as its first Speaker. That first Assembly's term ended on 30<sup>th</sup> November 2006. The First Assembly comprised 27 elected Members and 5 Ex-officio Members thus totaling to a Membership of 32.

### **3.2.1 The Enduring Challenges**

The current EAC secretariat reports that during its formative days, EALA experienced some teething challenges 'of operationalizing a new organ of the Community'<sup>7</sup>. Subsequently the Assembly has had to deal with problems ranging from consolidating the gains; reexamining the implications of the enlarged EAC and its expanded mandate; streamlining its decision-making functions, strengthening its oversight role, and enhancing the weak resource capacity as well as reinforcing meaningfully it's administrative and research support infrastructure.

Besides the teething and intra-institutional challenges that face EALA, of concern is the fact that some of the problems that dogged and eventually led to the dissolution of the first Community remain real to date and are as much a threat to the renewed efforts towards East African integration as they were in late 60's and 70's, key among this is the fact that to date there is still apprehension as to the economic leverage of Kenya and difference in socio-economic ideologies of the partner states. This attitude of suspicion and mistrust does not auger well for the Community even if full integration, including political federation was achieved eventually. It is imperative that they be dealt with by policy, legal and other measures as a matter of urgency.

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<sup>7</sup> The East African Community '*The East African Community Legislative Assembly: Three Year Strategic plan, 2010-2012*'

Such measures would be best put in place by a quasi independent organ with the potential of shaping the individual governments' stance towards the integration such as the proposed taskforce with a make-up of experts from each of the five EAC member states. Sweeping this issue under the carpet is not a solution and must be discouraged from this early stage.

Indeed it is a reality that there is political and economic tension between the members states albeit mild and subtle. The case that immediately comes to mind is the ongoing dispute between Kenya and Uganda over fishing and residence rights over the approximately half acre Island of Migingo in Nyanza region. Both Kenya and Uganda claim territorial jurisdiction over the Island and the same is frequented by fishermen from both Countries. Uganda has gone to the extent of sending its military personnel to the Island to guard it and has even purported to hoist a Ugandan flag on the Migingo Island has created reasonable tension between the two countries with allegations of harassment by Ugandan forces to Kenyan fishermen.

Another incidence is the ongoing Oil exploration in Kenya and Uganda that is leaning on non-constructive competition with each wanting to appear as the one with more prospectus and resources than the other. Another hurdle that faces the integration process that the EALA must deal with are fears that as a federation, the member states would cease to have any meaningful powers and would be relegated to mere provinces within the federation. This fear is manifested in different ways such as perceived loss of power by the sitting heads of state and loss of complete decision making power. This position effectively takes us back to the issue of ceding of sovereignty to community organs, an inescapable matter if we are considering the political federation, but one to be handled equitably and objectively. Finally, there seems to be a general fear and anxiety about the perceived industriousness and ambition of Kenyans by Tanzanians who have been reported to have been on occasion cold and hostile towards their Kenyan neighbours.

### **3.2.2 Key Economic Challenges**

The differences in the levels of economic development, entrepreneurial skills and competitiveness in the manufacturing and service industries are another real problem that the Assembly must contend with. The fear that such discrepancies will disadvantage some partner states must be allayed. There are fears for example in Tanzania of potential loss of investment and employment as a result of fast tracking political federation and are fears that industries may cluster in Kenya which has more attractive locations for business. Rwanda and Burundi have in particular cited increased disparities in economic development and revenue loss which lead to possible collapse of their infant industries due to domination by more developed economies. Of all economic challenges probably the most prominent is the problem of attaining currency integration. It is a hurdle which if overcome, would definitely open a formidable frontier in the march towards a political federation. The Assembly must make this a priority and look at possible legislation that will allay the fears mentioned above.

### **3.2.3 Political Challenges**

The fact that there is in existence different political systems in the partner states, with some being single party ruled Countries, e.g. Burundi, others bordering on dictatorship Nations like Uganda's therefore a real challenge given the historical lessons. In Uganda there is no presidential term limits while Kenya, Rwanda, Burundi and Tanzania have term limits for presidents though Rwanda has a seven year term compared to the rest that have five year terms. A move towards a uniform system may be necessary for all the EA states. Specific fears such as concerns by Zanzibar of being marginalized under the union government in the federal government and the Buganda kingdom issue in Uganda still exist.

### **3.2.4 Social Challenges**

A key social problem challenge is adopting a common language for the East Africans. Kenya and Tanzania have Swahili as the common language, while Uganda, Rwanda and Burundi have a mix of English, French and Swahili. There is a push for Kiswahili to be promoted as an integration catalyst while Rwanda and Burundi are campaigning for French. Respective nationals are also wary of the prospect of losing their respective national identities. They need assurances that their cultures will not be adulterated or interfered with in the event of a federal community.

## **3.4 Conclusion**

The fact that efforts to unite the people of East Africa into a socio-political and economic bloc have a long history is in itself an indication that the prevalent aspiration among the East Africans is a successful and functioning East African Community. The hurdles currently being faced are not totally unexpected and should not deter the process, however, if integration is to be achieved more expeditiously, more effort needs to be put into the process of integration by all organs and functionaries of the Community particularly EALA, which is arguably, the most suited integration vehicle. The challenges are by and large policy issues and EALA is more than anything else, a policy blue printer. Even though the community has made progress, to ensure the proposed political federation does not remain a pipe dream or an illusion, the fears and challenges highlighted need to be tackled head on. Levels of awareness and sensitization of the EAC integration and its benefits should be increased and then sustained. Grassroots support is crucial for the success of the integration process. After all, what the East Africans want to see are practical measurable indicators of integration like free movement of people goods and services, the right to employment, work and live (reside) in any of the partner states, a large market, improved security and governance. Other activists have even suggested that there should be a referendum on the contentious issues. Some optimists see light at the end of the tunnel- a one prosperous East Africa Country, with one President.

### 3.5 THE MANDATE OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY

Specific focus now turns to EALA with a view to examine its mandate in detail. The section will capture both EALA's current and envisioned roles, examine its functional, operational structures and challenges. That discussion will lead to an in-depth analysis of the ways in which EALA can be transformed to be an effective representation, legislative and watchdog organ of the East African Community. The argument here is that EALA can only make meaningful contribution to the process of integration if it is empowered to operate as a truly supranational and democratically founded parliament and its institutional weaknesses are overcome.

#### 3.5.1 EALA under the Treaty and Current Status

Under Article 49 of the treaty, the Assembly is mandated to

- a) be the legislative organ of the Community;*
- b) liaise with the National Assemblies of the Partner States on matters relating to the Community;*
- c) debate and approve the budget of the Community;*
- d) consider annual reports on the activities of the Community, annual audit reports of the Audit Commission and any other reports referred to it by the Council;*
- e) discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty;*
- f) establish any committee or committees for such purposes as it deems necessary; recommend to the Council the appointment of the Clerk and other officers of the Assembly; and*
- g) Make its rules of procedure and those of its committees.*

#### 3.5.1 The Legislative Mandate

As a legislative organ of the Community, EALA is expected to pass laws that govern the affairs of the Community. The first and inaugural Assembly passed 19 Acts while the Second Assembly passed 35 pieces of legislation. One particular commendable step by the 2<sup>nd</sup> Assembly<sup>8</sup> was the holding of public hearings of bills that were conducted throughout the region<sup>9</sup>. However as will be discussed shortly, even though the public hearings may help to boost reception and appreciation of the activities of the Community among the citizenry, they fall short of the democratic threshold for public participation<sup>10</sup>.

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<sup>8</sup> Whose term was between 5<sup>th</sup> June 2007 and 5<sup>th</sup> June 2012

<sup>9</sup> This activity forms part of the EALA 2011-2012 Strategic Plan and has won accolades from the president of Kenya Mwai Kibaki see the speech by his Excellency Hon. Mwai Kibaki, during his state address to the EALA at parliament buildings, Nairobi on 17<sup>th</sup> April, 2012. Retrieved from the State House Nairobi Official Website on 28<sup>th</sup> August 2012 at <http://www.statehousekenya.go.ke/speeches/kibaki/april2012/2012170401.htm>

<sup>10</sup> International Human Rights Watch infra

Another area of concern is the autonomy and exclusivity of EALA's legislative power. The power, in many respects, rendered nugatory by the functions of the Summit and the Council. Specifically, the doctrine of separation of powers is not clearly delineated in the EAC treaty. Article 11, paragraph 6, for example, makes reference to legislative powers conferred on the Summit and the Council. Article 14(3)(b) also empowers the Council to "initiate and submit bills to the Assembly" (EAC Secretariat 2002, Articles 11(6) and 14 (3)(b). Whereas paragraph 6 of Article 123 empowers the Summit to "initiate the process towards the establishment of a political federation of the partner states by directing the Council to undertake the process", paragraphs 7 provides that the "Summit may order a study to be first undertaken by the Council" (EAC Secretariat 2002, Articles 123 (6 and &7). These responsibilities as well as decision-making powers conferred on the Summit and the Council also seems to usurp the powers of the EALA.<sup>11</sup>

Importantly however, is the notable power of a member state to withhold assent to a community bill thereby killing such a bill! Article 63 of the EAC Treaty provides for assent of a bill passed by EALA by the summit of Heads of State and further states that should a single head withhold assent, then this move makes the bill to lapse. This provision makes EALA legislation and EAC laws open to abuse by Countries that may be mischievous or hell-bent to slow integration process. This provision also takes from EALA the ultimate legislative mandate.

The best scenario would be to give EALA all requisite powers to legislate; so that they have the reversionary right and final determination in terms of making of the Community laws. This way no single Nation can hold the community at ransom by refusing to assent to any single community bill. It is proposed that the current period of 3 months given for assent of bills by the summit be maintained. So that a Bill that has not received assent as provided for in the Treaty within three months from the date it was passed by EALA ought to be referred back to the Speaker Explaining why it was assented to, and the members may debate it and either pass it as it is, or with amendments and in a majority vote, as ultimate representatives of the citizens of East Africa, finally decide on its fate, i.e. be able to overrule/ overturn decision of a the summit.

Should an Individual state be withdrawing assent while the rest or majority are in agreement with it in terms of article 63 (4) of the EAC treaty, then after a period of three months, instead of such bill standing as having lapsed, it should be taken as having been assented to and take effect as part of EAC laws.

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<sup>11</sup> See also the arguments of Adar, *Federalism and East African Community Integration Process: The Role of the East African Legislative Assembly*, Paper prepared for presentation at CIGI/GARNET conference on: Mapping Integration and Regionalism in a Global World: the EU and Regional Governance outside EU, 17-20 September 2008, Bordeaux, France



### 3.5.2 Oversight Mandate

The IPU has proposed a kit that sets out various tools that a parliament can apply to exercise its oversight role<sup>12</sup>. These include,

- (a) effective use of Committee systems for investigation purposes and compelling accountability*
- (b) the use of questions and motion debates in the Chamber to hold the executive accountable*
- (c) use of sanctions including votes of no confidence*
- (d) establishment of independent oversight audit institutions such as ombudspersons and supreme audit institutions*

EALA only makes use of Committee system and flooring of questions to Executive i.e. the Council of the Ministers of the Community.

Rule 17<sup>13</sup> of the Rules of Procedure of the Assembly provides for EALA priority questions to the Council of Ministers relating to matters of the Community. Records of EALA show that the 2<sup>nd</sup> Assembly alone asked a total of fifty priority questions on the implementation of the Treaty, which were duly answered by the Chairperson of the Council of Ministers. It is noted however that the Rules are silent on the implication of failure of answer or giving unsatisfactory answer to questions; it is not even listed as an ‘out of order’ act under the Rules. In other words the Council is under no legal duty to answer or appropriately respond to priority questions raised by the Assembly.

The use of Committees has also not been adequately applied by EALA. According to the Treaty, under Article 48, Clause(3), the Assembly is empowered to have committees constituted in the manner provided in the Rules of Procedure of the Assembly and they perform the functions provided in the said rules of procedure”. Under Article 49 of the Treaty, clause (2) (e), the Assembly

*“...may, for purposes of carrying out its functions, establish any committee or committees for such purposes as it deems necessary”.*

Thus, the East African Legislative Assembly (EALA) is empowered to make its own Rules of Procedure and to constitute committees. The EALA Rules of Procedure provide for a Committee System of seven standing committees, but may also appoint select/ad hoc committees when need arises and under Rule 80 for the purposes of investigations directed by the Assembly.

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<sup>12</sup>Hironori Yamamoto, *Tools for parliamentary oversight: A comparative study of 88 national parliaments*, IPU, 2007

<sup>13</sup> Rules made under made under Articles 49 (2) (g), and 60 of the Treaty

The EALA currently has seven Standing Committees established under *Rule 78* of the Rules of Procedure.

In line with the provisions of Rule 80 of the Assembly Rules of Procedure, the EALA appointed two Select Committees. The purpose of the first Committee was to investigate the resignation of the Clerk of the Assembly in February 2003. The Committee made a report of its findings to the Assembly in March 2003, and after extensive debate, the report was adopted in July 2003. The second Committee sought to investigate the circumstances under which the 4<sup>th</sup> Session of the Second Assembly was suspended and the trend of the financial remittances from Partner States to EAC for financial years 2007/2008 and 2008/2009.

The Assembly does not have power to impose or propose imposition of sanctions; neither does it have a mechanism for passing of votes on no confidence. A legal framework to enable EALA recommend sanctions, economic, social or political for any member states for breaches of EAC laws ought to be put in place.

Similar, the Treaty establishing the East African Community ought to be amended to provide for a legal framework within which the EALA can pass a vote of no confidence against senior public and state officers of the EAC.

### **3.5.2 Advisory Mandate**

This is a role that EALA has over time exercised by way of passing of resolution for the use of the other organs of the Community<sup>14</sup>. Some of the key recorded resolutions of the assembly are as follows;-

- (a) A Resolution to urge organs of the EAC to work towards the realization of the objectives and goals of co-operation, adopted in January 2002
- (b) A Resolution seeking to establish practical working relations between the Secretariat, the Assembly and the Court, adopted in February 2003 in pursuance of Article 14 (3) and Article 66 of the Treaty
- (c) A Resolution seeking the appointment of an East African Peace Committee for Uganda with the mandate to bring to an end the violence in Northern Uganda in May 2003, in pursuance of Articles 123 and 124 of the Treaty
- (d) A Resolution seeking to enforce the directive of the Summit to the effect that in matters pertaining to participation in WTO and ACP/EU, the EAC Partner States should negotiate as a Bloc, adopted in May 2003 in line with Article 74 of the Treaty.

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<sup>14</sup> Permitted by Rule No 35 of the EALA Procedure Rules, 2003

- (e) A Resolution of November 2009 urging Action to End Violence Against Women in the EAC Region and Particularly Partner States
- (f) A Resolution of June 2010 Urging the EAC Partner States to Halt the Signing of the EU-EAC EPAs
- (g) February 2012 Resolution urging the EAC Council of Ministers to implore the International Criminal Court (ICC) to transfer the case of the four Kenyans facing trial at the Hague to the East African Court of Justice (EACJ).

The value served by the advisory role of EALA is to assert subtle pressure on decision making organs of all players in the process of integration and in the affairs of the Community. However, EALA has been criticized for shying away from using the advisory tool in critical matters and matters of primary interest to the people of East Africa. An example is the issue involving the protracted dispute between Uganda and Kenya over the Migingo Island on Lake Victoria. Whereas the matter is of critical importance being that it involves a boundary dispute between two major partners in the Community, the Assembly has remained alarmingly silent. The only resolution of the Assembly to ever come to the limelight was the Assembly's February 2012 Resolution urging the EAC Council of Ministers to implore the International Criminal Court (ICC) to transfer the case of the four Kenyans facing trial at the Hague to the East African Court of Justice (EACJ), unfortunately the publicity was largely negative<sup>15</sup>.

It is also of concern that just as with the oversight role, the decisions made by the Assembly out of its advisory role are equally not enforceable<sup>16</sup>.

### 3.5.3 Representative Mandate

According to the EALA Secretariat<sup>17</sup> the representative role of the Assembly has since its first sitting in 2001 been greatly enhanced by instantaneous live coverage of its proceedings; public hearings, site visits and other outreach programs. Exchange programs in the Community and beyond to, for example, similar entities in the European Union are also said to have enabled the EALA to broaden its network, share best practices and exchange information and thereby intensify its representative roles. How these activities contribute to effective representation is not exactly clear, however, one needs to interrogate the procedures and criterion for accession to membership of the Assembly to begin to appreciate that this role is lagging behind.

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<sup>15</sup> The resolution moved by MP Dan Ogalo and seconded by Mp Gervase Akhaabwas met with hostility especially from human rights commentators who viewed it as part of a plot to scuttle the trial of the Kenyan Cases at The Hague. See for example Simon M.Nthei *East African Legislative Assembly's (EALA) Hypocrisy*, Musa Haron, *EALA's call on ICC cases not genuine*

<sup>16</sup> This deficiency forms part of the SWOT analysis of the EALA in its *2010-2012 Strategic Plan*, supra

<sup>17</sup> See Analysis of performance in the 2010-2012 Strategic Plan, supra

Under the Treaty establishing the EAC, members of EALA are to be nine (9) elected members from each member state County; and Five *ex-officio* members (the minister in each of the Partner States responsible for regional cooperation, the Secretary General and the Counsel of the Community)

One major shortfall of the provision on elections to EALA is the wide berth of discretion that partner states, in terms of parliamentary political parties, have been given in determining their representative membership to the Assembly. In accordance with the provisions of Article 50 of the Treaty, the Parliament of each of the Partner States was mandated to elect 9 members, who would represent, as much as was feasible, the various political parties represented in therein and have different shades of opinion, gender and other special interest groups in the Partner State, in accordance with such procedure as the Parliament of each Partner State may determine. Serving members of Parliament are expressly barred from membership of the EALA.

Ang'ila makes an apt analysis of these differences in his *Process of Elections of The East African Legislative Assembly*<sup>18</sup>

*What were the interesting differences? The mathematical formula adopted by Kenya and not Tanzania perhaps reveals a more politically polarized and charged agenda in the former. Another is the fact that in Kenya the candidate can speak in Kiswahili and English while addressing members of the National Assembly in extraordinary session, while in Tanzania, only English is provided for in ordinary session. Kiswahili. Uganda's rules state nothing on language. A third difference is the categorization of candidates on the ballot papers in the respective countries, which reveals the unique political realities in those countries. Uganda's situation is probably explained by the fact that its legislature is "party-less".*

According to the author, when one looks at the Kenyan election process, and the controversy over the amendment of the rules at the last minute to avoid the political complications of electing three women, Kenya stands out as the most gender insensitive. Less than one third of Kenya's representatives are women. This does not compare very well with the gender composition of Kenyan society, and begs the question whether article 50(1) was fully complied with.

The lack of uniformity in the methods of election by the various member states is already proving problematic. The East African Court of Justice (EACJ) has already had to deal with three major cases arising out of the respective Rules.

A brief overview of the cases are discussed below

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<sup>18</sup> Francis Ang'ila *Process of Elections of The East African Legislative Assembly* Friedrich Ebert Stiftung, 2004

### 3.5.4.1 The Kenyan Case

In a first case of its kind at the EACJ, some eleven (11) Kenyans among them members of the Kenya National Assembly and political party officials sued the AG of Kenya and the Speaker of Kenya's National Assembly challenging the process by which the representatives of the Republic of Kenya to the EALA had been nominated<sup>19</sup>. They contended that the process had contravened Article 50 of the Treaty in so far as no election was held. They therefore sought a nullification of the election rules<sup>20</sup> resulting in list of nominees that the Clerk to the National Assembly of Kenya had forwarded to the Clerk to the EALA.

The Court found that the election rules infringed Article 50 of the Treaty to the extent of their inconsistency with it. In the result, the Court declared that the National Assembly of Kenya did not undertake an election within the meaning of Article 50, and that the election rules in issue infringe the same article.

The matter was so serious; it resulted in a near debacle in the running of the affairs of the Community. The Court had at the initiation of the reference granted interim orders barring the Kenyan nominees from taking office. The interim order incensed the executive organs of EAC who immediately embarked on endeavors to make amendments to the treaty to reconstitute the Court. That move led to yet another Reference before the EACJ brought by the East Africa Law Society challenging the proposed amendments<sup>21</sup>. In determining the reference the EACJ held that

*the lack of people's participation in the impugned amendment process was inconsistent with the spirit and intendment of the Treaty in general, and that in particular, it constituted infringement of principles and provisions in Articles 5(3) (g), and 7(1) (a). We also hold that the purpose for which Article 26 was amended constituted infringement of Article 38(2) of the Treaty.*

### 3.5.4.2 The Tanzania case

With respect to the United Republic of Tanzania, a reference at the EACJ was filed in the year 2007 challenging the election of members of EALA by the Tanzanian National Assembly<sup>22</sup>. The Applicant's case was that the Tanzanian National Assembly acted contrary to Article 51 of the Treaty in conducting General elections as a result of which some two EALA MPs lost their

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<sup>19</sup> *Anyang' Nyong'o & 10 others v Attorney-General & others* EACJ Reference No 1 of 2006

<sup>20</sup> East African Community (Election of Members of the Assembly) Rules 2001 LN 154/2001. The Kenya National Assembly has subsequently amended its Rules and in the year 2012 it passed the *EAC (Election of Members of The Assembly) Rules, 2012*; LN Non 31 of 2012 11<sup>th</sup> May 2012

<sup>21</sup> *East African Law Society and Others v Attorney General of the Republic of Kenya and Others* (Ref. No. 3 of 2007) [2008] EACJ 1 (1 September 2008)

<sup>22</sup> *Christopher Mtikila vs. AG of Tanzania & others* EACJ Ref No 2 of 2007

national Assembly seats. The Tanzanian Assembly then proceeded to elect 9 new members to EALA pursuant to the Country's East African Legislative Assembly Election Rules, 2001<sup>23</sup> hence the Applicant's complaint that the election of the 9 members effectively terminated the 5 year EALA tenure of some 2 members.

In upholding a preliminary objection to the Reference the Reference, the EACJ stated that the Court has no jurisdiction to annul the elections conducted by the National Assemblies of the partner states pursuant to Article 50 of the Treaty.

### **3.5.4.3 The Ugandan Case**

In the year 2011, the Democratic Party of Uganda filed a reference in the EACJ challenging the propriety of Uganda's Rules of Procedure of Parliament, 2006 for the election of the EALA Members.<sup>24</sup>

The crux of the Applicants' case was that the Government of the Republic of Uganda and its Parliament were unwilling to amend the Rules of Procedure of Parliament, 2006 for the election of the EALA Members to have them conform to the provisions of Article 50 of the Treaty and that the Government and Parliament of Uganda intended to conduct the upcoming EALA elections by those Rules. The Applicants contended that those Rules, specifically Rule 11 (1)<sup>25</sup> and Appendix B<sup>26</sup>, 10 and 11 of the rules in issue, contravened not only Article 21 (1) and (2), 29 (1) (e) 89 (1) and 94 (1) of the Uganda Constitution but also Article 50 of the Treaty to the extent that they discriminate and limit the freedom and right of the Democratic Party (DP) and its members, including the second Applicant, to associate in vying for election as representatives of the EALA.

The Applicants also claimed that the Secretary General of the EAC had failed to supervise the Government of Uganda to ensure that its Parliament amends the rules in question to make them consistent with Article 50 of the Treaty. The Applicants maintained that the state of affairs meant that the DP, other Political Parties and shades of opinion in Uganda, though represented in the Uganda Parliament are, and will not be, represented in EALA, which violates Article 50 of the Treaty.

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<sup>23</sup> Made by the National Assembly of Tanzania in May, 2001

<sup>24</sup><sup>24</sup> *The Democratic Party & Another vs. The Attorney General of Uganda & Anor* EACJ Ref No 6 OF 2011. It was brought to the attention of the EACJ that actually the issue was the subject of a constitutional reference in Uganda in Constitutional Petition No 28 of 2006, *Hon Jacob Oulanyah vs. AG*. The Constitutional Petition brought by an independent MP was subsequently abandoned as the complainant joined a political party.

<sup>25</sup> Which provided that election of members to EALA would reflect the proportion of party membership in the House

<sup>26</sup> Providing that elected members of the Assembly representing Uganda shall be nominated by the Parties or Organizations represented in the House on the basis of proportional party membership taking into consideration the numerical strength of the parties or organizations and gender

The Court agreed with the Applicants and held that Uganda's 2006 Rules did not conform to the Treaty. Accordingly, it ordered the Parliament of the Republic of Uganda be restrained from conducting the EALA elections unless and until they amend the impugned Rules to conform to Article 50 of the Treaty.

It has also been argued that the fixing of the elected members at 9 does not take cognizance of the demographic reality of the region.<sup>27</sup> According to the International Democracy watch<sup>28</sup> the EAC region has a total population of about 127 million, which translates into an average of 3 million East Africans per EALA representative. These figures vary markedly when the 9 EALA representatives are calculated against the total population of each partner state. For example, one EALA representative from Burundi, Kenya, Rwanda, Tanzania and Uganda represents nearly 889,000, 4 million, 1 million, 5 million and 3 million people respectively. A similar anomaly holds true with respect to the issue of equal financial contributions by the partner states to the EAC. The contributions are mainly pegged on the principle of equality as opposed to proportional representation. Limitation of funding notwithstanding, proportional representation provides a better option, at least in terms of fair distribution of population. Suffice it to say, electorates feel attached to their representatives than other government officials, that is to say, representatives are expected to draw public attention on issues that affect their constituents.

Another issue of contention is whether the elections should be direct or indirect. As discussed earlier in this chapter, the ideal Parliament is one which is constituted by way of universal suffrage standards. None of the EAC member states exercises this type of representative election of EALA representatives. The argument against direct elections is mainly on the issue of logistics. Former Kenyan National Assembly Speaker Kenneth Marende has himself also cast doubts on the direct election of EALA members<sup>29</sup>. He argues that it will pose a challenge on the type of domestic elections the Partner States will have to conduct. He further cast doubts on how the issue of costs will be rationalized to avoid Partner States engaging in an expensive exercise by way of general elections separate from that of the standard national general elections. He also questioned if Partner States will have a single constituency for purposes of the election or if it will be divided into several regional constituencies equivalent to the number of seats a Partner State is allocated in the Treaty.

However arguably, the indirect electoral process undermines the democratic principles of popular participation and individual sovereignty. It is the electorate that confers sovereign rights

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<sup>27</sup>See the International Democracy Watch 'East African legislative Assembly' at <http://www.internationaldemocracywatch.org/index.php/east-african-legislative-assembly> accessed on 28th August 2012

<sup>28</sup> Ibid

<sup>29</sup> See *End of majority rule? Small parties get EALA Reps* by Christabel Ligami and Peter Muwonge in *The East African*, 26<sup>th</sup> December 2011

on elected representatives who, in turn, make laws on behalf of the electorate. This is the key to liberal democracy also inscribed in the EAC treaty.

The founding fathers of the EAC seemed to have been more interested in national representation as opposed to the people's (East African's) representation. There is, therefore, no clear nexus between the EAC and the people of East Africa. In order to fill this gap, EAC must seriously consider instituting representative elections, this is the missing link, and meanwhile, EALA ought to continue its programme of "*taking the Assembly to the people through tours, of the partner states by the EALA representatives*"<sup>30</sup>. Even though EALA representatives acknowledge this anomaly, they have not, to my knowledge, passed any law directing the partner states to introduce direct elections as the most viable and democratic option. Ultimately, these tours cannot substitute the sovereign rights of the East Africans in participating in popular elections, one of the foundations for liberal democracy also envisaged in regional integration processes, including that of the EAC. It is the best way to legitimize ceding of sovereignty and to justify representative democracy at the regional level.

Further, it should be appreciated that Parliaments, the EALA included, derive their mandate and legislative authority from the electorate to whom they also owe allegiance. This is done through clearly stipulated provisions in constitutions. The provision in the EAC treaty which empowers the political parties and other interest groups, to participate in the nomination and thereafter election by parliament of the EALA representatives shift allegiance to the nominating bodies as opposed to the electorates. In one of their consultative meetings in 1999, prior to the adoption of the EAC treaty, the speakers of the National Assemblies of Kenya, Tanzania and Uganda emphasized the importance of inscribing in the treaty, the nexus between the peoples of East Africa and the Community. They recommended that the treaty should incorporate this people-centered vision of the Community<sup>31</sup>. It is for this reason that we shall be recommending the amendment of the Kenyan constitution through a referendum to specifically provide that the people of Kenya cede their sovereignty through elected representatives at the National Parliament, County Assemblies and Regional Assembly of EALA.<sup>32</sup> We shall also recommend the amendment of the Treaty establishing the EAC to align it to this recommendation.

There is therefore no excuse whatsoever for not taking a representation model that adequately encourages peoples' participation in all the affairs of the Community.

Making a contribution to the need to have a people centered election process, Ang'ila<sup>33</sup> states as follows:

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<sup>30</sup> See the EALA *Strategic plan 2010-2012* ibid

<sup>31</sup> EAC Secretariat, Doc. Ref: EAC/C13/02/99 2003, 39

<sup>32</sup> Proposed amendment to article 1 of the Kenyan Constitution 2010

<sup>33</sup> Ibid



*The one disheartening similarity [in the party states' election rules] is the lack of civil society in particular - and the East African people in general - participation in the election processes of all the three states. The core principle of people-centeredness contained in article 5(3)(d) has thereby been paid short shrift. There is certainly a need to re-think the regulations and the process for the next elections for representatives to the EALA. It is also the key to a true federation that has the full involvement and support of all the people of East Africa.*

From the foregoing, and particularly from Mr. Ang'ilas statement, it is emerging crucial to acknowledge that a huge proportion of the integration process is tagged on the fact that public participation is lacking and that for a successful and legitimate process, one in which a great majority of the people of EAC can buy into, public participation must be involved at a greater scale than currently undertaken. The best and easiest way to achieve public participation is by having direct elections of EALA representation.

Some effort, albeit dismal, is being made to reform the election procedures of the Assembly; in April 2012, the EALA passed the East African Legislative Assembly Elections Bill, 2011 which *inter alia* seeks to attain uniformity of Nomination/Election Rules by the various national Assemblies. The Bill also fixes the EALA term to 5 years and prescribed a 30% gender rule in EALA membership.<sup>34</sup> Having been passed by the Assembly, the Bill now awaits presidential assent.<sup>35</sup> The noteworthy progress that the new law is set to make is the harmonization of the election procedures for EALA members and thereby mitigate on the possibility of constant and costly law suits.

### **3.6 Empowering EALA**

In order for EALA to take up the form of a true vehicle of integration, it is imperative that the above gaps, as highlighted, be filled and the weaknesses be dealt with decisively. With a committed integration goal, and taking in mind the concerns of the citizenry of the EAC, priority should be given to making the Assembly and its operation, people centred and people driven.

Being a representative institution, it is imperative that sacrifices by way of resources and commitment be made by the partner states to introduce direct elections. It is hoped that the Assembly's Bill on harmonized election Rules will soon attain presidential assent from the Heads of States. The new law will mark a big step towards integrating the legislative activities of the various member states with the operations of the Assembly. It is hoped that it will also break ground for the eventual realization of universal suffrage in the election of members of EALA.

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<sup>34</sup> Note that the treaty currently provides for a 5 year term for the members but no limit for the life of EALA itself. The Treaty although it proposes gender considerations in the nomination of members, does not fix a threshold.

<sup>35</sup> EALA, *Bills before the Assembly*, retrieved on 28<sup>th</sup> August 2012 from the official EALA website at [http://www.eala.org/10yearsanniversary/index.php?option=com\\_content&view=article&id=267&Itemid=102](http://www.eala.org/10yearsanniversary/index.php?option=com_content&view=article&id=267&Itemid=102)

While public sessions of the Assembly are commendable, the Assembly should work out modalities that will ensure actual participation of the public in the legislative processes e.g. by inviting public opinion on Bills for introduction to the House or during the second and third reading stages of bill making, by availing the Standing Orders and order papers of the Assembly online, by enhancing live broadcast of EALA proceedings online in regular partner states television stations or otherwise, having in place a station dedicated to airing only EAC affairs including live broadcast of EALA proceedings in committees and at the plenary .

It is however noteworthy that the Standing Orders for National Parliaments of EAC through resolutions made at the EAC Speaker's forum have now operationalised the formation of Integration/ EAC committees that are able to receive EAC and EALA reports, Bills and resolutions analyse them and report to the national Assemblies. This way, there is created a proper linkage between national legislatures and the EALA and a good venue for parliamentarians to deliberate of EAC matters on a regular basis. It is suggested that EALA will similarly have a select committee that will look solely at policies, laws and issues being deliberated in national Parliaments with a possible impact on the EAC and analyze their consequence or otherwise give direction in terms of the position of the community with respect thereto.

### **3.7 Conclusion**

From the foregoing analysis, it is apparent that much work remains to be done to ensure that EALA has both the requisite legal and institutional capacity to drive the process of integration of East Africa. As a result, the hope of an East African Federation remains a disjointed project with no clear mandate or tangible strategic direction.

For a complex and diverse society such as the East Africa region to function effectively as a socio-political and economic unit, it requires a properly functioning legislative organ with all the rights and duties conferred on it by a treaty. In other words, the role of any legislature, the EALA included, on the issue of good governance and its corollaries, accountability and democratization is critical for any society. In the case of the East African Community, loyalty to the political parties and presidents by the EALA representatives and the EAC Ministers (as ex-officio members of the EALA) respectively, tend to outweigh their concerns for the transformation of the EALA to accommodate the direct interests of the East Africans on the question of integration towards a single body polity (supranationalism). Unless these incapacitating issues are decidedly and urgently dealt with through a meticulous review and improvement through amendments of the EAC Treaty, integration will remain a delusion long into the future.

The working of a political federation is a complex affair that needs solid professional and institutional grounding, failing which the

## **4.0 CHAPTER FOUR**

### **SUMMARY CONCLUSIONS AND RECOMMENDATIONS**

Chapter 4 will explore the gaps and opportunities, primarily focusing on the loopholes that have contributed to the failure of integration of East Africa and highlight the potential inherent in the regional bloc, as a supra-national Organisation, that can be built on to fast track the process of integration. This final Chapter will collate the lessons from other countries, then focus on the uniqueness of the East Africa situation and propose a general model for using a strengthened EALA as the ideal vehicle for delivering expeditious East African integration. The chapter rests on the positive notion that indeed, this task, the dream of complete East African Community integration, is possible.

#### **4.1 Summary of Findings**

The EAC exists because it has been able to demonstrate that it can create value and acceptable outcomes for its partner states. However, partner states compete over allocation of gains in order to maximize their interests and collaborate because they are interested in the survival of the community. Each partner state in the East African Community joins the Community for its own interests and fights inside it to satisfy its self-interest. Divergent interests should be negotiated until a common position is agreed upon, amicably. EALA is, under the circumstances, the best forum to undertake such delicate and balanced negotiation of personal verses community interests.

Joint EAC sovereignty is hampered by the fact that partner states are not equal and are at different levels of economic development and democratic maturity. The danger of the most powerful pursuing the most objectives can be mitigated by special programs to protect the minority or weaker partner (s). In the balancing of this equity scale, once again EALA appears to be a potentially useful instrumental in passing laws and affirmative action policies, a good example being Affirmative Action in Trade Quotas.

To date, and as we have seen from the foregoing, there still exists apprehension and anxiety as to the economic leverage of Kenya and of differences in socio-economic ideologies of the partner states. This attitude of suspicion and mistrust does not auger well for the Communal development and cohesiveness, and is a situation that needs to be contained and managed by proactive and concerted effort by EAC leadership. One way to handle this matter is through having in place relevant policy and putting in place EAC legal measures to ensure compliance thereto. Such measures would be best put in place by an independent organ with the potential of shaping the individual governments' stance towards the integration. In my view, such a responsibility can best be achieved by legitimate representatives of the people of East Africa, and the vehicle here is EALA.

The legislative mandate of EALA is seriously constrained; EALA can only put forward and vote on motions and bills if they have no cost implications to any fund of the community. This gravely impairs the scope and relevance of potential laws. Furthermore, the Summit of Heads of State and Government have an effective veto right over EALA's legislation. The Assembly does not have power to impose or propose imposition of sanctions; neither do the Rules have provision for passing of votes of no confidence on public officials of the EAC.

The limited powers of EALA and other RAs in the African region reflect the general approach and attitudes that most national governments tend to take towards political integration. Structures of contemporary African regional organizations remain primarily inter-governmental rather than supra-national. National governments are often unwilling to give up national sovereignty rights to regional levels, be it in the executive sphere or in the legislative domain. In other words, what is generally described as regional "integration" would generally merely qualify as an institutionalized form of inter-governmental co-operation, which is hardly compatible with strong and independent RAs.

The East African Members of the Regional Assembly (MRAs) are nominated by the parties represented in Parliament, but the MPs themselves are excluded from candidacy. While this procedure is believed to broaden the political space and might allow the Assembly to focus more on its regional mandate, other observers argue that the EALA set-up leads to a disconnection between the regional body and the national assemblies at the expense of the EALA's means to push the regional agenda at the national level.

For a complex and diverse society such as the East Africa region to function effectively as a socio-political and economic unit, it requires a properly functioning legislative organ with the appropriate mandate conferred on it by a treaty. In other words, the role of any legislature, the EALA included, on the issue of good governance and its corollaries, accountability and democratization is critical for any society. In the case of the East African Community, loyalty to the political parties and presidents by the EALA representatives and the EAC Ministers (as ex-officio members of the EALA) respectively, tend to outweigh their concerns for the transformation of the EALA to accommodate the direct interests of the East Africans on the question of integration.

The differences in the levels of economic development, entrepreneurial skills and competitiveness in the manufacturing and service industries are another real problem that the Assembly must contend with. The fear that such discrepancies will disadvantage some partner states must be allayed. There are fears for example in Tanzania of potential loss of investment and employment as a result of fast tracking political federation and other fears include one that that industries may cluster in Kenya which has more attractive locations for business. Rwanda and Burundi have in particular cited increased disparities in economic development and revenue

loss which lead to possible collapse of their infant industries due to domination by more developed economies. Of all economic challenges probably the most prominent is the problem of attaining currency integration. It is a hurdle which if overcome, would definitely open a formidable frontier in the march towards a political federation. The Assembly must make this a priority.

It should also be a matter of concern to EALA that the existence of different political systems among EAC partner states poses a real challenge to integration given the historical lessons learnt. For example in Uganda there is no presidential term limit and a President can serve until he dies in office or is otherwise removed from office. On the other hand, Kenya, Rwanda, Burundi and Tanzania have term limits for presidents though Rwanda has a seven year term compared to the rest that have five year terms. A move towards a uniform system may be necessary for all the EA states. Specific fears such as concerns by Zanzibar of being marginalized under the union government in the federal government and the Buganda kingdom issue of marginalization in Uganda still exist. The important thing would be for all the countries to have a formidable and common agreement that a federation is better for citizens of East Africa notwithstanding the persistent challenges.

Another challenge which a united front can easily counter is the insecurity and instability in neighboring countries, especially those in the Great lakes region for instance Somalia, Sudan, South Sudan, The Democratic Republic of Congo, Djibouti and Eritrea,

A good and fundamental social challenge is adopting a common language for the East Africans. Kenya and Tanzania have Swahili as the common language, while Uganda, Rwanda and Burundi have a mix of English, French and Swahili. There is a push for Kiswahili to be promoted as an integration catalyst while Rwanda and Burundi are campaigning for French. Respective nationals are also wary of the prospect of losing their respective national identities. They need assurances that their cultures will not be adulterated or interfered with in the event of a federal community.

The East African Community is situated within an environment that is dynamic. Social challenges like terrorism and environmental catastrophes, technological and political changes demand that the EAC is proactive to better meet the needs of its members or risk loss of position. The current state of affairs demonstrates that EALA like its peers in the African region in many ways is at an infant stage of development and is far from exercising the roles that a fully-fledged Parliaments play in democratic setups. Indeed many East African citizens are yet to feel its presence and appreciate its role. The strengthening of EALA must be seen as part of a larger, continuous process to complement economic integration with broader political dimension of regional integration. Ultimately, RAs like EALA are intended to assume the legislative and democratic oversight functions for supra-national regional integration organizations in the long run. *As long as the long run is not too long.*

In order for EALA to take up the form of a true vehicle of integration, it is imperative that the gaps highlighted above be filled and the weaknesses dealt with. With integration in mind and having noted the concerns of the citizenry of the EAC, priority should be given to making the Assembly and its operation, people centred. Being a representative institution, it is imperative that sacrifices by way of resources and commitment be made by the partner states to introduce direct elections and active citizen participation in EALA activities.

EALA is strategically placed to drive the process of regional integration but it is hampered by legislative shortfalls. The constitutions of all member countries do not anticipate power being ceded at regional level. This reduces EALA to the level of an intergovernmental institution. Laws passed in EALA cannot be enforced regionally as there is neither constitutional backing, nor sanction for non-compliance or non-assenting to any bill by a state party. This makes harmonisation of laws cumbersome. A reason adduced for this sour state of affairs is that member countries would like to retain sovereignty. It is the opinion of the writer that ceding power to a regional body does not result in loss of sovereignty, in the contrary; it strengthens institutions charged with oversight responsibility making governance more transparent and accountable. EALA as a supranational body would have legal standing to enforce the laws it passes.

The old EAC ran into difficulties because of the lack of joint planning and fiscal policy, separate political policies and Kenya's dominant economic position. A supranational union is an agreement between sovereign states, based on international treaties. Member states retain ultimate sovereignty, although some sovereignty is ceded to, the supranational body. Supranational agreements encourage stability and trust, because governments cannot break international accords at a whim. Supranationalism provides for a higher degree of institutional scrutiny both via the Legislature and through the Consultative Committees or commissions. In a supranational union, the problem of how to reconcile the principle of equality among nation states is resolved by taking a sectoral approach. This allows a democratic broadening of the number of actors to be included. This can be done by introducing committees or commissions.

This presents a challenge to the operations and effectiveness of EALA because it is not a supranational Parliament.

## **4.2 Recommendations**

### **4.2.1 Introduction**

Efforts to unite the people of East Africa into a socio-political and economic bloc have a long illustrious history; no doubt an indication that the prevalent aspiration among the East Africans is to come together in the framework of a working geo-political unit and in circumstances where the benefits of unity far outweigh those of not uniting. The hurdles and challenges are not totally unexpected and should not deter the process, however, if full integration is to be achieved within the next four years, then more effort needs to be spared by all organs and functionaries of the Community, particularly EALA, with respect to time, commitment and resources to see the process through.

Even though the Community has made considerable progress in its thirteen years of existence, to ensure the proposed political federation does not remain a pipe dream or otherwise, an illusion, the fears and challenges highlighted need to be tackled head on. A number of key recommendations are therefore proposed hereunder to ensure effective and more expeditious EAC integration.

1. Levels of awareness and sensitization of the EAC integration and its benefits should be sustained and increased. Grassroots support is crucial for the success of the integration process, after all, what the East Africans want is a bit simplistic if we can choose to see it that way - free movement within the community with one identical travel document, the East African passport has been approved, it is also instrumental that the use of national identity cards to travel across the borders has also received approval from the majority of the state parties, however, the borders are still not open. East Africans also seek the right to employment and residence in any of the partner states, a large market for goods and services, security and improved governance. Engagement with the EAC citizens is therefore crucial. It is recommended that there should be a referendum on all contentious issues for instance the right to buy property in any EAC countries and own land, or the terms of such ownership, issuance of work permits, trade quotas, but to name a few. The media would be instrumental in enhancing levels of awareness and their partnership ought to be secured.
2. From the foregoing analysis, it is apparent EALA is not adequately equipped to steer the integration process. It is unfortunate that the EAC treaty fails to provide for clear linkage between the people of East Africa and the EALA, which is evidently the main organ that should be endowed with responsibilities to drive the project of federalism. The EALA, like any other properly constituted and effective legislature, ought to be enabled to play its rightful role by enlarging the democratic space in the region through and ensuring participation of East Africans in legislative processes. It is recommended that the EAC,

under the guidance of the summit of heads of States and with the support of the Secretariat, ought to embark on a process of “constitutional review” of the Treaty Establishing the EAC, so that matters to do with ceding of sovereignty by each one of the partner states, to the institutions and key organs of EAC can be endorsed by the East Africans in a community –wide referendum. This will force each one of us to focus on this process of integration, apply our minds to it and decide in an unequivocal manner which way to take. Further, this may be an easier route to ensuring eventual review of individual national constitutions to ensure they are in line with the EAC Treaty provisions. This move is touted as a decisive and a pro-active war path, which the leaders of EAC ought to institute at their earliest opportunity and will mark a beginning of the brave march towards supra-nationalism in EAC. It is hoped that this thesis will serve to trigger the onset of this move.

3. This paper calls upon all the partner states of the EAC Community sets up a taskforce made up of key experts in integration, conflict management and resolution and Governance and supported by the EAC Secretariat whose role would be to conduct research and prepare a policy and legislative framework on the strategic direction for EAC. The taskforce will be competitively sourced, given clear terms of reference and timelines. The team would be further required to look into all relevant regional and international treaties and negotiations affecting partner states and the EAC as a whole and to prepare a report for deliberations and eventual adoption by EALA and the Summit of Heads of States.
4. Deliberate effort to expand the mandate of EALA ought to be made. This will enable it to assert itself in its rightful seat in East Africa as an autonomous body, with the sole legislative mandate, proper representation of the people of East Africa including exploring the possibility of increasing the numbers of representatives from each partner state and putting into place proper mechanisms to enable proper oversight of the Summit of Heads of State.
5. Another recommendation is centered on the area of prioritizing the making of the Assembly and its operations, people centred and people driven. The people centred approach to operations of the Community resonates in Article 5 paragraph 3(d) of the Treaty which stipulates that one of the objectives of the EAC is to strengthen and consolidate the long standing socio-cultural and econo-political and traditional linkages *“between the peoples of the Partner States so as to promote a people-centered mutual development”*. Similarly, Article 7 paragraph 1(a) provides for a *“people-centered and market-driven cooperation”* as one of the key operational principles of the EAC. This ought to include open sessions in the Assembly and committees coupled with proper and prompt notifications of sittings and order of business before the house, live broadcast of proceedings in EALA in partner states local Television channels, making the process of



public petitions to EALA clear and accessible to all, ensuring that EALA infrastructure in terms of the building and facilities are accessible to all including women, men, persons with disabilities and children alike and having an active and interactive website. Further, EALA must reach out to civil society and the private sector and seek to partner with them in highlighting and sensitizing the citizenry on the integration process.

6. Being a representative institution, it is imperative that sacrifices by way of resources and commitment be made by the partner states to introduce direct elections, this is another mode of encouraging public participation in democratic determination of their representatives to EALA . It is hoped that the Assembly's Bill on Harmonized Election Rules will soon receive presidential assent from all the Heads of States. The new law will mark a big step towards integrating the legislative activities of the various member states with the operations of the Assembly particularly by harmonising the election date as similar in all five partner states. It is further hoped that this will also break ground for the eventual realization of universal suffrage in the election of members of EALA.
7. Since the writer is from Kenya, it is recommended that the committee on integration or the one dealing with Legal Affairs in the Parliament of Kenya or otherwise the Ministry on charge of EAC and integration may take up the issue of proposing possible amendment to Article one (1) of the constitution of Kenya (Chapter One) on sovereignty of the people and supremacy of the constitution). This article is to the effect that sovereign power belongs to the people of Kenya and is to be only exercised in accordance with the Constitution and that Kenyans may exercise their sovereign power either directly or through their democratically elected representatives. It goes further to provide that Sovereign power is delegated to three State organs, that is Parliament and the legislative assemblies in the county governments and the national executive and the executive structures in the county governments; and the Judiciary and independent tribunals and that sovereign is exercised at the national level and the county level.

It is proposed that Kenya amends this section by providing that article 1(3) reads as follows:

*(3) Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution—*

*—*

*(a) Parliament and the legislative assemblies in the counties and the Assembly of the East African Community,*

*(b) the national Executive and the executive structures in the county governments and in the East African Regional Government*

*(c) the Judiciary, independent tribunals and the East African Court of Justice*

*(4) Sovereign power is exercised at:*

*(a) National level*

*(b) County level*

*(c ) Regional level*

The above amendment is an important amendment that will be governed by provisions of chapter 255 of the constitution that will require a referendum.

8. The EAC Resolution 39<sup>36</sup> proposes the following useful measures which we concur ought to be adopted to ensure people centred processes and these include the *promotion of social activities such as sports and culture* in East Africa and the establishment of a Sectoral Committee and other mechanisms that would promote social interaction of East Africans key among these is *an Implementation committee of EALA to monitor implementation of resolutions and recommendations of EALA and to ensure harmonization of EALA rules*. In addition, Integration committees in partner state parliaments whose chief function would be to interrogate community affairs, indeed as was indicated by the Speaker Emeritus, Rt. Hon. Adbirahin Abdi, one of the key impediments to steady integration is a mechanism or system of monitoring and evaluation. According to him, monitoring and evaluation unit could be set up at the Secretariat and the same would work closely with the integration committees of National Parliaments and the EAC Ministries of Partner states to follow up and advice on the timelines and programme of integration, any bring out major issues on the progress.
9. The development of human resources capacity for East Africa and the establishment of joint EAC research institutions that promote the role of civil society in the region is another frontier of promotion of development and integration particularly in light of laws promoting labour movement and respect for the rule of law and human rights. This is strongly recommended as another integration strategy.
10. It is further recommended that there should be established an EAC Training Center whose mandate would be to ensure continuous training of EALA MPs, MPs from members states, staff and students from the entire community.

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<sup>36</sup> EAC Secretariat, Doc. Ref: EAC/C13/02/992003, 39

11. It is recommended that to ensure better appreciation of the integration history and outlook, EAC school curriculum ought to be introduced in all EAC primary and secondary schools to enable the majority of citizenry learn about community affairs. Members of the academia are hereby encouraged to undertake more research into this field of study.
12. With the apparent tendency by the executive units of the Community to seek to have their way in decision making<sup>37</sup>; it is imperative that the principle of separation of powers be strengthened especially with respect to EALA. It is necessary to delineate legislative powers completely from the Council and Summit and place it exclusively on the EALA. To achieve this it will be necessary to amend the Treaty's Articles 11 and 14. This is the only way by which the Community can ensure that there are checks and balances among the organs of the community even as they make their respective contributions to the process of integration.
13. In enhancing EALA's autonomy, its mandate should be expanded and its budget enhanced making it more independent. Article 132 and 133 of the Charter establishing the East African Community provides for a budget for the organs and institutions of the community prepared by the Secretary General and approved by the Assembly however, member states commitment and appropriate investments should see to it that EALA's capacity to work effectively and raise funds is strengthened.
14. Further, to add meaning to the Assembly's advisory and oversight roles, it will be necessary to provide enforcement mechanisms, this should be through appropriate legislation that should describe appropriate qualities and desired conduct of both member states and public officials of the EAC. So that a state digressing from prescribed conduct ought to be recommended for appropriate sanctions, social, economic or political and EAC public officials and state officers falling short of prescribed conduct ought to be removed by EALA's passage of a vote of no-confidence. It is desirable that sanctions should include possible suspension of a member state that fails to follow guidelines or live within the rules of the community. By this way, the decisions of the Assembly would bear legitimacy and a degree of force of law.
15. It also recommended that the EAC secretariat, working closely with EALA should come up with a mechanism of ensuring that all EALA laws are harmonised within the Community and implemented to trigger a stealthier walk towards the political federation. It is envisaged that an institution can be used to achieve this purpose, like the Centre for Parliamentary Studies and Training (CPST) which is a legislative Training Centre situated in Kenya and flaunted as a possible centre to steer legislative studies in all of

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<sup>37</sup> Example is the decision by the summit to move the reconstitution of the EACJ following the decision of the court in *Nyong'o Case* to halt the swearing in of the Members of the 2<sup>nd</sup> Assembly

East Africa, otherwise an office can be set up within the secretariat whose sole mandate would be harmonisation of EAC laws.

16. The proposed task force chaired by the Secretary General of EAC Secretariat and comprising of Governance experts should look into and receive views from EAC citizens on the above recommendations and ensure that they are adopted by EALA and forwarded for adoption to the summit of Heads of states. Unless these debilitating issues are decidedly and urgently dealt with, an East African Federation will surely remain a cloud-cuckoo-land or otherwise, an illusion.

Finally, as per a *Luhya* saying, from the western part of Kenya, that *the best thing about the future is that it comes one day at a time*. The East African Community belongs to the people of East Africa who live in its land and enjoy its scenery and its fruit. For them, I believe, the time is right to review the EAC Treaty and examine whether or not it is adequately placed to bring us together under one Government as a people. Indeed, in my assessment it was a great start, but that it is time to rethink it in terms of the above recommendations and work at having a Treaty that binds us together in a truly united and formidable political federation...just in case that is still the vision. Suffice it is to say that some optimists see light at the end of the tunnel- a one prosperous East Africa. I believe that this is an achievable deed, especially because I am one such optimist.



## Bibliography

Adar, *Federalism and East African Community Integration Process: The Role of the East African Legislative Assembly*, , 17-20 September 2008, Bordeaux, France

Adar, Korwa G *Fast tracking East African political Federation: The role and limitations of the East African Legislative Assembly*, Africa Insight, Vol 37 (2008)

ADB Group, *Consolidating the Present and Shaping the future: Report by the African Development Bank Group in East Africa*, (2011)

Akena Adoko, *Work for Progress, Uganda's Second Five-Year Plan 1966-71 (Entebbe, 1966)*, 15

Andrea Ribeiro Hoffmann and Anna van der Vleuten (eds.), *Closing or Widening the Gap? Legitimacy and Democracy in Regional International Organizations*. 2007

*Anyang' Nyong'o & 10 others v Attorney-General & others* EACJ Reference No 1 of 2006

Bardi, Luciano, “*Report: Transnational Trends in European Parties and the 1994 Elections of the European Parliament*”, (1996) *Party Politics*, 2/1: 99-114

CPA, *Benchmarks for Democratic Legislatures: A study Group Report*, (2006)

CPA ‘*Benchmarks for Democratic Legislatures: Self-Assessment Guidance Note*’, (2007)

Corbett, Richard, *The European Parliament's Role in Closer EU Integration*. (1998)

Christabel Ligami and Peter Muwonge *End of majority rule? Small parties get EALA Reps The East African*, 26th December 2011

*Christopher Mtikila vs. AG of Tanzania & others* EACJ Ref No 2 of 2007

*Democratic Party & Another vs. The Attorney General of Uganda & Anor* EACJ Ref No 6 OF 2011.

Deutsch Karl et al *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience*. (1957)

Delupis, Ingrid Diomi, *the East African Community and the Common Market*, (1970)  
Dobner et al *The Twilight of Constitutionalism Oxford Scholarship Online* (2010)

*EAC e-News Letter* Issue No 57 of 2012

East African Community: *EAC Treaty 1999*

East African Community (EAC), *The Treaty Establishing the East African Community*, EAC Publication 1(1999)

EAC-GTZ, The EAC, Report on the Survey on *Benefits Experienced by Ordinary Citizens from East African Community (EAC) Regional Integration*. (2009)

<http://www.eac.int/infrastructure/index.php>, Infrastructure Map last updated on Tuesday 25<sup>th</sup> January 2011.

EAC Secretariat, Doc. Ref: EAC/C13/02/99 2003, 39

[http://eala.org/oldsite041111/component/docman/cat\\_view/45-key-documents/43-acts-of-assembly.html](http://eala.org/oldsite041111/component/docman/cat_view/45-key-documents/43-acts-of-assembly.html) The East African Community ‘The East African Community Legislative Assembly: Three Year Strategic plan, 2010-2012’ EALA ‘Acts of the Assembly’

East African Community (*Election of Members of the Assembly*) Rules 2001 LN 154/2001. at [http://www.eala.org/10yearsanniversary/index.php?option=com\\_content&view=article&id=267&Itemid=102](http://www.eala.org/10yearsanniversary/index.php?option=com_content&view=article&id=267&Itemid=102) EALA, Bills before the Assembly retrieved on 28th August 2012

EALA Procedure Rules, 2003

*East African Law Society and Others v Attorney General of the Republic of Kenya and Others* (Ref. No. 3 of 2007) [2008] EACJ 1 (1 September 2008)

Edward Best ‘*Supranational Institutions and Regional Integration*’ European Institute of Public Administration (EIPA), Maastricht, the Netherlands

European Parliament, ‘*Benchmarking for Parliaments: Self-assessment or minimum criteria?*’ 2012

"Failed States FAQ Number 6". The Fund for Peace. Retrieved 2007-10-22.

Farrell, David; Roger Scully. *Representing Europe's Citizens? Electoral Institutions and the Failure of Parliamentary Representation*. (2007)

Francis Ang'ila *Process of Elections of The East African Legislative Assembly* Friedrich Ebert Stiftung, 2004

Gelles, Gregory M, and Mitchell Douglas W, "Returns To Scale And Economies Of Scale: Further Observations" ( 1996 ) Journal of Economic Education, 27 , 259-261

Godfrey Musuka & Innocent Chingombe, 'Building Equitable, People-Centered National Health Systems: The Role Of Parliament And Parliamentary Committees on Health in East And Southern Africa' (2003)

<http://www.jstor.org/stable/1229436> Goldsmith Jack. *Sovereignty International Relations Theory and International Law*. Stanford Law Review

Gross, Leo, "The Peace of Westphalia", (January 1948) The American Journal of International Law **42** (1): 20–41, doi:10.2307/2193560, JSTOR 2193560

Held, David, et al.. *Global Transformations* (1999) Cambridge: Polity Press. ISBN 9780745614984

Hironori Yamamoto, *Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments*, (2007)

<http://www.eac.int/current status>

<http://www.businessdailyafrica.com/Opinion-and-Analysis/Why-an-EAC-negotiations-Act-is-crucial/-/539548/1002442/-/o51xn8z/-/index.html>

<http://www.eala.org/component/content/article/26-overview/13-welcome-to-the-east-african-legislative-assembly.html>, as accessed on 21<sup>st</sup> June 2013

<http://www.eala.org>, EAC portal,

[http://www.eac.int/index.php?option=com\\_content&view=frontpage&Itemid=1](http://www.eac.int/index.php?option=com_content&view=frontpage&Itemid=1), accessed on 4<sup>th</sup> April 2013

<http://www.trademarka.com/will-new-eac-learn-from-old>, accessed in August 2012



<http://www.marxists.org/subject/africa/nyerere/1967/arusha-declaration.htm>

<http://www.internationaldemocracywatch.org/index.php/east-african-legislative-assembly>  
International Democracy Watch 'East African legislative Assembly' accessed on 28<sup>th</sup> August 2012 at Ihucha, Adam "EAC Split On Khartoum's Bid To Join Community". The East African. Retrieved 18 September 2011.

<http://igad.int/index.php> IPU-IGAD Treaty Information

IPU, *Parliament and Democracy in the 21st Century : Preliminary Report by the Inter-Parliamentary Union* (2005)

Korwa, G. Adar "The democratization of Organizations, : 1<sup>st</sup> International Democracy Report, 2011", (Giovanni, Lucio Levi and Nicolla (eds), International Democracy Watch, page 13

Korwa G. Adar 'The East African Community' 2010 Centre for Studies of Federalism,

Korwa G. Adar and Mutahi Ngunyi, "The Politics of Integration in East Africa since Independence", in Walter O. Oyugi, ed. *Politics and Administration in East Africa* ((1993),

Krasner Stephen (1999) *Sovereignty: Organized Hypocrisy* (1999) Princeton University Press  
New Jersey United Kingdom

Laursen F *Theory and Practice of Regional Integration*. (2008) Jean Monnet/Robert Schuman  
Paper Series Vol. 8 No. 3

Lindberg, Leon N. *The Political Dynamics of European Economic Integration*. (1963)

*Monitoring Regional Integration Yearbook 2008*

Newlyn, William.. "Gains and Losses in the East African Common Market," in  
Peter Robson (ed.) *International Economic Integration*. 1971 Middlesex: Penguin Books:  
348-361

Nugent, N. *The Government and Politics of the European Union*. (2006) 6th Edition. Palgrave  
Macmillan. [Online]. Available at  
<http://books.google.ie/books?q=Neil+Nugent%27s+Government+and+politics+of+European+Union&lr=&sa=N&start=10>

- Pelkmans, Jacques, *European Integration: Methods and Economic Analysis*, (2001) 2<sup>nd</sup> edition, Financial Times - Prentice Hall.
- Philipp Kiiver (ed). Groningen *National and Regional Parliaments in the European Constitutional order*, 2006 .
- Pollack, M. A. *International Relations Theory and European Integration*. (2001) Journal of Common Market Studies, 39 (2), pp. 221-44.
- Randa Rugangazi *South Sudan: Big trading potential for EAC*". IGIHE. Retrieved 10<sup>th</sup> September 2011 Reuters *"FACTBOX-East African Common Market Begins"*.. 1 July 2010. Retrieved 1 July 2010.
- Riker *Federalism: Origin, Operation, Significance*. (1964) Boston: Little, Brown & Co.
- Rosamond, Ben *Theories of European Integration*, (2000) London: Macmillan Press Ltd.
- Ryan, Selwyn D.. *"Economic Nationalism and Socialism in Uganda"*. *Commonwealth & Comparative Politics* (1973) **11**: 140–158. .
- Sheila Naturinda *East Africa Federation Push Looses Steam*, (2011) Business Daily, from the Trademark Southern Africa Website,
- Schmitz A *New Kind of Organisation: Supranational Union* [lehrstuhl.jura.uni-goettingen.de/tschmitx/index.htm](http://lehrstuhl.jura.uni-goettingen.de/tschmitx/index.htm)
- Simon M.Nthei *East African Legislative Assembly's (EALA) Hypocrisy*, Musa Haron, *EALA's call on ICC cases not genuine*
- Society for International Development (SID) *The report on the State of East Africa, 2012: Deepening Integration, Intensifying Challenges* (2012)
- Solana, Javier *Securing Peace in Europe*, (November 12, 1998), North Atlantic Treaty Organization, retrieved 2008-05-21
- <sup>^</sup> Tandon, Yash. *The People*. (1 June 1970) Cited by Ryan.
- Ted Hopf *The Promise of Constructivism in International Relations Theory* (1998) , Journal: International Security - INT SECURITY , vol. 23
- Tulya-Muhika, Sam.. *Lessons from the Rise and Fall of the East African Community: Summary*. (1995) East African Cooperation Forum. Kampala: Friedrich Ebert Foundation

Ujupan Stefania Alina. *Reconciling Theories of Regional l Integration: A Third Approach*.  
University of Ulster

Ulf Terlinden, “*African Regional Parliaments; Engines of Integration and Democratization*,  
(September 2004)– African Regional Parliaments, Bonn Information from annex  
1 to the book.[http://www.ulf-terlinden.de/docs/Terlinden2004Reg\\_Parl.pdf](http://www.ulf-terlinden.de/docs/Terlinden2004Reg_Parl.pdf)

U W, *Comparative Regional Integration Studies*. (-2003-2005) UNU-CRIS: United Nations  
University

[www.ulf-terlinden.de/docs/2005-08SADCPF\\_RAs\\_Lusaka.pdf](http://www.ulf-terlinden.de/docs/2005-08SADCPF_RAs_Lusaka.pdf). *African Regional Parliaments /  
Parliamentary Bodies as Engines of Integration: Current State and Challenges*

Walter O. Oyugi, ed. *Politics and Administration in East Africa* (Nairobi: Konrad Adenauer  
Foundation, 395-325.

Wanyande, Peter, *The Role of Africa's Regional Parliaments in Regional Integration*. (2004):  
(Unpublished draft. Workshop on the Role of Regional Parliaments (ECOWAS,  
EALA and SADC-PF) in Regional Integration Efforts in Africa, Maasai Mara /  
Kenya, 09.-12.05.2004. Friedrich-EbertFoundation.

Weiler *The Reformation of European Constitutionalism*. (1997) *Journal of Common Market  
Studies* Vol.35 No. 1, 97 – 131