

**UNIVERSITY OF NAIROBI**

**PROSPECTS AND PITFALLS OF THE PROPOSED EAST AFRICAN  
POLITICAL FEDERATION**

**BY**

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**DECLARATION**

I, Simeon Muga Opiyo hereby declare that this dissertation is my original work and has not been submitted for a degree at any other university.

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This project has been submitted for examination with my approval as University supervisor.

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**DR. KIZITO SABALA**

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## **DEDICATION**

I dedicate this research study to my parents Phillip Opiyo and Lewtine Adoyo for their undying love and support. I dedicate this study also to my siblings for their unquestioning support and encouragement.

Also dedicated is Dr. Kizito Sabala, without whose mentoring, this project would not have seen the light of day.

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## ABSTRACT

Regional integration is a concept that has received considerable interest from scholars particularly after the end of the Second World War. This attention has focused on regional integration as a process, as an outcome of the process and as a sub discipline of study within the larger academic area of International Relations.

To adequately respond to the changing dynamics in the international political system, countries have increasingly sought to integrate economically and politically, either to acquire greater military/ security/ defence / capacity or to reap from the benefits of enlarged markets. In the process several regional integration arrangements have been founded with varying degrees of success.

It is this phenomenon that this study investigated with specific reference to the political integration in the East African Community. This research project dedicated itself to investigating the prospects and pitfalls of the proposed East African Political Federation. It analyzed the development of federations in other parts of the world, examined the history and development of the East African Community and investigated the opportunities and challenges that faced the proposed political federation of East African states. The study further sought to establish the link between economic and political integration and to investigate the extent the East African Community has exploited the opportunities and addressed the challenges to the eventual attainment of the political federation.

The study employed both primary and secondary data in its investigation. Primary data was gathered mainly through interviews while secondary data was gained from already published works that addressed the topic of concern. Consequently, content analysis was employed to analyze the information. From the said analysis several conclusions were drawn.

The study concluded that economic integration influenced political integration through the Common Market that eased movements of people across national borders thus working towards erosion of national prejudices. Benefits of economic integration also influenced loyalties as more people favoured the larger polity that offered the benefits over their individual states that then began to seem inadequate and limiting. Lastly, economic integration would spill-over into political integration since a political bureaucracy would be needed to ensure coordination and direction of the economically integrated units.

The study also found out that the East African Community had made significant strides towards ameliorating some of the challenges. The community has achieved considerable progress under the economic integration platform and laid some foundation for the political federation by addressing some of its pillars e.g. good governance, election observation and defence/ security coordination.

On the other hand the study found out that the community still faces several hurdles to the political federation, mainly the lack of citizen awareness and participation and an emerging ideological rift pitting Kenya, Uganda and Rwanda on one side and Tanzania and Burundi on the other. These are challenges with far-reaching implications that must be addressed adequately if the community is to achieve its goal of crafting a political federation.

## **LIST OF ABBREVIATIONS**

<b>C.E.T</b>	-	Common External Tariff
<b>COMESA</b>	-	Common Market for Eastern and Southern Africa
<b>C.O.W.</b>	-	Coalition of the Willing
<b>EACCU</b>	-	East African Community Customs Union
<b>EAC</b>	-	East African Community
<b>EADB</b>	-	East African Development Bank
<b>IGAD</b>	-	Intergovernmental Authority on Development
<b>ILO</b>	-	International Labour Organization
<b>IMF</b>	-	International Monetary Fund
<b>MOU</b>	-	Memorandum of Understanding
<b>NTBs</b>	-	Non Tariff Barriers
<b>WCO</b>	-	World Customs Organization
<b>WTO</b>	-	World Trade Organization

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## CHAPTER ONE

### Introduction and Background to the Study

#### 1.1 Introduction and Background

Regional integration has increasingly become an important topic of discussion among scholars of international relations. New realities ,among them but not restricted to globalization and the preponderance of assertive non state actors have forced states to come up with strategies of remaining relevant in this new dispensation. Integrating with other states to satisfy needs they opine can only be addressed as integrated units is one attractive and compelling option.

This integration, both a process and an outcome has both economic and political components. One would then be tempted to ask; why this sudden desire by states to cooperate and integrate considering that this was a process that would have far- reaching consequences on their independence, identity and sovereignty? Regional integration is sometimes used in a confusing manner and different scholars have defined the concept differently.

This is what perhaps prompted Wallace<sup>1</sup> to sensationally claim that the term is so less clear cut that no common understanding emerges. This does not mean that a definition with a near universal acceptance cannot be found, Ernst Haas<sup>2</sup> defined the term as ... a process transferring loyalty, expectations and political decision making or sovereignty to a new centre. Karl Deutsch,<sup>3</sup> on the other hand defined it as “a relationship

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<sup>1</sup> Wallace, W. ‘The Dynamics of European Integration’, (London, Pinter, 1999, p5).

<sup>2</sup> Haas, E. B. ‘The Uniting of Europe, Social and Economic Forces’, 1950 – 1957, (Stanford, Stanford University Press,) 1958, p.16.

<sup>3</sup> Deutsch, K. ‘The Analysis of International Relations’, Englewood Cliffs, Prentice Hall, 1968, P. 192.

among units in which they are mutually interdependent and jointly produce system properties which they would separately lack.

From the above definitions the idea of regional integration as a multifaceted phenomenon begins to appear. A multidimensional nature to the process is also evident. The term denotes both a process and an end state of the process but even this aspect of its nature is fiercely contested by different scholars. Some scholars treat the concept as both a processual phenomenon and a terminal condition while others posit that there is no empirical justification that the process must have a definite end state.

Federalists for example see the end of integration in the growth of a federal union among the continent states. Because of this difficulty in approaching the problem from the general perspectives this study endeavors to limit its analysis to the political aspect of regional integration. It is also of paramount importance to assert from the outset that the study adopts the dual definition – processual and outcome so as to adequately accommodate the focus of the study mentioned i.e. political federation and include the processes/phases that preclude the end-polity.

The process of political regional integration is long and winding and assumes a stageist model as propagated by Bella Ballasa.<sup>4</sup> It starts from ad-hoc intergovernmental cooperation to an institutionalization of the cooperation efforts e.g. through a small secretariat. The next stage then incorporates coordination and synchronization of activities. An example of this stage is a confederation. As the process intensifies it becomes partial or supranationalised integration with partial ceding of sovereignty and

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<sup>4</sup> Balassa, B. 'The Theory of Economic Integration', Homewood, Richard Irwin Inc, 1961, p1.

achieves the end state with full political integration when states surrender major part of decision – making and sovereignty to a central authority and cease to be direct subjects of international law. The end result is a political federation along the lines of the USA.

What then is a political federation? In the words of King, ‘a political federation is:

“an institutional arrangement in the form of a sovereign state and distinguished from such other states solely by the fact that its central government incorporates regional units in its decision making procedure on a constitutionally entrenched basis.”<sup>5</sup>

Burgess<sup>6</sup> seems to concur when stating that .... “Federation is a specific organizational form which includes structures, institutions, procedures and techniques. It is a tangible institutional reality clearly distinguishable from other forms of state.” Federations may be organized differently but a common thread is that it involves states voluntarily agreeing to cede some power to the centre. Thus, a federation denotes a compound polity with shared responsibility between tiers of government.

There are different types of federations when analyzed on the basis of how they are formed. There are ‘holding together’ federations formed to respond to an external and sometimes, internal threat, “coming together” federations borne out of mutual voluntary bargain to procure gains and advantages to members and “putting together” federations carved out through imperialism of conquest. Modern day federations are often a combination of the first two types while the third variant has become obsolete

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<sup>5</sup> King, P. ‘Federalism and Federation’, London, Groom Helm, 1982, p20.

<sup>6</sup> Burgess, M. ‘Federalism and European Union: The Building of Europe; 1950 – 2000’, London, Routledge, 2000, p 25.

through changes in the international system. Basing on the above typification, four imperatives to integrate come to mind i.e.

i) The Gain Imperative: States are driven by motives of gain maximization and loss minimization e.g. to acquire more military might, a unified political system and bigger presence in the international system. (ii) The Affection Imperative: States federate due to common characteristics and trans-national bonds of affection (language, history, culture etc). But these linkages must overcome parochial and strong national identities and disparate political and legal systems. (iii) Threat Imperative: States view a federation as a viable insurance against an external and increasingly, internal threat or as a means of solving conflicts between them. (iv) Power Imperative: Increasingly becoming outdated is the instance where a regional hegemony annexes neighboring states. Examples of successful federations include the USA, Germany, Canada and Italy.

The basis for a political federation in East Africa derives from the belief that East African countries are organically linked and share a common history, language, culture and strong socio-economic and political bonds. Again, economic integration is sometimes considered slow without a political superstructure.

The benefits the region stands to gain from the prospect of federation are also too compelling to ignore. More respect and bigger voice on the international stage, more defense potential, ripple effects on peace and democracy and the pre-requisite geographical proximity make the federation a feasible and attractive option.

This optimistic thread is tempered by a myriad of fears, challenges and concerns including fear of losing sovereignty, fear of the unknown, disparities in governance

structures, perceived and real economic imbalances, concerns over loss of land and social cohesion.

## **1.2. Statement of the Problem**

From the foregoing analysis, it is apparent that the commitment to regional integration with an ultimate outcome of a political federation for East Africa is alive and strong. A renewed political will, satisfaction of several enabling preconditions for federation, strong motivating factors and an already existing institutional framework transform the idea of a political federation from an idealistic utopian aspiration to an achievable and practical reality.

It is also equally clear that several economic, political and socio-cultural impediments are likely to make the process painful and long. Reports, consultancies and research papers have investigated this phenomenon, identified the aforementioned variables and even offered possible recommended solutions. But still, a purely academic endeavor, adhering to all the rigors of social science research examining how the variables working for and/or against the achievement of a political federation are being exploited and/or addressed was sadly lacking. This study therefore, investigated and provides answers to the question: What are the prospects and pitfalls of the proposed political federation in the East African Community?

## **1.3. Research Objectives**

The overall objective of this study was to examine the prospects and pitfalls of a political federation in the East African Community.

## **Specific Objectives**

Specifically, this study:

- i. Reviewed the history, theory and practice of political federation in other parts of the world.
- ii. Examined the history and progress of the East Africa Community in relation to Political Federation.
- iii. Analyzed how the opportunities and threats to political federation have been addressed within the Community.

## **1.4. Research Questions**

This study set to answer the following research questions:

- i. What is the history and theory of and how established is the process of political regional integration in other parts of the world?
- ii. What is the history of and progress made by the East African Community in relation to political federation?
- iii. How has the East African Community exploited the opportunities for and addressed the challenges to political federation?

## **1.5. Hypotheses**

The study has been guided by the following hypotheses:

- i. Progressive achievement of economic integration objectives will have a positive ‘spillover’ effect on political integration.
- ii. Lack of sufficient political will and inadequate citizen awareness of federation largely explain the slow progress towards federation

## **1.6. Justification and Significance**

### **1.6.1. Academic Contribution**

A reading of the literature review betrays the fact that scholars have written extensively on regional integration, its history, theory and application in different parts of the world. They have also explored the incremental process of economic integration and how it makes the final outcome of the process i.e. political federation possible. They have analyzed the federalist theory of handing over sovereignty to a supranational institution. Quite a substantial body of research literature also investigates the process of regional integration in East Africa and the prospects and challenges of achieving a political federation in the region.

These studies only identified the challenges and opportunities that apply to the EAC while some gave recommendations. Subsequent research on how these challenges and opportunities are being addressed and/or exploited in the community was sadly lacking e.g. how does economic integration relate to the desire for political federation in the EAC? Or how is the issue of sovereignty being handled in the community? There existed a dearth of research work that answers these and many other questions. This lacuna justified this study as it contributes to filling this crucial gap in the literature. As a direct consequence the study immensely contributes to the literature and data that will inform researchers, students and scholars and provide a basis for future studies of a related nature.

### **1.6.2. Policy Contribution**

The desire to form a political federation of East African states has been alive for decades. This study analyzed progress made on this undertaking and examined the

prospects and pitfalls on the road to achieving this. It contributes to policies that would ensure prospects, opportunities are expeditiously exploited and fears challenges and concerns similarly redressed. The study therefore is of invaluable use to policy makers in departments in the Kenyan government in charge of regional integration and East African Community affairs, the East African Community Secretariat and interested parties in the entire East African region.

### **1.7 Literature Review**

A substantial body of research work and literature exists on the topic of regional integration in general and its political variant, political regional integration. Equally extensive research has been done in the process and ultimate outcome of political federation in the world. It is this elaborate literature that this study now proposes to analyze and critique. The review opens with a general examination of literature that addresses the issue of regional integration and political federation, and then narrow down its scope to a specific review of literature that addresses the East African process of regional integration and political federation.

Haas,<sup>7</sup> considered the founder of the neo-functionalist school of regional integration defined the concept of political integration as ...

” a process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities to a new centre, whose institutions possess or demand jurisdiction over pre-existing national states. The end result is a new political community super-imposed over existing ones”

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<sup>7</sup> Haas, E. ‘The Uniting of Europe: Social and Economic Forces: 1950 – 1957’, Stanford, Stanford University Press 1958, p 16.

Deutsch<sup>8</sup> is of the opinion that the process does not have to produce a new state-like entity, but says that if it has to, the strategy must consist of four main elements i.e. maintenance of peace, attaining more multipurpose capabilities, accomplishing some specific tasks and, gaining a new self image and role – identity.

They both seem to subscribe to the processual school of thought. The process has both economic and political aspects and to avoid the confusion that sometimes characterizes the debate on regional integration, this study will adopt the dual concept that encompasses both aspects of integration. It is also important to stress that regional integration takes place in such a way that at its highest stage, it includes a fusion of both economic and political activity.

The interconnection between political and economic aspects of integration cannot be gainsaid. When states co-operate on economic issues, they create opportunities and pressures that make it desirable to have a political bureaucracy for coordination. This is what distinguishes integration from cooperation; the presence of a supranational decision – making body. In many cases, political integration creates a framework for a wide range of human activity that overlaps onto the economic field.

When viewed purely as a process, the content of the end state is left partly unexplained. For example, what is the character of the end result of integration that Haas describes in his definition? What is the final state of economic integration? Is it a monetary union or something else? A general description of regional integration involves several phases on the way to an ‘ever-closer’ community. When this process of

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<sup>8</sup> Deutsch, K. W. ‘The Analysis of International Relations’, Englewood Cliffs, Prentice hall, 1968 p 192.

integration achieves an advanced stage, it can be referred to as a politically integrated community.<sup>9</sup>

If the various arguments about the end state of integration are reconciled, it emerges that the terminal condition is a new political community that somehow compromises the traditional concept of authority of the state and its sovereignty. States are regarded to hold dear the supreme authority within their territory but political regional integration seeks to create a new authority. This is not a new phenomenon since all through history, the state has often limited its sovereignty both voluntarily and otherwise e.g. through signing of treaties.

This nevertheless falls short of affecting the basic principles of state sovereignty as states only compromised sovereignty in single cases but largely retained the supreme authority within their territory. This prompts the question; does integration limit the authority and decision – making of states to an extent that it also affects the basic principles of sovereignty and the way states exercise it? In the initial stages of economic integration much authority is retained but as the states continue ‘all the way through they are eventually forced to hand over all their sovereignty to the supranational level.

They create a new state, holding supreme authority within the territory which was previously dispersed to independent sovereign polities. A process that begins as conventional international cooperation between sovereign states leads to an integrated political unit i.e. a political federation along the lines explained by Haas.

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<sup>9</sup> Etzioni A. ‘Political Unification: A Comparative Study of Leaders and Forces’, New York, Rinehart and Holt, 1965 p 60.

What is sovereignty and why is always used to justify the difficulty by states to achieve successful federation? It refers to the ability of a national state to determine alone and independent from other subjects of international law, its domestic and foreign policy. It is the right of political leadership and its identification with the polity<sup>10</sup> and is considered indivisible. Yet integration efforts seeks to voluntarily hand over part of or all of this decision – making power to a supranational level and establish a new tier of political power above the state.

In such an arrangement, sovereignty is no longer indivisible and integration seems to challenge this very concept of sovereignty. When successful, this movement towards federation would best be explained through a brief discussion of the concept of political federation and federalism. A more detailed analysis of this concept of sovereignty is done in Chapter Two of this study

Federation is a political philosophy that underlies a system of government where sovereignty is constitutionally divided between a central government and constituent political units such as states. It is a political organization where two or more states agree to form a union government with central authority while retaining local autonomy.<sup>11</sup> Sovereign states come together in a written commitment to transfer a degree of sovereignty to a common body that internally and externally represents the totality of these states and implements and enforces this written commitment.

It is a mode of politics within an overarching political system by distributing competencies among general and constituent governments in a manner designed to

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<sup>10</sup> Iona, A. 'Theorizing Democracy in the European Union. The Choice between Madison and Althusius', Melbourne University Press. 2007, p1.

<sup>11</sup> Ojo et al (Eds) 'African International Relations', London, Longman, p 85.

protect the existence and autonomy of both.<sup>12</sup> The degree of sovereignty transfer is such that the federation establishes a political relationship with the citizens of the states which sits alongside the citizen's political relationship with their state. Federations emerged as an alternative to coerced state – making in the 18<sup>th</sup> century. Montesquieu proposed federation as a way for republics to grow larger in a way superior to imperial expansion as it avoided a sacrifice of the freedom of the citizenry.

Analysts<sup>13</sup> of the political features of federation like Elazar construe federation in terms of the binary: federal versus unitary and therefore screen out any idea of federation that does not have its culmination in a mega state or empire. They see federation as either a confederation of sovereign states, which are merely treaty organizations with states retaining sovereignty and having their constitutional structures unaltered or as federal states i.e. federation which implies a sovereign, political, territorial entity that enjoys internal monopoly of the use of force, a hierarchically supreme coercive and comprehensive domestic constitutional legal order and governing apparatus.

A federation enjoys control over the armed forces, treaty making power, an international legal standing and diplomatic competencies on behalf of the constituent states, which remain states in name only. The first mention of a federation in East Africa was in June 1960 when Julius Nyerere made his famous offer to delay Tanganyika's independence if it would mean that all three East African states could come to self rule together as a federation. This was never to be as several factors congealed to frustrate its actualization. A concentration on national interest worked to derail the dream.

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<sup>12</sup> Elazar, D., 'American Federalism: A View from the States', New York, Harper and Row, 1984, p vii

<sup>13</sup> Elazar, D. 'Exploring Federalism', Tuscaloosa, University of Alabama Press, 1987, p5.

Tanzania devoted itself to raising the living standards of its people and thought the emergence of a political federation would challenge this goal. Uganda faced the opposition of federation from a powerful Buganda Kingdom, afraid to lose their system in a federated arrangement. Kenya had fewer problems as the political federation was in its economic interests, but it could not go it alone. The third attempt began in 1967 with the coming into force of the Treaty of East African Cooperation. This experiment ended in failure in 1977 when the EAC collapsed.

The next attempt to revert the sub-region into a viable integration group started in 1984 when the three countries signed the Mediation Agreement for the Division of Assets and Liabilities of the defunct EAC.<sup>14</sup> In this agreement the parties left room for pursuing further co-operation in future.<sup>15</sup> Concrete steps towards revising the community began in November 1991 when the Heads of States at a summit in Nairobi issued a formal communiqué for the re-establishment of the EAC.

In November 1993 a Permanent Tripartite Committee was set up by the Heads of State leading to the establishment of the secretariat in 1996. A draft treaty was published in 1988 and circulated in the member states for debate. This culminated in the signing into force of the Treaty on 30<sup>th</sup> November 1999. The founding members were Kenya, Tanzania and Uganda while Rwanda and Burundi were admitted to the expanded EAC on

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<sup>14</sup> Rwekaza M. *Political Cooperation in Perspectives on Regional Integration and Cooperation in East Africa*: Proceedings of the first inter-ministerial seminar on East African Cooperation. Arusha, Tanzania 25 March 1999 (2000) p 95

<sup>15</sup> Kamanga, K. *Some Constitutional Dimensions of East African Cooperation*, paper presentation to Kituo cha Katiba, Within the state of constitutional Development in East Africa Project (Dar-es-Salaam, 2001) p 15

the 18<sup>th</sup> of June 2007. With their inclusion and South Sudan's pending application to join, the community is truly set for exciting times.

The EAC treaty has been viewed as unique in Africa and perhaps the world at large as its aspirations go beyond economic to include objectives of a political nature.<sup>16</sup> Membership is conditional and predicated on principles of good governance, adherence to principles of democracy, the rule of law, social justice with membership conditioned on adherence to these principles and standards.<sup>17</sup> Ultimately the EAC aims to establish a regional political federation to be achieved through a 'stageist' model that involves the gradual integration of major economic systems i.e. Customs Union, Common Market, Monetary Union and finally a Political Federation.

The dualism of regional integration is captured in this model. Political integration requires a basis of economic integration to succeed but this economic process is not an end unto itself. It must aspire towards a terminal condition which is political in nature. A treaty is intended to regulate each stage of the process. Notable developments have been made as concerns the Customs Union, and Common Market while the Monetary Union and Political Federation are still work in progress.

Museveni advances a passionate argument as to why economic and political integration are interlinked. He asserts that economic integration is slow without a political superstructure to provide direction and coordination.<sup>18</sup> He says that the economically weak nature of East African states made it imperative to form a larger

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<sup>16</sup> Kamanyi, J. *The East African Federation: Progress, Challenges and Prospects for Constitutional Development*, 2000, p 2.

<sup>17</sup> Treaty for the establishment of the East African Community. Articles 75 (1) 76 (1) and (2).

<sup>18</sup> Museveni, Y. *Towards a closer Cooperation in Africa*, Kampla, 1998.

polity capable of improving its military and economic weight in the world. He supports this by arguing that investors would be more attracted to a united East Africa than to individual states.

A bigger and more powerful defence potential would guard the region from foreign interference. In his opinion, Museveni says individual East African States do not possess such a defence capacity. He proceeds to invoke the existing basic linguistic, cultural and social unity and linkages among the peoples of East Africa. His argument is buttressed by the geographically contiguous nature of the members states that offers a distinct advantage for federation.

However the region needs to ameliorate a series of fears, concerns and challenges that threaten the viability of achieving a political federation for the region. The issue of sovereignty plays out again for the East African Community too. States appeared reluctant to cede sovereignty and lose decision – making power. Since federation results in a new international creature, parties need to address the issue of sovereignty although there exists analyses that argue that federation does not virtually take away the sovereignty of state parties. In the East African case for example, by delegating some of their individual state sovereignty, the delegating state e.g. Kenya, gets in turn part of the sovereignty delegated by the other four member states. Essentially this results in a ‘pooling or sharing’ of sovereignty as opposed to a surrender as some analysts may believe.

Other concerns involve citizen fears of disparities in governance structures and the possibility of a spill over of bad governance structures from one state to another. This can be ameliorated through a harmonization of the member states’ defence and foreign

policies and the empowering the East African Court of Justice to be the guardian of justice, rule of law and to uphold good governance. The other concern is the lack of awareness among the general citizenry of the member states. One of the weaknesses of the defunct EAC (1967) was its disengagement with the East African masses.

The new EAC has tried to avoid this pitfall through inclusion of the private sector and civil society in its overall architecture. But more still needs to be done, more awareness and participation of the public needs to be cultivated e.g. through electing members to the East African Legislative Assembly through universal adult suffrage. Political parties could also make the Community relevant by including it in their political campaigns. This would ultimately engender a feeling of being 'East African' that is vital for successful federation.

Economic related fears and challenges include inadequate implementation of the Customs Union and slow take off of the Common Market. This affects the realization of benefits of integration. Loss of employment opportunities due to labour mobility is a potent fear. Programmes to exploit the advantages of labour mobility should be made a priority e.g. exchange programmes and a harmonization of qualification standards throughout the region. Fear of the loss of land could be alleviated by the development of alternative sources of livelihood besides land and a harmonization of member states land tenure systems. If these concerns about the political federations are to be diffused, and political federation allowed to proceed the top leadership of the region should send a clear signal of political will and commitment to political federation. Additionally, citizens at the grassroots should be mobilized and encouraged to embrace the idea.

The summit being the supreme decision making organ of the community should provide direction in consolidating the gains made under the economic integration process. This can be done through making significant statements in both word and deed regarding the need, purpose and by implication the type of federation. This review has introduced the concept of regional integration and traced the approaches to political federation in the world.

Also discussed is the history of the East African Community pointing on the imperatives, potential benefits and challenges to the achievement of a political federation. This study is forever indebted to this vast body of literature that has illuminated the topic and provided the necessary background to understanding key concepts and ideas about regional integration and political federation. But more needs to be done to complement the available literature. This complementary research work should investigate how the variables mentioned above i.e. imperatives, prospects and challenges practically play out towards a realization of the federation. It is this task that this study undertakes

### **1.8 Theoretical Framework**

There exists different theories that attempt to explain the various aspects of political and economic integration. The East African community proposes to form a Political Federation through several stages of economic integration. This means that no single overarching theory can adequately explain East African integration. There is need for a theory to explain the incremental spill over of the economic onto the political and one that explains the eventual handing over of sovereignty to a new polity. In view of this, the study proposes to adopt an eclectic theoretical framework that employs the Neo-

functionalist Theory to explain the process of integration and Federalism Theory to account for the outcome of a political federation.

The neo-functional theory first took shape in 1958 when Ernst Haas published the “Uniting Of Europe “ and soon several articles emerged to propagate the key tenets and arguments of neo-functionalism. According to neo-functionalists, it is important to understand why states are keen to integrate.

Haas’ definition of integration would partly offer an explanation. For Haas, integration is a mixture of common ideas, internal and external constraints and the political will to find new solutions to national and regional problems.<sup>19</sup> Motives originate from political calculations and socially constructed shift of loyalties. For neo-functionalism, regional integration is a mixture of voluntary and forced cooperation which leads to deeper integration through loss of sovereignty if the interests and/or constraints are complementary and the regional integration arrangements solves problems better than nation states.

Such a deepening is not only linked with interests and constraints but also with the rise of alternative actors. The role of the state in decision making is challenged by the emergence of influential national and transnational interest groups and the establishment of assertive regional institutions. But perhaps the most innovative part of the neo-functionalism model is the concept of ‘spill over’ originally developed by Haas.

In its original formulation, Haas defined it as a situation where the creation and deepening of integration in one economic sector would create pressure for further

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<sup>19</sup> Haas, E. ‘The Uniting of Europe, Notre Dame’, Notre Dame University Press, 2004, p 16

integration in other sectors. Lindberg<sup>20</sup> attempts to define spill over in a more compact form. He says “spill-over refers to a situation in which a given action, related to a specific goal creates a situation in which the original goal can be assured only by taking further action, which in turn creates a further condition and need for more action and so forth”. He seems to be adding emphasis on the processual nature of integration which he believed had a sort of inbuilt logic to automatically lead to further integration once the process is in motion.

This spill over was not automatic but required a driving force e.g. from politicians and technocrats. This study will therefore adopt the neo-functional approach to explain how the axioms of actor hood, spillover, motive and automaticity of integration apply in the East African context. Regarding the question of actor hood, three and now five independent countries, vulnerable to external influences created a regional integration arrangement to better respond to several international trends of globalization, liberalization and interdependence but also to internal developments.<sup>21</sup>

Beyond the interests and constraints of East African states, external donors and internal interest groups pushed the integration effort forward. Trade Unions, business groups, international economic and social non-governmental organizations are a few examples. State actors have even recognized that regional integration would not be successful without NGOs.<sup>22</sup> Several interest groups including the East Africa Law Society and the East African Business Council have accompanied and monitored the

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<sup>20</sup> Lindberg, L. ‘The Political Dynamics of European Integration’, Stanford, Stanford University Press, 1963 ,p 10.

<sup>21</sup> Mair, S. ‘East Africa Co-operation’Berlin, Stefan and Christian Peters – Berries, 2001p. 2.

<sup>22</sup> EAC, *East African Co-operation Development Strategy*\_(1997-2000) Arusha, EAC p2.

process of initiating and institutionalizing the EAC.<sup>23</sup> Because of the early inclusion of civil society and civil society, EAC was one of the first regional integration arrangements in Africa to embed the status of non-state actors in the integration process.

Given this status these non-state actors directly take part in EAC decision making. These empirical observations are concordant to the declaration of actor hood as propagated by neo-functionalism. The role of motive explained by neo-functionalism is also relevant in the East African experience. The driving motives for state and non-state actors in the EAC include constraints like water / food supply, strong financial, economic and social dependencies on foreign partners, national problems like how to attain economic growth and markets,<sup>24</sup> the will of political actors confronted by conflict and constraints and the interest in national security. East African states are not faced with an inter-regional war situation but by an unstable and warlike environment in the Horn of Africa and Great Lakes Region. The conflict – ridden nature of their neighbors’ forces East African states to deepen their liaisons. Thus security motive is what eventually pulled Rwanda and Burundi into the community as an effort to address their post civil-war reconstruction.

As EAC become politically and economically successful, it geographically spilled over into Rwanda and Burundi. East African community provides them with a more attractive market combined with foreign policy and security politics. East African finds itself presented with a second opportunity to create a regional political body and member

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<sup>23</sup> Odhiambo, M. *Towards Greater Civil Society Participation in the East African Community: Challenges and Prospects*. Kampala Kituo Cha Katiba, 2010, p55

<sup>24</sup> Musonda, F. M. ‘Regional Integration in Africa: A Closer Look at the East African Community’, Munich Helbing and Lichtenhahn, 2004 p. 102.

states are trying to avoid the pitfalls that lead to the failure of the first attempt in 1977. Consequently, the EAC is not an isolated integration attempt but a socially loaded integration arrangement with a legacy and experience of a prior attempt. Today, the member states and their political systems and economic alignments are much more similar. Neo-functionalism fits well in this context as it recognizes increasing confidence and a learning effect.

Regarding spillover, the EAC is currently enjoying the first spillover benefits. While economic integration accelerated, regional co-operation extended geographically and politically towards a coordinated foreign and security policy. The new members and politic areas have in turn seen a rebounding spillover effect towards economic integration. But few developments seem to challenge the spillover automaticity thesis. For example, weak and unprepared business groups in Tanzania and Kenya have caused a ‘spillback’ regarding the free trade area and customs union by urging their governments to maintain non-tariff barriers (NTBS) to protect their economies<sup>25</sup>

Furthermore the main impact in the degree of integration is still made by interstate political coordination. In this case, the partly dogmatic neo-functionalism and its economic based logic are not of clear –cut application. East Africa still does not have a stronger economic development status which could generate the primary functional spillover for integration.<sup>26</sup> Again due to limited pluralism, politics dominate and low

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<sup>25</sup> Musambayi K. *After the Floods. The Rainbow Contextualizing NARC's Election Victory* in Maina and Kopsieker, *Political Succession in East Africa*, Nairobi, 2006, p. 31.

<sup>26</sup> Rosamond, B. Op. cit. P. 51.

politics areas e.g. economics soon become sensitive making the idea of automatic sector integration problematic.<sup>27</sup>

Nevertheless, it remains unclear whether such dynamics will lead ultimately or taxonomically towards a new political entity. This necessitates the need for a complementary framework to explain the final stage of regional integration. After all the organic economic stages of integration have been achieved, what would enable the regional grouping to surrender individual sovereignty and form a new polity that becomes a subject of international law?

Federalism fills this lingering theoretical question of the end product of regional integration. Federalism as a theory attempts to explain how federations emerge and how they are organized and how they function. Federation emerges from a desire by a people to be under a single independent government for some purpose and at the same time want to have regional government's responsible for some matters.

The proposed model of the East African Community clearly captures this dynamic allocating some tasks to the federation while retaining considerable operational jurisdiction to the constituent states. The states must desire to be united but not to be unitary. Added to this must be the capacity to operate a general government as well as independent regional governments not submitted to the general federal polity.

Wheare enumerates some of the factors that motivate states to form federations under the federalist model.<sup>28</sup> He says “communities have been led to desire union for a variety of reasons.” But in the modern federation some factors seem to have always been

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<sup>27</sup> Mehler et al (ed) East Africa Year Book, Leiden, Brill, 2006 p. 316.

<sup>28</sup> Wheare, K. C. 'Federal Government (4<sup>th</sup> Ed)', London. Oxford University Press, 1963 p. 36.

present i.e. a sense of military insecurity and the consequent need for common defense, a desire to be independent of foreign powers and a realization that only through federation can such independence and defense be secured, a hope of economic advantage from union, some political association of the community concerned prior to federation, geographical neighbourhood and a similarity of political institutions.” It seems that the pressures to federate dovetail perfectly with the neo functionalist axiom of motive discussed previously.

## **1.9. Research Methodology**

### **1.9.1 Case Study**

Studies of this nature are best examined using a case study method research design. In this study the case is the prospects and pitfalls of the proposed political federation of the East African Community. This type of design enabled the research to be specific, concrete and contextual.

### **1.9.2 Data Collection**

The study employs mainly secondary data that included published works/books, papers, journals, the internet and other unpublished works. Primary data was utilized to complement the secondary data sources. This was collected through unstructured interviews with members of government departments, members of the East African Legislative Assembly ,reputable scholars who have published on the subject area and Members of Parliament.

### **1.9.3 Research Instrument**

Even though unstructured interview questionnaires are easy to develop, they present a high risk of bias during analysis.<sup>29</sup> The study addressed this loophole by use of qualitative means to analyze data. Simple random sampling with all elements of the frame treated equally<sup>30</sup> was used to select the specific organizations and departments. A respondent was selected using a stratified sampling model to ensure adequate representation and to improve efficient control of sample composition.

### **1.9.4 Data Analysis**

The study used mainly qualitative data analysis methods. Content analysis was employed to help assess the progress of the East African Community and to draw conclusions on the viability of the proposed Political Federation.

## **1.10 Chapter Outline**

### **Chapter One: Introduction and Background to the Study**

This chapter sets the broad context of the study and introduces the topic. It includes background to and statement of the problem objectives, justification, literature review, theoretical framework, hypotheses and methodology of the study.

### **Chapter Two: History, Theory and Practice of Political Regional Integration**

This chapter reviews the history, theory and practice of political federation in other parts of the world. This also includes a general discussion of political regional integration.

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<sup>29</sup> Nachmias, C. F. and Nachmias, D. 'Research Methods in Social Sciences (5<sup>th</sup> Ed)', London, St. Martin Press Inc. 1996 p. 235.

<sup>30</sup> Mugenda O. and Mugenda A. 'Qualitative and Quantitative Approaches', Nairobi ACTS Press, 2003 p 45.

### **Chapter Three: History of the East African Community**

Chapter Three traces the history and progress of the East African Community mainly analyzing the history of the first EAC until its collapse in 1977. It also examines the rebirth of the community in 2000 and discusses the progress made by the various stages of integration as outlined in the EAC Treaty.

### **Chapter Four: The Proposed East African Political Federation**

Chapter Four provides the examination and analysis of primary and secondary data on the prospects and impediments to attainment of political federation in East Africa.

### **Chapter Five: Conclusions and Recommendations**

Chapter Five provides conclusions based on the data collected and analyzed against the research objectives, questions and hypotheses and proceeds to give recommendations that derive from the conclusions. This chapter also suggests areas for further study.

## CHAPTER TWO

### The History, Theory and Practice of Federalism

#### 2.1. Discourses on Federation and Federalism

It is always difficult to find a definition of federalism that gains a unanimous acceptance among the various scholars of the subject. This is so because different scholars have defined the term differently, influenced by their different intellectual backgrounds. Lawyers, political scientists, philosophers and historians have over the years lent their contribution to the definitional aspect of this concept.

In this endeavor they have employed a wide range of methodologies ranging from a procedural definition, to an institutionalist approach and finally ending with a hybrid definition that merges both conceptions. It was this difficulty in unanimous definition that prompted Sawyer<sup>1</sup> to warn that“..... attempts at defining either the word or the thing are likely to be futile”

Nevertheless, it is important to raise a definition of federalism, or at least to identify some common denominator features. It would thus suffice to provide some of these definitions in the search for meaning. It was American political scientist Preston King<sup>2</sup> who defined federalism as:

“an institutional arrangement taking the form of a sovereign state and distinguished from other such states solely on the fact that its central government incorporates regional units in its decision making procedures on some constitutionally entrenched basis”

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<sup>1</sup> Sawyer G. ‘Modern Federalism’, London, C-A Watts and Co 1969, p2.

<sup>2</sup> King P ‘Federalism and Federation’, London, Croom and Helm 1982.

In other words, it is a mode of political organization that unites separate polities within a more comprehensive political system in a way that permits each to maintain an element of integrity. Wheare<sup>3</sup> contributes adding that federalism entails a system where functions of government are divided in such a way that the relationship between the legislature with authority over the whole territory and legislatures with authority over parts of the territory is not one of superior and subordinate but a relationship of coordinate partners.

Birch<sup>4</sup> weighed into this definitional debate saying that a federation is a system that provides for division of powers between one general and several regional authorities each of which in its own sphere, is coordinate with the others and each of which acts directly on the people through its own administrative agencies. Yet another scholar of federalism Carl Friedrich<sup>5</sup> in 1964 defined federalism as “unions of groups united by one or more common objectives, but retaining their distinctive group character for other purposes”

The above definitions are not exhaustive but they illustrate the diverse nature of interpretations of the concept. Birch and Wheare define the process as a division of powers while King and Friedrich emphasize the centralization aspect of the phenomenon. It is clear that when analyzed from an institutional approach what becomes more pronounced is the centralization the process upholds i.e. merging of sovereign units of

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<sup>3</sup>Wheare K. ‘What Federal Government Is: Studies In Federal Planning’ in Patrick Ransome (Ed) London, 1990, p 23-24.

<sup>4</sup> Birch A. H. ‘Federalism Finance and Social Legislations in Canada, Australia and the United States’, Oxford, Clarendon Press, 1955, p. 291.

<sup>5</sup> Friedrich, C. *New Tendencies in Federal Theory and Practice* Sixth World Congress of IPSA September 1964, Geneva Switzerland P 1-14.

government into a new one and the outcome of a unitary political community that becomes a federal whole.

When approached as a process, the non-centralization is emphasized i.e. a constitutional division of powers between different tiers of government and a distribution of powers that results in shared competence in decision making. Whether examined from either perspective what is clear from the foregoing argument is that a consensus emerges that federalism and its end product, federation are animated by a multilayered system of governance that embraces unity in diversity.

The system works to centralize and to decentralize at the same time. The countries involved exercise both shared rule through the general government but retains significant self rule through the competence delegated to them by the federal bargain. Federalism assumes two main forms ranging from a spectrum of loose amalgamation to considerable centralization. As a form of centralized political integration it is embodied in a federation. There exists several examples of federated systems i.e.

Federation-in this system, states continue in existence but acquiesce to a new federal authority. The new federal state becomes the subject of international law though the regional units retain an existence under domestic law.<sup>6</sup> Unlike a unitary state, the sovereignty is constitutionally split between at least two territorial levels so that units at each level have final authority and can act independently in some areas.<sup>7</sup>

The population enjoys dual citizenship with rights and duties from the two authorities. There exists an inter-governmental mechanism that conjoins the general

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<sup>6</sup> E.A.C, Experts Report on the East African Federation: Addressing East African Fears, Challenges and Concerns and Consolidating its Pillars 2010, EAC. Arusha p. 13

<sup>7</sup>*The Oxford Guide to U.S. Government* in EAC Experts Report Ibid p. 14.

governor but enables each to retain its identity.<sup>8</sup> Each layer assumes responsibility to provide for the socio-economic welfare needs of citizens within its jurisdiction.

At the other end is a confederation- This is a system where the national government is subject to the control of the sub national governments.<sup>9</sup> It is formed when several pre-existent governments join to pursue a limited objective. The sub-units continue to enjoy absolute sovereignty derived from their own constitutions and retain their international legal personality.

The territories and citizens of the member states do not become the territory of citizenry of the confederation and Cohen<sup>10</sup> argues that “the states can exit at will assuming they fulfill their contractual obligations”. This study concentrates on the more centralized form of political regional integration that is the federation.

## **2.2 Types of Federations**

Literature on federalism usually gives a distinction between two ideal types of federations i.e. *separation des pouvoirs* or dual federalism. This is the model adopted by the United States that is premised on the institutional autonomy of different levels of government with a clear vertical separation of powers.<sup>11</sup> Each level of government enjoys its own sphere of responsibility autonomous of the other level of government and competences are located according to policy sectors and the level of government granted competence possess both legislative and executive jurisdiction.

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<sup>8</sup> Ibid p. 14

<sup>9</sup> Ibid P. 14

<sup>10</sup> Cohen J.L ‘Federation: Rethinking Legality and Legitimacy in the Epoch of Globalization’, Cambridge, Cambridge University Press, 2012, P3.

<sup>11</sup> Borzel T.A. *What Can Federalism Teach Us About The European Union? The German Experience*. Paper prepared for the conference; Together in the new Europe, Robinson College, Cambridge 12<sup>th</sup>-13<sup>th</sup> April 2003 p4

In this type, government machinery and roles are duplicated and this model does not require very strong representation of the sub-units at the national level of government<sup>12</sup>. Its representation, based on the senate principle gives the sub-units an equal number of directly elected senators irrespective of geographical size. It is through voluntary coordination and cooperation that the federal states articulate their interests.

To buttress this autonomy, the federal units enjoy sufficient fiscal independence to procure adequate resources necessary for the execution of their delegated competences.<sup>13</sup> This comprehensive financial independence is expressed in their powers to collect taxes and have independent sources of revenue. In dual federalism, different levels of government enjoy exclusive responsibilities e.g. while the national government possess competence on foreign affairs and defense, education is squarely delegated to the sub units.<sup>14</sup>

Its counterpart *distribution des pouvoirs* or cooperative federalism that has Germany as a prototype provides for a functional division of powers. A complementary system is put into place where the central government legislates while the sub units implement. This leads to a vast majority of concurrent and shared competences.<sup>15</sup>

This system requires strong representation of constituent state interest at the general federal level both for efficiency of policy implementation and as a mechanism to insulate federal units from becoming more administrative appendages of the central government. The self determination of the constituent units is considerably compromised

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<sup>12</sup>Ibid p 5.

<sup>13</sup>Ibid p 5.

<sup>14</sup>Soder, H. *Federalism: A Study of Evolution and Consequences*; Bachelors Thesis in Political Science, Jonkoping University, Jonkoping, January 2009, p. 11.

<sup>15</sup>Borzal, *What Can Federalism Teach Us About the European Union* Idem p.5

in this model but they are adequately compensated by their increased participation in decision making.

Major policy initiatives require consent of both the federation and a majority of the federal units. Representation is based on population size along the lines of a Federal Council and small states usually enjoy over representation. There exists a joint tax system that provides for a redistribution of financial resources.

### **2.3. The Evolution and Development of Federations**

#### **2.3.1. Earliest Federal Arrangements**

While modern federations have their roots in 1787 with the US as the first federal system<sup>16</sup>, federalism has a much more ancient history. Elazar<sup>17</sup> argues that the first documented federal system appeared among ancient Israelites tribes in the 13<sup>th</sup> century. While it is disputable whether it had federal or confederal features, what is undeniable is that it had a binding constitutional element (The Torah) and significant elements of non-centralization. In its 700 year existence, it underwent numerous regime modifications e.g. the introduction of kingship and the division of the kingdom between the north and south.

Elazar argues that some variant of its constitution was carried over to be the utopian blue print found in the Talmud used to usher in the Messianic Era.<sup>18</sup> While many tribal confederal and federal outfits appeared before, during and after this period, the Israelite federation occupied the pride of place by pioneering the written constitution and history.

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<sup>16</sup>Elazar, D. 'Federalism: An Overview', Pretoria, 1995, HSRC publishers,p19

<sup>17</sup> Ibid p. 19

<sup>18</sup> Ibid p. 19

After the Peloponnesian War, leagues and federacies appeared among Greek city states, and in Asia Minor<sup>19</sup>. By today's definitions, they may have been confederal arrangements where ultimate authority and sovereignty remained lodged with the constituent units. They were motivated to federate to pursue common objectives principally military in nature.<sup>20</sup>

They were designed to accumulate what was an essentially communal democracy to acquire certain benefits in the realm of defense. Greece was under threat from different enemies and since the motive was military it followed that only military competences were delegated. Key decisions relating to diplomatic and economic realms were retained. But this seems to have been a mistake since the denial of some competences to the federal authority led to poor execution of this military functions. Larger imperial aggressors took advantage and the Greek federation soon disappeared. First Macedon, then Rome triumphed over Greece.<sup>21</sup>

The first attempts at federation, thus were not the greatest of successes and it was not until many years later that federalism reappeared, this time in the Roman Republic<sup>22</sup> where an asymmetrical arrangement was established. Rome assumed federate power while cities it had conquered and / or embraced acquired satellite status as federal partners where they preserved their local autonomy at the expenses of enjoying full Roman citizenship.

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<sup>19</sup>Soder , H. idem p. 14

<sup>20</sup>Elazar, Federalism: An Overview p. 20.

<sup>21</sup>Soder, H. *Federalism. A Study of Evolution and Consequences* p. 14.

<sup>22</sup> Ibid p. 14

### **2.3.2. Medieval Federal Arrangements**

Democratic republicanism then bequeathed upon Europe, the next wave of federal experiments. Self governing cities developed and leagues of cities were established as loose confederations that survived at the whims of local rulers. In the more rural areas, small republics confined to particular geographical areas banded together first as confederal and later as federal units.<sup>23</sup>

An example is the Helvetic Confederation that later morphed into the Swiss Federation in 1848. Most federal arrangements of this period underwent the same unfortunate military predicament of conquest and death that was characteristic of the Greek attempt.

### **2.3.3. Federation in the Reformation**

The 16<sup>th</sup> Century provided, in many ways, the first successful federation i.e. the Dutch Federation. It was born as an incident in the struggle for independence of the low country bourgeoisie from the yoke of Spanish imperialism. The first major body of federal theory also owes its genesis from this Reformation period. The theory emphasized the federal aspects of self rule and organization.<sup>24</sup>

The Dutch Federation survived for 200 years until Napoleon's plunder demolished it from existence. It was one of the longest lasting federations and provided a major constitutional innovation distinct from previous federations. It possessed features of significant centralization where more military and diplomatic competences were seized

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<sup>23</sup>Elazar, Idem p. 20

<sup>24</sup>Ibid p. 20.

of by the federal level.<sup>25</sup> Perhaps this is what insulated it from the pitfalls of the previously over decentralized experiences.<sup>26</sup>

#### **2.3.4. The U.S.A.**

The American federal experience deserves a mention in this study because of its immense contribution to the federal institutional theory and to the theory of representation as an element of federalism. It was the next big step in the history of federation following the federal formations of the Reformation era. Its history dates back to the time English immigrants set foot in the New World and created small townships that developed into bigger counties and eventually into states.

Before the war of independence, these states had been self-reliant and autonomous taking care of their own affairs, having their own government's interest and traditions. The possibility of federal union seemed a distant prospect, if not a non-issue altogether. But in the background, something lingered that inevitably brought them together; desire to be independent of England.<sup>27</sup>

As they fought for independence, they relinquished some of their power in favour of victory and union.<sup>28</sup> With the war won, states demanded their sovereignty back and this is what prompted discussions on the federal idea e.g. how much power should the states give up, for example? The federal government appeared weak at the time and to save the federation, a commission was created under the tutelage of George Washington to craft a new constitution. This federal blueprint was soon ratified setting up the

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<sup>25</sup>Ibid p. 21.

<sup>26</sup>Soder H. p. 15.

<sup>27</sup> Peterson (2004) *Federalism*, in Soder H., 'Federalism: A Study of Evolution and Consequences'. Bachelors Thesis in Political Science, Jonkoping University, Jonkoping January 2009 p. 15

<sup>28</sup>Elazar P. 'Federalism: An Overview' p. 22.

federation in 1789. In terms of representation the federal constitution provided for a senate to represent states sovereignty and a house of representatives as the embodiment of the sovereignty of the people.

This system was an expression of the concept of checks and balances that became important in the U.S. federal system as well as other federal arrangements throughout the world.<sup>29</sup> Three powers were created. The Legislature as the first power consisted of a representation of the people and tasked with the responsibility to pass federal law. Here the states and citizens had their chance to influence decision making and thus compensate for the sovereignty they had donated to the federal polity.<sup>30</sup>

The second branch is the Executive that has the President and his Cabinet. The Executive represented the sovereignty of the federal union and acted for and on behalf of the totality of the federal polity. Finally judicial power rested in the Judiciary that acted as the custodian of the federal covenant. The checks and balance mechanism gave each branch an element of power over the other branches and ensured the federal architecture maintained a semblance of balance.

### **2.3.5. Germany: A Modern Federation**

Germany boasts of many sequences of federalism throughout its history. Examples include the empire constitution of 1871 and the Weimar constitution of 1919.<sup>31</sup> However it was in 1949 that the modern German federation was born. To ensure the totalitarianism of the Nazi regime would never be repeated, Allied victory powers saw a federal arrangement as a perfect solution. It guaranteed that power would be dispersed

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<sup>29</sup> Tocqueville, A.D. Quoted in Soder, H. p. 15

<sup>30</sup> Soder, H, Idem p. 16.

<sup>31</sup> Ibid p. 16

and not concentrated in one instance.<sup>32</sup> To achieve this, they eschewed a centralized government and gave power to different regions.

Once the idea of federation gained acceptance, the division of the areas into eleven regions (*landers*) was an already established fact.<sup>33</sup> A Constitution Court was created as arbiter between the federation and the *landers*. Each state had its own constitution, legal services and constitution court. Its representation model is bicameral and special. The House of Representatives (*Bundestrat*) represents states but instead of being elected through universal suffrage, the representatives are appointed by local governments with numbers dictated by population size.

The national government enjoys competence over foreign affairs, immigration, tariffs, foreign trade and infrastructure. States handle education, religion and culture. Such a system admittedly is prone to conflict and the German constitution addresses itself to this possibility. It specifies that should such a conflict arise, and cannot be solved by compromise and negotiation, the federal law overrules state law<sup>34</sup>

#### **2.4. Federalism: Theory and Practice**

In the field of political science and by extension, international relations, federalism has not yet achieved definite status. Yet it is undeniable that the federal idea has developed into an autonomous concept possessing an interpretive criterion of socio-historical knowledge and a guiding criterion of political action.<sup>35</sup>

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<sup>32</sup> Peterson (2004) *Federalism* in Soder, H., 'Federalism: A Study of Evolution and Consequences', p. 17.

<sup>33</sup>Soder, H. p17.

<sup>34</sup>Dikshit, R. 'The Political Geography of Federalism: An Inquiry into Origin and Stability', London, Macmillan 1976, p. 154.

<sup>35</sup> This statement was first pronounced by Proudhon 1974, the founder of the journal. The Federalist.

The concept, like many others in the social sciences, draws intense debate from leading scholars. Is federalism just one way of understanding the problem of enlarged government? Is it the division of jurisdiction and authority in a two tier level government? Or, still, is it a combination of shared and self rule? Lalande<sup>36</sup> posits that is important to acknowledge that federalism as a theory goes beyond a simplistic division of legislative power or arrangement of institutions.

It is important to acknowledge the socio-political element of federalism as advocated for by the personalist movement who stressed the centrality of a federalist way of thinking and acting. Those who argue for a socio-political conception of federalism opine that an adequate understanding of federal government depends on an intimate appreciation of the social behavior which constitutes the character of a federal society i.e. the federal way of thinking and acting.

As de Rougement<sup>37</sup> argues federalism is essentially an attitude comprised of focused basic ideas, diversity, inter-dependence, responsibility and efficiency. To Burgess and Gagnon,<sup>38</sup> federalism is the accumulation of human associations that balances and maintains unity. Robinson and Simeon<sup>39</sup> on the other hand argue that federalism is about the coexistence of multiple loyalties and identifies and about shared and divided authority.

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<sup>36</sup>Lalande, C. 'In Defense of Federalism.' A View from Quebec' Toronto, McClelland and Stewart, 1978, p 132.

<sup>37</sup>De Rougement quoted in Lalande, Ibid. p. 33.

<sup>38</sup>Burgess, M. "*Federalism and Federation: A Reappraisal*" in 'Competing Traditions and Future Directions'; Toronto, University of Toronto Press, 1993, p. 3 – 14, p.4.

<sup>39</sup>Robinson and Simeon quoted in Burgess and Gagnon. Ibid. p. 1

It is quite apparent from the introduction of this chapter and the foregoing arguments that federalism, its meaning and operation to a highly contestable and convoluted concept. An all encompassing meaning of federalism has proved elusive. There is, though a sense of consensus on what the concept addresses generally.

It is the set of ideas and prioritization of federal principles that differs from academic to academic. Among these different conceptualizations, scholars differ on how power is supposed to be shared, degree of autonomy for the units, extent of (de) centralization and the motives for federation. In the contemporary literature, several influential scholars have advanced various postulations of what federalism is in theory and how it should function. It is these contending arguments that the study proposes to briefly address.

More often than not, theorists and scholars of federalism have the tendency of not distinguishing federalism from federation and the concepts, though distinct in reality are always used interchangeably. Burgess<sup>40</sup> draws our attention to the fact that it was not until the 1980s that political scientists began to explicitly distinguish the two concepts. Both concepts are subsets of the federal idea that refers to specific forms of human associations.<sup>41</sup>The federal idea more specifically concerns itself with how to organize human relations in ways that accommodates, preserves and promotes distinct identities.<sup>42</sup>

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<sup>40</sup> Burgess, M. “*Federalism and Federation: A Reappraisal*” in Burgess and Gagnon; ‘Comparative Federalism and Federation: Competing Traditions and Future Directions’, Toronto, University of Toronto Press, 1993, p 3 -4 p. 3.

<sup>41</sup>Ibid. p.3.

<sup>42</sup> Ibid. p. 3

According to Watts,<sup>43</sup> federalism is the normative term that embodies the idea of self rule and shared rule between at least two tiers of government. It perpetuates both union and non-centralization at the same time.<sup>44</sup> Watts then proceeds to refer to federation as the descriptive term that explains the institutional make up of division of powers, written constitution as embodiment of the federal bargain, regional representation and autonomy among others. Federation is therefore the employment of the principles of federalism in order to achieve a balance between unity and diversity.<sup>45</sup>

Watts emphasizes the constitutional autonomy of the constituent units where they derive their sovereign power from the constitution rather than from the other level of government. For the units to be autonomous, therefore the abuse of power or federal outreach must be prevented through separated spheres of competence in an institutional framework<sup>46</sup> i.e. a happy medium must be found between the national and regional governments.

This can only be achieved through representation of the regions at the centre to enhance their role in decision-making. As advanced by Preston King,<sup>47</sup> “the chief distinguishing feature of a federation is the territorial grouping of its citizens and the means by which these groups are represented.” In embodying the idea of balancing and maintaining unity and diversity, the federal principle is realized through institutions and

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<sup>43</sup>Watts,R., ‘Comparing Federal Systems in the 1990s’, Kingston Ontario, Institute of International Relations, Queens University 1996 p6.

<sup>44</sup> Ibid p6

<sup>45</sup> Ibid. p6

<sup>46</sup>Hueglin, I. *Federalism in a Comparative Perspective* in Oling, R.D and Westmacott (Eds) ‘Perspectives on Canadian Federalism’, Scarborough, Prentice Hall, 1998 p. 3.

<sup>47</sup> King, P. “*Federation and Representation*” in Burgess and Gagnon, ‘Comparative Federalism and Federation Competing Traditions and Future Directions’, Toronto, University of Toronto Press, 1993, pp 94 -101,95.

constitution whose form is the federation i.e. while federalism is the idea i.e. the socio-historical interpretive criterion, federation is the form that is the guide for political action.

Several conditions must be fulfilled to maintain the union of the constituent states under the federation and at the same time ensure that considerable non-centralization is guaranteed. This is always the paradox inherent in federal arrangements. It is a delicate balance between union and non-centralization at the same time. Modern federations generally provide for direct lines of communication between the citizenry and all governments that serve them. This also encompasses the relationship between the state and national governments. This direct line of communication is what distinguishes federations from confederations.<sup>48</sup>

For non-centralization to be maintained there ought to be a pluralization of governance where smaller units maintain their autonomy i.e. the right to self rule<sup>49</sup>. There occurs territorial representation of citizens, separated spheres of jurisdiction that is constitutionally entrenched, intergovernmental collaboration and the requirement that only unanimous consent can allow for an amendment to the original contract. This is encapsulated in the motto. “*What pertains to all must be approved by all*”<sup>50</sup>

To achieve successful non-centralization, it is important that the consistent units be fairly equal in population and wealth or to be geographically and numerically balanced in their inequalities.<sup>51</sup> An example is the U.S.A where each geographical section includes

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<sup>48</sup>Elazar, D. ‘Federalism: An Overview’, Pretoria, HSRC. Publishers, 1995, p. 28.

<sup>49</sup>Hueglin, Idem, p. 3.

<sup>50</sup>Ibid p. 28.

<sup>51</sup>Elazar, Idem p. 28.

both large and small states. In Canada ethnic differences between the two largest or richest provinces have prevented them from combining against others.<sup>52</sup>

#### **2.4.1. The Arguments about Motive**

What are the motives that drive previously autonomous polities to seek the union offered by a federal arrangement? This area of the federal debate elicits considerable theoretical arguments amongst scholars of federalism. The frequently discussed motives for federation locate in defense and security goals on one hand and economic and commercial objectives on the other. The former concerns have given birth to defense based unions for military purposes while the latter inform the creation of customs unions and common markets for increased flow of trade and commerce.

It is however the defense motive that initially received a lot of intellectual attention William Riker<sup>53</sup> one of the most influential contributors to the intellectual debate on federalism was quick to reaffirm the primacy of the defense motive in a concept he referred to as centralized federalism in a compound republic.<sup>54</sup> As he propagated his thesis, Riker sought to identify general conditions that made the creation of federations attractive.

This led him to formulate his ‘federal bargain hypothesis’ as follows: Two related events coalesced to make the federal bargain possible (the federal bargain is the initial covenant contract that eventually becomes the constitution i.e. a desire of the part of politicians who offer the bargain to increase territorial control peacefully in the face of an

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<sup>52</sup>Ibid p. 28.

<sup>53</sup> Riker, W. H., ‘Federalism: Origin, Operation and Significance’, Boston: Little Brown and Company, 1964, p. 19.

<sup>54</sup>Ibid p. 20.

external military diplomatic threat or for military / diplomatic aggrandizement and a willingness on the part of the politicians who accept the bargain to forego some independence for union either for protection or to partake in the spoils of the expected aggression of the federation. Riker summarized his motives as the expansion motive and the military condition.

Riker approach reflected the political nature of the time. Economic interdependence had not assumed the primacy it enjoys today. Riker's primary task therefore was to reassert the political. He was convinced that federalism was neither economic nor sociological in nature but a purely political affair.

To Riker, the federations to appear, there was a necessary for the existence of a threat so significant as to compel the actors to strike a bargain that would be mutually beneficial. Without these two necessary political conditions, i.e. a desire to expand and a willingness of regional politicians to accede in spite of provincial loyalties, federations could not come into existence.

Riker's postulation is important not just for its contribution to federal theory but also for the healthy theoretical discourse that is soon generated. He was rewarded for his scientific approach by a swift and uncompromising reaction. Burgess<sup>55</sup> opines that the reality of circumstances that explained the origin of federations had to include economic, commercial and welfare conditions.

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<sup>55</sup>Soder H. *Federalism: A Study of Evolution and Consequences*, Bachelors Thesis in Political Science Jonkoping, University, Jonkoping, 2009, p. 34.

Forsyth<sup>56</sup> is alive to this fact when he says that federations are rarely concerned with defense and security alone; there was an intimate and reciprocal relationship between the goal of security and the goal of welfare and it was impossible to escape this logic of interdependency.<sup>57</sup>

While interrogating Riker's assertions, Birch<sup>58</sup> reviewed the propositions adding that the federal bargain must include the desire to deter internal threats and the willingness to have them deterred. Davis<sup>59</sup> was even more caustic referring to Riker's model as a 'science lab model of analysis' He refuted Riker's two political conditions asserting that if it was to remain valid, then it could never assume a universal application.<sup>60</sup>

He explains that Riker's conditions could be dominant, conspicuous and constant in some instances or they could be secondary, negligible, remote, vague and inconstant in others. He concluded that every theorist should not ignore the military security factor but only Riker had granted it such overriding importance.<sup>61</sup>

In his contribution to the debate, Preston King<sup>62</sup> weighed in with a searing indictment of Riker's hypothesis. He contended that Riker's theoretical claims were intuitively attractive but analytical imprecise and ultimately trivial. King claimed that the

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<sup>56</sup> Forsyth, M. 'Union of States: The Theory and Practice of Confederation', Leicester, Leicester University Press, 1981, p. 160.

<sup>57</sup> Ibid. p. 160.

<sup>58</sup> Birch, A. H, *Approaches to the Study of Federalism*, Political Studies XIV (1) 1966, p. 32.

<sup>59</sup> Davis, S. R, 'The Federal Principle: A Journey Through Time in Quest of a Meaning', London, University of California Press 1978, p. 126.

<sup>60</sup> Ibid p. 132.

<sup>61</sup> Ibid p. 132.

<sup>62</sup> King P. 'Federalism and Federation', London, Croom and Helm 1982, p. 34.

military – security threat was present in all unions and thus not peculiar to federations alone.<sup>63</sup> His calm assurance to Riker was:

“..... in short, it is always possible to play up the case of threat where a federal entity comes into being as also to play it down where federations fail..... To stipulate a condition which is not only necessary for a given development but also for a distinctly opposed or contrary development is not very enlightening”<sup>64</sup>

To complement Riker’s overly political analysis of federation, a comparative analysis of federation reveals other motives that are socio-economic and historical in nature. In the case of Switzerland, Linder<sup>65</sup> identified, economic imperatives, and social values propelled via a fusion of democratic ideals and the federal idea. For Canada, Gibbins<sup>66</sup> provides the motives as; the political stalemate between different provinces, threat from the United States, economic pressures and a noble vision of a national dream.

It is clear that motives for federations are many and varied. No single motive should be elevated above others. While these motives coalesce to convince states to federate, it is also apparent that the military–security complex and economic considerations that assume an element of constancy. In the era of globalized economics, the economic imperative is gaining increased salience. For Switzerland, it was the need to enlarge markets through customs union and a common market. For Australia increased public expectations for improved economic development found answers in federation.

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<sup>63</sup>Ibid p. 34.

<sup>64</sup>Ibid. p. 36.

<sup>65</sup> Linder, W., ‘Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies’, London, Macmillan, 1994 p5.

<sup>66</sup>Gibbins, R. ‘Conflict and Unity: An Introduction to Canadian Political Life’, Scarborough, Ont and Nelson, 1994, p 10 – 21.

In reference to the Australian experience Sawyer<sup>67</sup> authoritatively asserts that "... though some worries about effective defense contributed to the federating state of mind, expected economic advantages were more important". While studying Indian federalism, Burgess<sup>68</sup> points out that "... the goals of economic development and modernization seemed to require a strong central authority capable of directing the economy".

Bryce<sup>69</sup> also added his voice to the debate about motive, He points that "...there are causes and motives that dispose independent and semi independent communities or people living under loosely compacted government to desire closer union..." These, he says, springs from the local position, history, sentiment and economic needs of those among whom the problem arises. While addressing himself to the American federalism, he argues that motivation was accentuated by internal causes, growth in the importance of federal matters such as defense and commerce and the increasing need for regulation uniformity.<sup>70</sup>

In view of the foregoing, it is safe to assert that the motives for federation are not difficult to identify in a general sense but what remains a matter of conjecture is how to prioritize them. In some cases, political factors outweigh socio-economic considerations. In others the reverse may be true. It is certain though, that it is impossible to reduce the variety of factors influencing the federal bargain *a la* Riker, to two simple criteria. The complex nature of each historical experience makes it much more difficult than Riker would want us to believe.

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<sup>67</sup>Sawyer, G. 'Modern Federalism, London', Pitman, 1976, p. 31.

<sup>68</sup> Burgess M. 'Comparative Federalism: Theory and Practice', London. Routledge, 2006.p. 87.

<sup>69</sup> Bryce. J. 'The American Commonwealth Vol. 1', London, Macmillan 1919 p 350 – 351.

<sup>70</sup>Ibid p. 351.

## 2.4.2. The Prerequisites for Federation

The motive to federate is an important ingredient for the process to succeed. But is it sufficient on its own? Are there a common set of preconditions that must exist even in a general way to help actualize the motives? Stuart Mill<sup>71</sup> seems to be in agreement. He identified certain social prerequisites necessary for federation. To him, these sympathies were primarily those of race, language, religion and political institutions. They worked towards building a feeling of identity of political interest. He suggests that territorial magnitude was a certain consideration to be taken into account when a country opted for federalism or not.

Mill proceeds to argue that separate states should not be so powerful as to be able to rely solely upon themselves for military defense otherwise they would be apt to think that they do not gain by union with others. Further, the general inequality of strength should never be too great. He quips:

”... there should never be one state so much more powerful that the rest to be capable of vying in strength with many of them combined. If there be such a one and only one it will insist on being master of the joint deliberations. If there be two, they will be irresistible when they agree and whenever they differ everything will be decided by a struggle for ascendancy between the rivals.<sup>72</sup>

Bryce<sup>73</sup> contributed to the discussion on preconditions by identifying what he called large and rather miscellaneous sources of sympathy. He included local common ancestry, use of common speech, enjoyment of culture, religion and elements of

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<sup>71</sup> Mill, J. S. ‘Utilitarianism, on Liberty and Considerations on Representative Government’, London, J. M. Dent and Sons 1972 p. 367.

<sup>72</sup> Ibid p. 367 – 368.

<sup>73</sup> Bryce, J. ‘The American Commonwealth Vol. 1’ p 357.

compatibility i.e. traits of character, ideas, social customs, similarity of intellectual sophistication, tastes and even trivial usages of daily life. In his opinion;

“.....on one hand there should exist the love of local independence and self government, on the other, the sense of community in blood, language, habits and ideas, a shared pride in the national history and the national flag.”<sup>74</sup>

In other words, political bargains merely fostered and gave legal basis to these forces of sentiment and interests which it finds in being. As a pre-condition, there had to be in existence, a mass of moral and material influences stronger than any political devices.<sup>75</sup>

Dicey <sup>76</sup> considered two basic preconditions for the formation of federations. First was a “body of countries so closely connected by locality, history or the like as to be able to bear in the eyes of their inhabitants, an impress of common nationality <sup>77</sup> and secondly “... the existence of a peculiar state of sentiment among the inhabitants of the countries which it proposes to unite. They must desire union without desiring unity”<sup>78</sup>

This demand for territorial contiguity gets reinforcement from Livingston<sup>79</sup> who focuses on the territorial aspect of federation. He says “... no government has ever been called federal that has been organized on any but the territorial basis. When organized on any other, it has gone by another name.... federation becomes nothing if it is held to embrace diversities that are not territorially grouped....”<sup>80</sup>

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<sup>74</sup> Ibid. p. 357

<sup>75</sup> Ibid 357.

<sup>76</sup> Dicey, A. V., ‘Introduction to the Study of the Law of the Constitution’, London, Macmillan and Co. 1950. p. 141.

<sup>77</sup> Ibid p. 141.

<sup>78</sup> Ibid p. 143.

<sup>79</sup> Livingston, W.S. A., *A Note on the Nature of Federalism* in Political Science Journal, March 1952 81 – 95, 84.

<sup>80</sup> Ibid. p. 88.

A set of general preconditions emerge from the above analysis as to what are likely to congeal with motives to make for a federation. They include but are not limited to commonality of race, language, religion and culture complemented by a physical requirement of territorial contiguity. These preconditions can go only as far as ensuring that the formation of a federation undergoes a smooth process but do not ensure that the union endures. A different set of theoretical and practical conditions are necessary to ensure success of the federation once the new polity has harnessed the best of prerequisites and motive to have in place a federal architecture.

#### **2.4.3. Basis for Success and Failure in Federations**

The presence of these conditions complements the generating basis that is the motive – precondition confluence to maintain the fabric of federation intact. Again the absence or attenuation of these conditions provide for the failure of the arrangement. A clear distinction need to be made between the propulsive forces that make for the formation of federations and those that provide a sustaining power over the long haul. In the words of Maddox<sup>81</sup>, “... For effective operation, the federal union must discover a generating as well as an enduring basis”

He then proceeded to identify three main basis for durability i.e. the constituent parts may not exhibit too much a diversity in size, culture and level of economic and political development. This must receive the reinforcement from forces of spiritual, emotional and ideological character to infuse vigour and sustenance in the struggle for

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<sup>81</sup> Maddox W. p. 1123 – 1124.

survival. Additionally, the central federal authority ought to possess decision-making power independent of the wills of the separate governments.<sup>82</sup>

Kenneth Wheare<sup>83</sup>, in his 1963 study “*Federal Government*” provides the first serious scholarly thinking about the conditions for success and failure of federations. He distinguishes between desire for union and capacity to operate it. Wheare explains that, it is important to identify factors that produced in societies the capacity and ability to form and then operate a federal system of government. He elaborates “... if we know the answers to these questions, we can begin to see what ingredient should be present before it can be asserted that federal government should be adopted for a given territory.”<sup>84</sup>

In support was Riker<sup>85</sup>. In his ground breaking seminal, “*Federalism, Origins, Operations and Significance*” he explicitly underlined the distinction between foundation of federations and their survival “.... it must be therefore, that the conditions of keeping the bargain are different from the conditions of making. We want to know which conditions help keep the bargain after the original conditions disappear”<sup>86</sup> Riker attributes success of federations to the new centralizing elements i.e. taxes, armies and administrative model which ensured the maintenance of constitutional guarantees to the constituent units as significance factors that kept the federal polity alive.

Riker added another set of factors that ensured loyalty/ patriotism was transferred from the state to the nation as present in the American model. In this relationship, the

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<sup>82</sup> Ibid p. 1123 – 1124.

<sup>83</sup> Wheare, K. C. ‘Federal Government’ (4<sup>th</sup> Ed), Oxford, Oxford University Press, 1963, p. 23.

<sup>84</sup> Ibid p. 37.

<sup>85</sup> Riker, W. H., ‘Federalism; Origin, Operations and Significance’, Boston; Little, Brown and Company, 1964 p. 50.

<sup>86</sup> Ibid p. 85.

federal government should not overawe its constituents, but should keep them from overruling its own decisions.<sup>87</sup> These factors include: the role of national institutions e.g. the presidency and the Supreme Court.<sup>88</sup> and a high degree of labour mobility in an expanded single market to weaken state loyalty and ensure the slow evolution of a national culture among others.

Thomas Franck<sup>89</sup> focused his attention on the question of success and failure of federations in the Third World. He explored the federal experiment in the East African Federation, Federation of Rhodesia and Nyasaland and the Federation of West Indies. He concluded that the common factor in failure could be found only in the absence of a significant politico-ideological commitment to the primary concept or value of federation itself<sup>90</sup>. This commitment ensued either from below out of the people's response to an overwhelming common external threat or some other historical challenge to the collective imagination or from above as a consequence of charismatic national leadership.<sup>91</sup>

Ursula Hicks<sup>92</sup> contributed to this theoretical debate through a comparative analysis that was guided by an economic criterion. This choice of criteria was perhaps informed by her background as an economist. She remarked that her main interest in the causes of failure prompted an inquest into the conditions for success. For Hicks, the main

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<sup>87</sup> Ibid. p. 105.

<sup>88</sup> Ibid p 105

<sup>89</sup> Franck, T. M., 'Why Federations Fail: An Inquiry into the Requisites for Successful Federalism'. London, University of London Press, 1968, p. 22.

<sup>90</sup> Ibid p. 177.

<sup>91</sup> Ibid p. 177.

<sup>92</sup> Hicks, U.K. 'Federalism: Failure and Success; A Comparative Study'. London. Macmillan Press 1978, p. vii.

factors, included initial physical and human, endowment, constitutional and institutional organization and incompatibilities and imbalances.<sup>93</sup>

The first set of conditions for success / failure included difficulties of physical environment that made transport and communication problematic and difficult thus hindering interaction and differences of human endowment such as religious, cultural disagreements and large degrees of educational or sophistication variations.<sup>94</sup>

Constitutional and institutional organization analyzed the role the institution framework laid down in the original covenant played in keeping the federal architecture intact. Facilitation of representation, formulation and execution of national public policy and the legal interpretation of the constitution were important. Above all the condition that appeared paramount to Hicks for a viable and durable federalism was the requirement for double loyalty; citizens had to be simultaneously loyal to their own state and the nation as a whole.<sup>95</sup> This could be facilitated through free movement of persons and goods from state to state.

Her final item addressed incompatibilities and imbalances among and within constituent units and entailed religious, cultural and economic imbalance and urban- rural contrasts. Hicks postulates that while such social cleavages may not threaten the unity of a federation they may provide fodder for demands for constitutional adjustments. They could also derive from socio –economic and technological change strong enough to outstrip the initial checks and balances mechanism entrenched in the original federal bargain.

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<sup>93</sup>Ibid. p. 172.

<sup>94</sup>Ibid. p. 172.

<sup>95</sup>Ibid p 173.

Hicks points at fiscal imbalances as the greatest threat to federal stability. This fiscal imbalance may occur at many levels in a federal arrangement i.e. between the constituent state governments, or between the overall federal government and all the units and lastly between the state governments and their local authorities.<sup>96</sup> The possibility and danger of this fiscal inequality was a concern Wheare<sup>97</sup> had addressed years earlier when he argued, “Yet there is one strong element in the tendency of general governments to increase their powers, and that is the financial predominance which it has attained... and the present predominance is likely to be permanent.”

But Wheare does not seem to consider this as necessarily an evil in itself. In fact he betrays his sympathies for such a possibility when he says “... the prospect for federal government ... is in my view that a plurality of jurisdiction be combined with some element of financial unification. This means a modification of the federal principle to some degree through it does not mean a complete denial of federalism”

He was still awake to the dangers that increased financial dependence of constituent units on the national government would present. Federal states may effectively be transformed into unitary ones and while the federation would continue to survive in a legal sense, this existence might practically unreal.

The intellectual debate on maintaining the federal principle provides us with some recurring themes i.e. the conditions for success can be summarized into: a desire for federal union that can be maintained after the formal establishment of the written constitution, dual loyalty of citizens to their own state and a shared attachment to the

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<sup>96</sup>Ibid p. 181.

<sup>97</sup>Wheare, K. C. Idem p. 242 – 243.

federation as a whole, a formal written constitution that provides the institutional frameworks for decision making processes and guarantees to preserve the identity of the constituent units, existence of a viable system of fiscal federalism that addresses important issues of resource allocation and redistribution and the need to keep the federal spirit alive by sustained commitment to the federal idea as a value in and of itself.

On the converse, the conditions of failure would be summarized as the absence of sufficient desire/commitment to the constitutional/institutional accommodation of differences and diversity, introduction of a federal constitution that does not accommodate salient diversities and thus lacks legitimacy from the outset, a weak fiscal federal system, absence or atrophy of the federal spirit and inability of the political elite to work together.

#### **2.4.4. Advantages of Federation**

In the event that the motives, prerequisites and conditions for success dovetail to keep the federation alive and vibrant for the long haul, there are expected benefits that accrue to the constituent units and their subjects. As eloquently expounded by Freeman<sup>98</sup>, federation was a mechanism of compromise between two opposing forces. It provides the advantages of a large state e.g. peace, order and general well being with those of a small state i.e. full development and autonomy of individual citizens. “In his opinion, federation was the most finished and most artificial production of political ingenuity.

Bryce<sup>99</sup> identified what he ascribed as district advantages of federation. i.e.

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<sup>98</sup>Freeman, W., ‘History of Federal Government’, Freeport, Books for Libraries Press, 1977, p3.

<sup>99</sup>Bryce. J., ‘The American Commonwealth, Vol 1’, London, Macmillan and Co. (919, p 341)

Federation provided the apparatus of uniting commonwealths into one nation under one government without compromising their separate administrations, legislatures and local patriotisms.<sup>100</sup> In essence federation was a win – win situation for both parts of the whole. The federation is stronger than each of its individual units yet guarantees the federated units a degree of autonomy. A reciprocal and consultative way of government that is normally beneficial is engendered.

The federated units cannot unilaterally revise their surrender of sovereignty while the federation is constitutionally rendered impotent to use this delegated sovereignty to change or withdraw the level of sovereignty of the federated units. A degree of balanced solidarity is guaranteed. Federation supplied the best means of developing a new and vast country as it permitted an expansion whose extent, rate and manner of progress was truly natural and spontaneous than would be possible in a centralized government.

Federation encouraged self government that stimulates the interest of the people in the affairs of their own neighborhood, sustains the local political life and secures good administration of local affairs by giving the citizens due means of overseeing the conduct of their business. Federations have at least one level of government more close to the people. The lower the level of decision making, the closer the participation in decision making and the greater the chance that challenges will be rapidly tackled.<sup>101</sup>

Federations provide for division and separation of powers that leaves no room for a monopoly of power. This makes federation and dictatorship mutually exclusive. The levels of government must be able to act and decide independently of each other to a

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<sup>102</sup>Ibid p 341  
<sup>101</sup> Ibid p 341

certain degree. In some case, negotiation is the only way to a coherent formulation and implementation of public policy.<sup>102</sup> Federation promotes the ability to compromise, cooperate and co-ordinate.

#### **2.4.5. Handicaps of Federations**

The rosy picture painted above does not mean that federations are immune to the handicaps that ensue in enlarged bureaucracies. Enlarged government that is inherent in federations coupled with the multi-layered nature of its institutions is bound to forment conflict and red-tape. Some of the faults charged on federations as compared to unitary states are identified by Bryce<sup>103</sup> i.e. possibility of a weak home government that suffers from deficient authority over the component parts and individual citizens. This may be borne out of a poorly struck federal bargain that becomes entrenched in the written constitution.

Secondly, want of uniformity among the states in legislation and administration caused by a diversity of conflicting rules.<sup>104</sup> In a centralized unitary system, it is easy for subjects to determine which institutions make the rules and which one executes the same. In a federation, this is more complicated. The division of powers between the federal level and the states gives way to a situation where the legal positions of citizens differ in various federated states.

Finally, the trouble, expense and delay associated with complexity of government. Autonomous levels of government provide for a double system of legislation and administration. There are additional institutions to operate the whole apparatus of state.

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<sup>102</sup> Ibid p 341

<sup>103</sup> Ibid p 241

<sup>104</sup> Ibid p 341

This breeds extra expenses and bureaucracy. Deliberations before and after decision making, the need for consultation and coordination between tiers of government accounts for this administrative bureaucracy.

#### **2.4.6. Conclusion**

It suffices to say that the analysis history and evolution, theory and practice of federation as an idea and federation as its institutional form provide insight into complex system of government with numerous benefits therein. It is a concept that enjoys a vibrant historical heritage. This provides the torch of hope for polities that are intent of forming federated states in contemporary international politics.

The statesmen if they were to strike Riker's political federal bargain or be compelled by economic consideration are beneficiaries of a rich political tradition complete with lessons for success and failure. A delicate balance needs to be struck between union and non-centralization and the checks and balances be upheld to provide their experiments with enduring basis that is the overarching ingredient for successful federation.

## CHAPTER THREE

### History and Progress of the East African Community between 1967- 2014

#### 3.1. Introduction

Regional integration arrangements have been one of the major developments in independent Africa since the early 1960s. These regional communities were viewed in Africa as a commitment to Pan-Africanism, the ideology of African unity. The East African Community is one of them; it collapsed in 1977 due to a variety of reasons.

After nearly two decades, the community was born again but this time it expanded to include Burundi and Rwanda, and possessed of more ambitious aims. Among these objectives is a gradualist integration process that culminates in a Political Federation. This chapter seeks to explore the history and progress of the East African Community from the inception of the first EAC in 1967 to the present day.

#### 3.2 History and Background

Regional integration in East Africa dates back to the colonial period. British colonial interest in the region began in the 1890s motivated by the need to secure control of the Nile headwaters as a conduit for protecting their stake in Egypt and the Suez Canal, monitor Germany pre-World War I imperial plans in the region and to open up the Kenyan hinterland via railways for large-scale agriculture<sup>1</sup>. The Customs Union, the first formal form of economic integration was formed between Kenya and Uganda just before the conclusion of the First World War.

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<sup>1</sup>Katembo, D. Pan Africanism and Development. The East African Community Model, *Journal Of Pan African Studies*, Vol 2, No 4 June 2008 p.108

Before this development, the first step had been laid by the construction of the Uganda Railways in 1894. Other attempts at unified administrative control prior to the customs union were the joint Court of Appeal in 1902. Postal Union in 1911 and later the Currency Board of 1920<sup>2</sup>. The Customs Union in 1917 merged the separate customs unions and by 1923 had abolished tariffs between them.<sup>3</sup>

Tanganyika, mandated to Britain after the defeat of Germany joined the Customs Union in the late 1920s. A second attempt at integrating the region began in 1948 when the colonial government established a quasi federation, complete with a Common Market and joint services. The East African High Commission was formed to oversee the management of these services i.e. the East African Railway and Harbours Administration, the East African Posts and Telecommunication Administration and the Agricultural and Medical Research Services, a high commission of the three territorial governors and a secretariat staffed by technocrats from the region<sup>4</sup>

Legislatively, there was the East African Legislative Assembly that was of limited competence and capacity, a situation Mukandala<sup>5</sup> analyses thus:

“.....this was a political co-operation whose scope was limited only to providing the critical support and context for economic co-operation. It was not expected to develop and evolve into something qualitatively different like a political federation or union”.

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<sup>2</sup>Ojo et al, 'African International Relations', London Longman, 1985, p

<sup>3</sup>Ademola, Y. 'Harmonisation of Laws in Africa', Lagos, Malthouse Press, 1999 p 90

<sup>4</sup>Kasaija, A, Regional Integration; A Political Federation of East African Countries? *African Journal of International Affairs* vol 7 No 1&2, 2004 pp 21-34:25

<sup>5</sup>Rwekeza M *Political Co-operation* in Perspectives On Regional Integration And Co-Operation In East Africa: proceedings of the 1<sup>st</sup> ministerial seminar on East African Cooperation, Arusha, Tanzania, 25-26<sup>th</sup> March 2000 pp 87-106: 95

In 1961 when Tanganyika gained its independence, the East African High Commission was replaced by the East African Common Services Organization<sup>6</sup>. In June 1960, Nyerere had made a famous offer to delay Tanganyika's independence so that all East African states would come into self-rule together as a federal unit. This was the first time the issue of federation was coming to the forefront in the regional integration process.

This desire arose from the Pan-African spirit that had emerged strongly after the 1945 Manchester Congress of the Pan-African Movement. Describing the prevailing circumstances, a Tanganyika cabinet minister is quoted saying..."It appears the tendency of all people, all over the world is to try to come together. In the past this has been because of danger. Now common markets are used as a second best form of achieving unity. We must not miss our chance"<sup>7</sup>

East African leaders then embarked on ways to integrate the region and on 5<sup>th</sup> June 1960 announced plans to form a federation by the end of that year. This dream of an East African Political Federation never saw the light of day. Kasaija<sup>8</sup> opines that the high degree of centralization entailed in a political federation scared off the Ugandans

Mwaseba<sup>9</sup> attributes this failure to the Buganda's kingdom's fear of losing their inherited colonial position in Ugandan politics that made them become hostile to the idea of a political federation. Mukandala, on the other hand, blames the intense competition

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<sup>6</sup>Mwaseba J.J, Proposed Political Federation Of East African Countries; Benefit to Tanzania, USAWC Strategy Research Paper, US Army War College, Pennsylvania 2010, p2

<sup>7</sup>Ibid p2

<sup>8</sup>Kasaija op cit p26

<sup>9</sup>Nye,J.S., 'Pan Africanism and East African Integration', Massachusetts, Harvard University Press,1967, p 175

for dominance and hegemony among the three East African states for the shift from regional integration to a more parochial national focus.<sup>10</sup>In Tanganyika, pressing domestic economic imperatives assumed a higher priority. While Kenya had fewer problems as pertains federation, it could not proceed alone.

In 1967, four years after the failure to form the East African Political Federation, the three countries signed the treaty known as the 1967 Treaty which acquired the force of law on 1<sup>st</sup> December 1967 leading to the formation of the East African Community equipped with six principal organs i.e. The East African Authority, Committee of East African Ministers, the Secretariat, the East African Legislative Assembly, Ministerial Councils and the East African Development Bank.

The new community inherited the whole range of East African Common Services Organization joint services.<sup>11</sup>The newly formed E.A.C placed the Customs Union and the Common Market under one framework and was possessed of a more solid legal foundation that had been lacking in previous attempts.<sup>12</sup>

To correct the Kenya-centric colonial model, the community was headquartered in Arusha, Tanzania while a number of joint services had their headquarters relocated to Kampala and Dar-es-Salaam<sup>13</sup> Katembo<sup>14</sup> argues that, during the British era of occupation of East Africa, the economic and industrial centre of the territory was Nairobi.

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<sup>10</sup>Rwekaza, op cit p 95

<sup>11</sup>Mwaseba op cit p 8

<sup>12</sup>Ojo et al, op cit, p 158

<sup>13</sup>Kamanga ,K, Some Constitutional Dimensions of East African Cooperation, Paper prepared for presentation to “Kituo Cha Katiba” Within the State of Constitutional Development in East Africa Project, Dar-es-Salaam, 2001, p3

<sup>14</sup>Katembo ,B, op cit p 109

Kenya was seen as the most desirable development area for European emigration, based on its abundance of national resource, ideal climate and rich soils.

This led to an economic marginalization of other states in the region. The decision to place the administration of the East African Community away from Kenya seemed a correction of the British model and a move to stem an anti-Kenya/Nairobi feeling from other members. Kamanga avers that these administrative micro-units and adjustments were established and distributed throughout the member states to illustrate the importance of all regions within and towards the integration effort.<sup>15</sup>

The 1967 Treaty was hailed as a forward-looking comprehensive and courageous document crafted with political wisdom and statesman-like vision. Yet barely a few years later the community it had created was beset by serious challenges leading to its eventual demise in 1977. Different scholars have advanced a variety of explanations for the collapse of the EAC (1967) Katembo attributes the collapse to a lack of political will, insufficient involvement of citizens, perceived unequal distribution of gains, inter-territorial trade imbalances, currency disharmony and constitutional impediments.<sup>16</sup>

The situation was made worse by a lack of compensatory mechanism to ameliorate this skewed distribution of benefits. Reith and Boltz<sup>17</sup> squarely blame what they describe as the purely intergovernmental/interstatal nature of the EAC for its collapse. Generally, the causes of the demise can be classified as political, economic and institutional. Politically the three East African states pursued divergent political

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<sup>15</sup>Kamanga, K., Some Constitutional Dimensions of East African Co-Operation. Retrieved august 8,2014 from <http://www.kituoachakatiba.co.ug/constm%202001%20%20khoti%20EAZ.pdf>

<sup>16</sup>Katembo, op cit p 110

<sup>17</sup>Reith.S. and Boltz, M. The East African Community :Regional Integration between Aspiration and Reality, Konrad-Adenauer-Stiftung International Reports, KAS, Dar-es-salaam, 2011 p 93

philosophies. Kenya maintained the capitalist trend bequeathed to it by its colonial past, Tanzania turned purely socialist while Uganda had the Common Man's charter as its main philosophical blueprint.

Katembo blames Idi Amin's forceful seizure of power in Uganda for exacerbating the nascent political tensions prevailing in the region at the time<sup>18</sup>. His egomaniacal personality, theatrics and open assertion of power in the region soured relations further.<sup>19</sup> Economically, forces of economic nationalism took over. The members withdrew from a common currency and central bank. Tarrosy attributes the economic problems for the collapse to the inability to achieve equitable development and distribution of benefits<sup>20</sup>.

At the root of the increasing differences was the fact that benefits of membership went disproportionately to Kenya which dominated intra-regional trade in finished products.<sup>21</sup> Gradually, inter-state trade declined, serious imbalances were recorded in interstate remittances and there occurred declining foreign direct investment caused by the perceived economic instability.

Institutionally, the micro management of East African Community affairs by officials from member states and the accompanying lack of supranational capacity

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<sup>18</sup>Katembo, op cit p 110

<sup>19</sup>Ibid p 110

<sup>20</sup>Tarrosy, I. Local Society and Democratization in Modern Tanzania, Ibadan *Journal of Social Sciences* vol 2, NO 1, Ibadan September 2004 pp 107-117

<sup>21</sup>Tordoff, W, 'Government and Politics in Africa' 4<sup>th</sup> Edition, Houndmills, Basingstoke, Palgrave Macmillan 2002 pp 240

provided a recipe for organizational chaos and confusion.<sup>22</sup> Slow decision making by the Council and non-implementation of decisions added to this institutional morass.

Collectively, a lack of common ideology, economic strategy and institutional deficiencies conspired to kill the first dream of pan-East African integration. Things came to a head in June 1977 when the partner states withheld approval for general fund services budget for the year beginning July 1977. This heralded the official demise of the East African Community (1967).<sup>23</sup>

The collapse of the E.A.C in 1977 was widely regretted, particularly since it was considered the world's model of success in regional integration. Kasaija<sup>24</sup> while quoting Ademola agrees ".....in fact it has been said that the East African community effort was the most advanced regional idea at integration in the whole of the developing world. At its height, the E.A.C was in all but name a federal government. It operated over thirty common services"

### **3.3 The New East African Community (2000): Development and Progress**

Kwarteg<sup>25</sup> notes that the imperative to integrate did not die with the collapse of the EAC (1967). He bases this on the fact that most African economies are too weak to stand up to global competition The rebirth of the EAC has its roots in the Mediation Agreement for the Division of Assets And Liabilities of the defunct E.A.C.<sup>26</sup> It had a provision

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<sup>22</sup>Katembo op cit p 110

<sup>23</sup>Ibid p 110

<sup>24</sup>Ademola, Y op cit p 90

<sup>25</sup> Kwarteg, C.O., 'Africa and European Challenges, Survival in a Changing World', Aldershot, Arebury 1997. P 29

<sup>26</sup> Rwekwza, op cit. p 97

stating that the states agree to explore and identify further area for further co-operation and work out concrete arrangements for such co-operation.<sup>27</sup>

It was not until 1991 that the concrete arrangements began to crystallize when a Summit of Heads of States in Nairobi issued a formal communiqué for the revival of the E.A.C.A committee of foreign ministers was appointed to thrash out the details. In November 1993, a Permanent Tripartite Commission was created in Arusha by the Heads of States. November 1994 saw the first protocol for the establishment of an East African secretariat being signed in Kampala.

The Secretariat was finally established in March 1996. In 1998, a draft treaty establishing the East African Community was published. It was subsequently circulated in the member states for debate culminating in its signing on 30<sup>th</sup> November 1999. The treaty has been viewed as unique in Africa and perhaps the whole world as it aspires to form a political federation as the penultimate stage of a series of economic integration initiatives.

This gradual process involves the integration of major economic system i.e. Customs Union. Common Market, Monetary Union and eventually the Political Federation of East African states. It provided that a special protocol be signed to formalize the launch of each of these stages. The protocol to establish the Customs Union was signed in March 2004 and came into force on 1<sup>st</sup> January 2005.

To avoid repeating old mistakes, the new EAC encouraged pooled regional resources, regional free trade and co-operation in infrastructure via full political,

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<sup>27</sup>Kamanga op cit p 15

economic and cultural integration. Areas of mutual co-operation include commerce, technology, health, environment and tourism. Co-operation in political matters cover defence, foreign policy, security and judicial matters.<sup>28</sup> The new treaty set out timelines for the achievement of various stages of the integration process.

### **3.4 Objectives**

The broad objective of EAC as stipulated in Article 5 of the Treaty is to develop policies and programmes aimed at widening and deepening cooperation among the Partner States in political, economic, social and cultural fields; research and technology, defence, security and legal and judicial affairs.

Article 5 of the Treaty stipulates that the Community shall ensure the: attainment of sustainable growth and development of the Partner States, strengthening and consolidation of cooperation in agreed fields, promotion of sustainable utilization of the natural resource base in the region. Other aims include, strengthening and consolidation of the long standing political, economic, social, cultural and traditional ties, promotion of people-centered mutual development, enhancement and strengthening of partnerships with the private sector and civil society, and mainstreaming of gender in all its endeavours among others

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<sup>28</sup>Africa Business Pages. The East African Community East African countries establish the EAC to boost regional trade-retrieved July 28,2014 from [http:// www.africa-business.com/features/eac.htm](http://www.africa-business.com/features/eac.htm)

### 3.5. Structure

The EAC Treaty<sup>29</sup> sets out the governance structure of the Community and confers defined powers to distinct organs of the Community. Among the organs include the Summit, the Council, the East African Court of Justice, the East African Legislative Assembly and the Secretariat. The Summit comprises the Heads of State or Government of the Partner States of the EAC, thus membership to the Summit is automatic upon election of a person as the President of the Partner State.<sup>30</sup>

The Summit plays the lead role in ensuring the sustenance of the Community. It gives directions and impetus to the development and achievement of the objectives of the Community; it reviews the state of peace, security and good governance within the Community with an ultimate aim of realizing a Political Federation for the Partner States.

It also considers annual Council progress reports and such other progress reports under the EAC Treaty.<sup>31</sup> The Summit has its Chairperson, which position annually rotates among the Partner States.<sup>32</sup> The Summit reaches a decision by consensus and it has the discretion to determine its own rules of procedure.

The Council is a policy organ of the EAC comprising the Ministers for regional cooperation of each Partner States. However, each partner State has the discretion to determine which other Ministers constitute the Council.<sup>33</sup> The Council is mandated to promote, monitor and keep under constant review the implementation of the

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<sup>29</sup>The Treaty for the Establishment of the East African Community, Art. 10

<sup>30</sup>Ibid, Art. 10

<sup>31</sup>Ibid, Art. 11

<sup>32</sup>Ibid, Art. 12

<sup>33</sup>Ibid, Art. 13

programmes for the Community and ensure the proper functioning and development of the EAC<sup>34</sup>

Working in concert with the Council of Ministers is the Co-ordination Committee which essentially comprises Permanent Secretaries responsible for regional co-operation in each

Partner States.<sup>35</sup> The Co-ordination Committee recommends to the Council, the Sectoral Committees necessary for the achievement of the objectives of the Treaty.<sup>36</sup> The Sectoral Committees prepares and monitors the implementation of the programmes of the Community with respect to its sector.<sup>37</sup>

The East African Court of Justice is the judicial organ of the EAC with the mandate to ensure the adherence to law in the interpretation and application of the EAC Treaty.<sup>38</sup> The Judges of the Court are appointed by the Summit from among the names nominated by the Partner States and in consideration equal Partner States representation.<sup>39</sup>

The East African Legislative Assembly comprises such members elected by the National Assembly of the Partner States<sup>40</sup> and it has the mandate to liaise with National Assemblies on matters relating to the Community; debate and approve the EAC budget;

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<sup>34</sup>Ibid, Art. 14

<sup>35</sup>Ibid, Art. 17

<sup>36</sup>Ibid, Art. 20

<sup>37</sup>Ibid, Art. 21

<sup>38</sup>Ibid, Art. 23

<sup>39</sup>Ibid, Art. 24

<sup>40</sup>Ibid, Art. 50

and consider annual reports on the activities of the Community referred to it by the Council<sup>41</sup>

The Secretariat is the executive organ of the EAC with the duty to do all the correspondence for the community as well as to study and implement programmes for the development of the Community<sup>42</sup>The Secretariat has a Secretary General appointed by the Summit who is the principal executive officer of the Community and the head of the Secretariat.<sup>43</sup> The Secretary General is assisted in his/her mandate by Deputy Secretary, Counsel to the Community and such officers as decided by the Council of Ministers.

The EAC now in its second decade has achieved a lot during this time. The community has grown from three Partner States:-Kenya, Uganda and Tanzania to five countries including Rwanda and Burundi. Other applications have been received which attests to the EAC's attractiveness. The Republic of Southern Sudan has applied to join the EAC and the process of evaluating her admission is ongoing<sup>44</sup>

The expected entry of oil-rich but infrastructure-poor South Sudan creates a new economic bloc with almost 100 million people and gives economies of scale to plans for the Lamu Port and South Sudan Ethiopia Transport (LAPSSET) corridor. Should Ethiopia join the coalition, it would create an economic bloc with a population larger than that of Nigeria.

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<sup>41</sup>Ibid, Art. 49

<sup>42</sup>Ibid, Art. 71

<sup>43</sup>Ibid, Art. 67

<sup>44</sup> Daniel K. Kalinaki "**Members pull apart: Is this the beginning of the end of EAC?**" The East African Posted Saturday, November 2 2013 at 16:00 retrieved from <http://www.theeastafrican.co.ke/news/Is-this-the-beginning-of-the-end-for-EAC/-/2558/2057530/-/item/0/-/7fic0fz/-/index.html>

As has been argued before, the EAC treaty outlined a gradualist, new-functional process through a multi-stage economic integration. The discussion that follows hereafter will assess developments and progress made under each of these stages.

### **3.6. Economic Integration as Basis for the Political Federation**

#### **3.6.1 Customs Union**

A customs union can be defined as an association formed when two or more sovereign states agree to eliminate or reduce trade barriers among themselves and adopt common trade policy towards outsiders. Customs unions are created for purposes of lowering costs of imported goods, enlarging markets and stimulating commerce and industry within the particular union.

The Treaty for the establishment of the E.A.C envisaged the creation of a single market and investment area in the region through harmonized policies that would enhance cross border movement of people and goods, develop infrastructure and improve technological and human resource development. Even prior to the signing of the treaty a number of achievements had been realized.<sup>45</sup> Among them was confidence building at the EAC Secretariat, harmonization of policies e.g. convertibility of currency, synchronization of budget reading and preferential tariff treatment

The Custom Union Protocol was ratified on 30<sup>th</sup> November 2004 to be implemented over a five year period. As part of this protocol, members agree to resolve the sticky issues of multiple membership in regional blocs and eliminate non-tariff

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<sup>45</sup>Kibua, T.N, 'Fast- Tracking East African Integration. Assessing the Feasibility Of A Political Federation by 2010',CHR,Michelsen Institute, Bergen, 2005 p11

barriers (NTBs) <sup>46</sup>The signing of the East African Community Custom Union (EACCU) protocol represented a significant take-off for the community. Its implementation started in January 2005 with several ambitious objectives among them the liberalization of interregional trade regime on the basis of mutual benefits, promotion of efficiency in production within the community, the promotion of economic development and industrial diversification.

The Protocol provides for the establishment of a Common External Tariff (CET), trade remedies and the prevention, investigation and suppression of customs offences and the collection of customs duty through a standardized evaluation of goods.<sup>47</sup> The protocol has been criticized for several weakness that has repeatedly hampered its effective implementation e.g. while internal tariff barriers had been eliminated, NTBs e.g. customs bureaucracy, immigration, administrative regulations (licensing) have proved difficult to eliminate and have negatively impacted on trade.

The Protocol did not expressly encompass the private sector, the impact of imperfect competition and dynamic gains and losers were not incorporated. Other problems facing the EACCU included the failure to resolve key issues such as the protection of the manufacturing sector disharmony in tax subsidies and unstable micro-economic environments.

Lastly, membership in multiple regional organizations remains unresolved.<sup>48</sup> While this problems are not insurmountable and do not threaten the viability of the EAC

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<sup>46</sup>Ibid p 12

<sup>47</sup>Ibid p 12

<sup>48</sup>Ibid p 12

they act to slow down the achievements of targets as specified in the timelines. Considerable progress has been witnessed towards achieving some targets of the E.A.C.C.U Protocol.

### **Establishment and Administration of the Common External Tariff (CET)**

The Customs Union Protocol established a three-band Common External Tariff (CET) with a minimum rate of 0%, a middle rate of 10% and a maximum rate of 25%. The highest CET rate of 25% is to be reviewed by the partner states after a period of five years and possibly be reduced to 20%. This (CET) is based on the international classification of goods also known as the Harmonized System (HS).

In line with World Customs Organization (WCO), changes were made to the Harmonized System (HS), the EAC CET was also updated and the EAC CET Version 2007 adopted. Implementation of the 2007 version commenced on 1st July 2007. Internationally, amendments to the HS arose from changes in technology, patterns of international trade and environmental concerns which result in creation and/or deletion of some tariff lines.

In an effort to ensure that the EAC CET as a tariff policy supports the objectives of liberalizing intra-regional trade in goods and promoting efficiency in production within the Community, the Council, in exercise of powers conferred by Article 13 of the Protocol reviewed CET rates on some of the tariff lines.

The review was based on recommendations from research and analysis undertaken by the Secretariat and experts from Partner States to analyze demand, production capacity, and potential supply in the region and price competitiveness.

### **3.6.2. Common Market**

This was the second stage after the actualization of the EAC. It entails deeper synchronization and coordination of macro-economic policy. The Treaty in article 5 (2)<sup>49</sup> places the easing of cross border movements of citizens and goods, harmonization and maintenance of uniform employment and labour policies as important pre-requisites for the attainment of the common market.

The basic elements of a common market include: Free movement of persons, labour, services and right of establishment and residence. The Common Market Protocol allows workers from any Partner State to accept employment within any other EAC country. They cannot be discriminated against on the basis of their nationality. Furthermore, a worker will have the right to social security benefits and can be accompanied by a spouse and child. Furthermore, employment in the public service is excluded unless permitted by the Partner State.

It is important to note that the Republics of Kenya and Rwanda have abolished work permit fees for East African nationals working in the two countries<sup>50</sup>. Kenyans, Ugandans and Rwandans working in Tanzania have to pay \$2,000, the highest in the

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<sup>49</sup>EAC Treaty, Article 5 (2) 1999

<sup>50</sup>Washington Akumu “Unrealized economic benefits of a working regional bloc: Planning versus reality” The East African Posted Saturday, November 2 2013 at 16.00 retrieved from <http://www.theeastafrican.co.ke/news/Unrealised-economic-benefits-of-a-working-regional-bloc/-/2558/2057508/-/9tujpuz/-/index.html>

region, for the all-important document, and then wait five months to get it. Uganda abolished work permit fees for Kenyans and Rwandan citizens from January 1, 2014.

The Republic of Rwanda also enacted an immigration law (No 19/2011) which encompasses all provisions of the Common Market Protocol with regard to the free movement of persons and labour as well as the Kenya Citizenship and Immigration Act No. 12 of 2011 and Kenya Citizens and Foreign Nationals Management Act No.31 of 2011. The Republics of Kenya, Rwanda, Burundi and Uganda have agreed to the use of IDs for their nationals for travel between the four Partner States

### **Free Movement of Capital within the Community**

Under the Common Market Protocol, Partner States- Kenya, Rwanda, and Uganda liberalized capital regulations and agreed to remove all barriers and restrictions on the movement, sale, investment and payments of capital and plans for the gradual removal of capital controls are under way in Tanzania. Partner States also agreed to remove any discrimination based on the nationality or on the place of residence of the persons or on the place where the capital is invested. Kenya, Rwanda and Uganda have already opened up their capital accounts.

Nonresidents have full access to capital markets, treated equally with residents for all transactions. The Nairobi Securities Exchange, Uganda Securities Exchange, and Dar-Es-Salaam Stock Exchange signed an MOU in 2004, establishing the East African Stock Exchanges Association (EASEA). Burundi and Tanzania are expected open up within the period 2010–2015. The Rwanda Capital Advisory Council joined the organization in 2009.

Uganda has also adopted the EAC policy of recognizing EAC citizens as domestic investors with respect to taxation. Furthermore, Rwanda and Kenya implemented the policy of reserving a minimum of 40 percent of privatization of initial public offerings to EAC citizens

### **Free Movement of Stock**

There is free movement of goods between the Partner States which allows intra-trade in goods locally produced within the region. Also providing legal basis of the operations of the Common market is the East African Community Protocol on Standardization, Quality Assurance, Metrology and Testing; which are in operation

Fast-moving goods like oil, maize, oranges and cement were the major goods traded, as well as clothing, black tea and liquefied natural gas. The figures do not include informal cross-border trade, which has been estimated to be as much as 40 per cent of formal trade. The EAC statistics indicate that the growth was driven by the increase of imports and exports that went up by 20.7 per cent and 23 per cent, respectively.

Total intra-regional exports increased from around \$500 million in 2000 to \$3.2 billion in 2012, an increase of over 600 per cent. Exports from Kenya and Uganda to South Sudan have more than doubled in the past 10 years and are currently valued at over \$200 million and \$180 million respectively annually. South Sudan has 85 per cent of Sudan's oil output, estimated at about 520,000 barrels per day, which offers the EAC a unique opportunity to have Juba as a partner state<sup>51</sup>.

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<sup>51</sup> Joint Report "EAC in court over possible admission of Juba" The East African Posted Saturday, November 2 2013 at 16:00 retrieved from <http://www.theeastafrican.co.ke/news/EAC-in-court-over-possible-admission-of-Juba/-/2558/2057496/-/nwgqx3z/-/index.html>.

In 2013, President Uhuru Kenyatta removed all the roadblocks that were previously delaying movement of cargo along the northern corridor following concerns from the neighbouring countries. The president of Kenya decided to initiate measures that will reduce the time taken to move goods from the Mombasa and Kigali from previously 22 days to 8 days.

### **Harmonizing operations in the Ministries of Finance and Central Banks**

The harmonization of monetary and fiscal policies have included convertibility of the partner states' currencies, harmonization of banking rules and regulations. Most central banks have improved their conduct of monetary policy in terms of communication, transparency and liquidity forecasting, harmonization of Finance Ministries' pre- and post-budget consultations, regular sharing of information on budgets, and reading of budget statements on the same day.

In capital markets, there have been changes in the policies and trading practices and regulations in the three stock exchanges and the exchange rate in all partner States is fully market determined. Most Partner States have also met the new targets outlined in the revised EAC macroeconomic convergence criteria, particularly in relation to price stability, official foreign currency reserves, real economic growth, the soundness of the financial sector and debt management.

### **Harmonization of the EAC axle load (vehicle weight) limit**

Kenya allows a cargo load weighing a maximum of 48 tonnes on its roads. However, the ministry of Transport and Infrastructure is in the process of reviewing the same to 52 tonnes. Vehicles using roads in the country are required to have a maximum of three axles. Rwanda and Burundi permit an axle load limit of 53 tonnes while Uganda

and Tanzania have already adopted the 56 tonnes. Other achievements include: harmonization of standards for goods produced in East Africa, reduction of national trade barriers, and implementation of preferential tariff discount and mutual recognition of health certificates issued by national bodies for goods traded in East Africa

In spite of such achievements the common market continues to face hurdles in its implementation. Among these are delayed negotiations on the protocol for the free movement of people and the five year development strategies, nationalistic chauvinism, unequal human resource development capacity and the lack of harmonized labour regimes.<sup>52</sup>

The issue of labour mobility as a pillar of the common market remains a fundamental issue and was not adequately addressed in the protocol. There exist varying degrees/levels of labour productivity and unemployment rates in member states. Allowing comprehensive labour mobility without uniform standards raise the fear of rising unemployment in low productivity countries which works counter to the objectives of regional integration<sup>53</sup>.

A protocol to guide the attainment of labour mobility continues to pose a senior challenge to the entire process even with the progress already made by the Coalition of the Willing (COW). Kibua and Tostensen<sup>54</sup> in their interviews with the stakeholders, civil servants and technocrats in the member states, conclude that there is need to resolve several unattended issues in the common market protocol including short term

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<sup>52</sup>Kibua of cit p 13

<sup>53</sup>Report of the Team of Experts on Addressing the Fears, Concerns and Challenges of the East African Federation, EAC Arusha 2011. P 13

<sup>54</sup>Kibua and Tostenten op cit p 14

distribution of benefits, need to cushion against shocks of implementations arising out of country specific tax laws.

In their conclusions, Kibua and Tostensen<sup>55</sup> argued that the Common Market and Customs Union are beneficial to the region and requires the support of both the political elite and the general citizenry. Serious effort need to be made to work on economic policy convergence, modalities to address the asymmetry existing in member states and the building of a common institutional framework to facilitate market integration

### **3.6.3. Monetary Union**

The 2001-2005 East African Community Development Strategy placed priority on the Monetary Union to overcome country-specific weakness, lead to greater macro-economic stability and to spur rapid economic growth in the region. Among the characteristic of a successful monetary union as a single or several convertible currencies determination of monetary policy or a federal level leaving no room for national monetary policy with a common post of external reserve for members. It is a situation where a uniform monetary policy prevails<sup>56</sup>

For Chipeta and Mkandawire,<sup>57</sup> Monetary Union would entail a common currency and the existence of a permanently fixed and rigid exchange rate, a common fixed and monetary policy, existence of a regional monetary authority and a common development bank. The fast tack committee identified areas of priority that needed to be addressed

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<sup>55</sup>Ibid p 1

<sup>56</sup>International Monetary Fund Africa Department, Monetary Union among members of the East African Community: Preconditions And Policy Directions: Washington DC, 2004

<sup>57</sup>Chipeta, C, and Mkandawire, M.C,' Monetary Harmonization in Southern Africa', African Economic Research Consortium, Research Report. NO 30, 1994, Nairobi,1994, p 26

towards the achievement of the monetary union i.e. need to merge the five central banks into one and empowers it as the regional monetary authority.

Secondly there is need to create a common currency for members, develop convergent and similar macro-economic policies e.g. inflation targets, GDP Growth rates fiscal deficits balance of payments, exchange rates and financial sector stability.<sup>58</sup>The achievement of monetary union comes up against serious impediments i.e. whether it should be implemented gradually or through a shock therapy approach.

The shock approach will implement a quick move to monetary union with a corresponding strong structural and institutional adjustment while the gradual approach will allow for lags towards achieving objectives and institutional instruments. Secondly the countries have varying exchange rates regimes. The IMF while studying the prospects of a monetary union for East African states concluded that the member states are diverse and conditions for achieving monetary union are far from being fulfilled.<sup>59</sup>. It is not only on the economic objectives that the EAC has made considerable progress .Since it's inception, the Community has several socio-cultural, institutional and political achievements to boast of:

### **3.7. Social/Cultural Achievements**

#### **Strengthening of an East African Identity**

There have been developments designed to foster the feeling of integration among the people of the EAC and to facilitate an East African identity. These have included: the

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<sup>58</sup>Kibua and Tostensen, op cir. P 17

<sup>59</sup>Ibid p 18

introduction of the East African Community flag and the launching of an East African anthem.

**Operationalization of the East African passport – (light blue in color)**

The East African passport is issued in all partner states and is designed to ease border crossing -valid for travel only within the countries of the East African. The holder of an East African passport has multiple- entry visa to any East African country for a period of six months without the need to stamp his/her passport and is renewable in any partner states.

**Implementation of cross-border disease control programs (EAIDSnet) East African Integrated Disease Surveillance Network**

This is a collaborative effort of the Ministries of Health of Kenya, Tanzania, and Uganda as well as national health research, and academic institutions. An important aspect of this network is to improve the quality of data on communicable diseases and the flow and sharing of information to improve the health of the East African population.

Other Social/Cultural Achievements include:

Implementation of seven-day grace period for personal motor vehicles crossing national borders of the EAC Partner States, establishment of special immigration counters for East Africans at ports of entry, issuance of temporary travel documents to facilitate travel within the region by EAC citizens and the harmonization of immigration forms at ports of entry.

Other achievements include abolition of student visas for East Africans, standardization of university fees for citizens of East Africans and implementation of student and lecturer exchange programs at university level, harmonization of procedures

for granting work permits, conducting annual EAC Students Essay Competition and conducting of the annual EAC Military Sports and Culture Week.

### **Institutional Achievements**

The first achievement of EAC was to put in place the organs of the community as stated in the EAC Treaty .The East African Court of Justice and the East African Legislative Assembly were formally launched in November 2001 and became operational pillars of the EAC. Other institutions established were:

Establishment of the East African Science and Technology Commission, the East African Kiswahili, Commission of the East African Health Research, Commission of the EAC Civil Aviation Safety and Security Oversight Agency and the EAC Chief Justices Forum.

### **Political/Security/Defence**

Since the signing of the Treaty for the Establishment of the East African Community in 1999 the Community has witnessed, joint military exercises by EAC Partner States Defence Forces, establishment of fora for Chiefs of Police, Directors of CID and Directors of Operations and Intelligence to coordinate peace and security matters and joint patrols, sharing of criminal intelligence and surveillance to combat cross-border crime

### **3.8 Political Federation**

This would be the penultimate stage of east African integration. The proposed East African Political Federation would be a compound polity with divided responsibility between regional and national tiers of government. Its nature would be a matter of

constitutional design arising out of negotiation among stakeholders<sup>60</sup>. The very design of the federation would be critical for its survival particularly in how it would address the issues of distributing costs and benefits of integration.

There would be need to legitimize the political federation through input from the citizens and provide mechanisms for representation, consultation, policy making and conflict resolution, Towards expediting the attainment of political federation, the heads of state have repeatedly expressed their support and commitment to the principle of accelerating and fast tracking the political federation.

The Heads of States agreed to appoint ministries solely responsible for EAC affairs and create the position of deputy secretary-general in charge of co-coordinating the Fast Track mechanism of the federation. Kibua opines that the fast track mechanism was politically motivated by people looking for political gains and that majority of politicians driving the process are still nationally and not regionally oriented. As a consequence parochial issues remain supreme over EAC matters<sup>61</sup>.

Waruhiu<sup>62</sup> feels that for the federation to be a success, the community needs to embrace the building bloc approach. She acknowledges that the bloc-by bloc approach is not purely technical in nature but essentially political since most of the decisions regarding attainment and the progress of the different stages of integration are still made by politicians influenced by political considerations.

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<sup>60</sup>Ibid p 19

<sup>61</sup> Muga S.O, Interview with Hon Waruhiu R, Former Member Of E.A.L.A and Member of the Team of Experts on addressing Fears, Challenges And Concerns of the Proposed East African Political Federation, August 2014

<sup>62</sup>Muga S.O Interview with Dr Kibua T.N Economic Analyst And Author, August 2014

It was the achievement of these ambitious initiatives that would serve as the basis of the political federation. This paper will now devote its next chapter to an in-depth discussion of the proposed political federation .it's prospects, anticipated benefits, model, challenges and the extent to which the challenges have been addressed.

## **CHAPTER FOUR**

### **The Proposed East African Political Federation**

#### **4.1 Introduction**

The Treaty of the East African Community provides for the formation of a Political Federation as the end stage of integration. This chapter examines the prospects and challenges that face the proposed federation. Its analysis is in response to answering study objective three that addressed itself to looking at the prospects and challenges. This chapter then offers an overview of the proposed model of the federation and proceeds to highlight the progress made by the community towards addressing the challenges

#### **4.2 Rationale for the Federation**

The rationale for the East African Federation is the shared common history of the East Africans and a desire to safeguard it and consequently pursue a joint agenda in the face of the challenging global circumstances.<sup>1</sup>The East African citizens have close historical, political, socio-economic and cultural-linguistic linkages stretching into generations.

The need for a political federation has been necessitated by the realization that in spite of individual national identity and diversities, deeper integration would help build an East African spirit necessary for survival in a competitive and globalised world. A federation would enhance the entrenchment of such values as freedom, equality, respect for the rule of law and constitutionalism.<sup>2</sup>

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<sup>1</sup> East African Community A Draft Model of the East African Political Federation, Arusha, 2012,p3

<sup>2</sup> Ibid,p6

A federation would equip the region with a capacity to manage its resources better, safeguard social, political and economic gains and effectively take part in regional and global affairs. There would be more peace, security stability, good neighbourliness and pacific dispute resolution. The Pan African goals, objectives would also find fruition in a properly crafted and successful East African Federation.

Museveni<sup>3</sup> advances a passionate argument as to why economic and political integration are interlinked. He asserts that economic integration is slow without a political superstructure to provide direction and coordination. To him, political integration quickens economic integration because it is easier to coordinate one planning unit than several sovereign ones.

He says that the economically weak nature of East African states makes it imperative to form a larger polity capable of improving its military and economic weight in the world i.e. The Political Federation will represent EAC as a bigger unit in the global economic arena with a united and stronger voice. He supports this by arguing that investors would be more attracted to a united East Africa than to individual states. A bigger and more powerful defence potential would guard the region from foreign interference.

In his opinion, Museveni says individual East African States do not possess such a defence capacity. The federation will help address the need for a central authority to coordinate and implement decisions made by various organs of the East African Community and to ensure that they are done efficiently and effectively, enhance the

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<sup>3</sup> Museveni, Y. 'Towards a closer Cooperation in Africa', Kampala, 1998,p12

consolidation of what has so far been achieved in the integration process and be used as a mechanism for channeling the benefits of economic integration more equitably among the Partner States<sup>4</sup>.

The Political Federation as a central political authority will generate savings through consolidating rather than duplication of efforts, ensure higher revenues from the bigger unit that will be more equitably accessible to all citizens under a Political Federation and enable the people of East Africa to harness diversity for a common goal and re-unite erstwhile cross border communities.

A Federation will minimize the occurrence of conflicts in the region as well as enhance and legitimize the participation of Partner States in conflict management in the region whenever they occur and promote better management and utilization of shared natural resources, better environmental management and the promotion of tourism and investment.<sup>5</sup>

#### **4.3. Purpose and Objectives of the Federation.**

The Federation aims are in conformity and perhaps borrow from the reasons advanced above as justification for the federation. The EAC explains that the Political Federation aims to unite the partner states into one Federation state having a unified and coordinated political authority and capable of pursuing common political, security, social and economic interests<sup>6</sup>.

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<sup>4</sup>East African Community, Strengthening Popular Participation in the East African Community: An E.A.C Guide to E.A.C Structures and Processes, Arusha, 2012, p 32

<sup>5</sup> Ibid, p33

<sup>6</sup> Ibid, p 33

It aims to consolidate gains and benefits accrued from the preceding economic phases of the integration process, strengthen policy implementation and effectively mobilize and utilize regional resources for a quicker economic and social transformation for the East African people.<sup>7</sup>

The Federation aims promote peace, and stability in the region, uphold respect for human rights, gender equality and transparency and accountability. It provides an opportunity for East African partner states to achieve a cohesive economic and political capacity to command a bigger voice in international relations.<sup>8</sup>

A Federation will enable a systematic and planned industrialization and ensure equitability in distributing benefits gained from economic integration prior to Federation.

#### **4.4 Legal Capacity of the Federation**

The draft proposed that the Federation enjoy international legal personality complete with perpetual succession. The partner states are expected to form the Federal constituent units and as a consequence cease to enjoy individual legal capacity.<sup>9</sup> However, federal states will retain authority in respect to non-federal matters. Such non federal matters include competences over education, health and environmental management among others

#### **4.5 Guiding and Operational Principles**

The Federation will be guided by a host of fundamental principles including; sovereignty of the people to be exercised and expressed through regular elections which is one critical characteristic of any democratic system, sovereignty of the Federal state

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<sup>7</sup>Ibid p7

<sup>8</sup> Ibid p7

<sup>9</sup> Ibid p8

and of constituent units in non-federal matters, respect for constitutionalism and rule of law, peace and stability promoted through good neighbourliness and prevention, management and resolution of disputes and conflicts without recourse to war.<sup>10</sup>

The principle of condemnation of undemocratic accession to power, acts of terrorism, war crimes, genocide, crimes against humanity and gross human rights violations. Other principles include unity in diversity and respect and preservation of positive cultural diversity. Among the operational principles of the Federation would include; The principles of the supremacy of the constitution that shall assume precedence over constituent states' organs, institutions, policies and laws, the principle of subsidiarity and proportionality emphasizing the multi-level participation and inclusive involvement of a wide array of stakeholders,

The principle of equitability in sharing the gains and losses, costs and benefits that would entail fiscal transfers, equalization and regional development programmes and projects<sup>11</sup> and the principle of variable geometry allowing for progression in co-operation in the region among different groups in various fields at varying speeds.

#### **4.6 Citizenship of the Federation**

In line with the established practice in other federations, it is suggested that there shall exist dual citizenship for citizens of the federation <sup>12</sup>i.e. upon coming into force of the Federation, citizens of constituent federal states, while retaining their individual state right of citizenship, shall automatically assume the citizenship of the Federation. The concurrent rights and obligations of citizens vis-à-vis the two-tier levels of government

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<sup>10</sup> Ibid,p9

<sup>11</sup> Ibid p9

<sup>12</sup> Ibid p9

will be spelt out in the constitution of the Federal Government and in constitutions of constituent states.<sup>13</sup>

## **4.7 Model of the Federation**

### **4.7.1. Structure**

A two tier structure of government is proposed combining the Federal states and the Constituent States, both interdependent and distinct. The Federation will assume jurisdiction over federal matters while non-federal matters remain the purview of the constituent states.<sup>14</sup> The Federal constitution shall spell out dispute resolution mechanisms between the two tiers of government as a way of forestalling conflict.

The Federation will have a government based on the principle of the separation of powers among the Executive, Legislature and Judiciary

### **4.7.2. The Federal Legislative Component**

There shall exist a bicameral Legislature composed of a Senate and House of Representatives. The Senate shall have equal representation from the member states and be responsible for safeguarding and promoting Federation interests, representing constituent states' interests, providing federal fiscal oversight and ensuring compliance to Federation principles.

The Senate shall review bills passed by the House of Representatives, ratify federal Treaties, have power to impeach the Federal President and Vice President and approve federal appointments and initiate federal legislation.<sup>15</sup> The House of Representatives shall be elected based of proportional representation of constituent states

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<sup>13</sup> Ibid p9

<sup>14</sup> Ibid p10

<sup>15</sup> Ibid p11

population. It shall represent the citizens of the federation, enact federal legislation, provide oversight over federal laws and policies, and consider approval of the federal budget.

#### **4.7.3. Executive Authority**

It is expected that the Federation will be run under a presidential system headed by a President and Vice- President who must be citizens of the Federation but not from the same Constituent State. There will be term limits for the President and his/her running mate who shall be elected through universal adult suffrage. The Executive shall be composed of an accountable and inclusive Cabinet and a Presidential Council to coordinate and harmonize Federal matters.

#### **4.7.4. The Judicial Structure**

The Federation shall have an Independent Federal Judicial Service Commission to appoint judges and other judicial officers. Among other responsibilities, the Federal Judiciary shall interpret and help in the application of the Federal Constitution<sup>16</sup>, have final appellate jurisdiction on matters of human rights from constituent states' High Courts and resolve intra-state conflict and disputes between the Federation and Constituent states.<sup>17</sup>

#### **4.7.5. Division of Competences**

Among matters classified as federal and entrusted solely to the federal state include; defense and security, enforcement of federal law, foreign affairs and international trade. Federal fiscal and monetary policy, immigration, standard and quality

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<sup>16</sup> Ibid p12

<sup>17</sup> Ibid p12

assurance, infrastructure including aviation railways, shipping, postal services and telecommunication, federal public services and political affairs are the other competences classified for exclusive federal competence

The Constituent States are seized of non-federal matters including, but not limited to land, natural resources and the environment, agriculture, local government and social infrastructure e.g. education, health, internal transport networks, public amenities and utilities and state taxes. Other constituent state competences include matters of personal law e.g. marriages and divorce, trade and industry, enacting and implementing their own law and constitutions, federal employees, state police, and constituent states public services.

There shall exist concurrent roles and responsibilities that shall necessitate concurrent competence. These matters include citizenship, statistics, census and information management, food security, ports and harbours, health issues such as control of epidemics, civil aviation and transboundary environmental management among others.<sup>18</sup>

The Federation is proposed to have federal institutions including a Federal Central Bank, Electoral Commission, Finance Commission, a budget, headquarters and emblems. For such matters such as external debts, succession of Treaties and community laws, the draft proposes that transitional arrangements be clearly spelt out in the treaty establishing the Federation and the Federal constitution.<sup>19</sup>

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<sup>18</sup> Ibid p14

<sup>19</sup> Ibid p15

#### 4.8. Challenges, Fears and Concerns

The long history of cooperation among East African states has seen its ups and downs that have left a legacy both good and bad. The processes and consequences leading to collapse in 1977 are still fresh in the memory of most of the bureaucracies of the three states.<sup>20</sup> A problem of perception still exists and an element of skepticism remains more so on the part of Tanzania.

Other challenges include, to a much lesser extent the previous ideological differences between ‘socialist’ Tanzania and capitalist Kenya and Uganda. A statist mode of thinking is still stubbornly pervasive in much of the civil service of the partner states. It is only hoped that the emergence of a more liberal conception of the state and the centrality of market driven economy will help transform this old mindset<sup>21</sup>

On the other hand one can also argue that the current situation is not exactly the same as the one obtaining thirty-seven years ago. The new E.A.C Treaty is differently orientated to reflect the changed circumstances and dynamics. It has placed governance issues higher up in its agenda and conceives the state as facilitator and not a hindrance to the process of integration.

Kibua and Tostensen<sup>22</sup> agree and argue that the environment has dramatically changed. In their analysis, they point out as the changed demography of East African that has produced a new generation of leaders and actors at all levels and spheres of society. The lessons learnt in the collapse of the first E.A.C has enriched the experiences of the

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<sup>20</sup> Kibua T.N., ‘Fast Tracking East African Integration: Assessing the Feasibility of a Political Federation by 2010’, CHR Michelsen Institute, Bergen 2005, p 2

<sup>21</sup> Ibid p2

<sup>22</sup> Ibid p3

leaders and is seen in the gradualism adopted in the treaty making and the consultation of and inclusion of a wide array of stakeholders<sup>23</sup>

As opposed to the 1967 process that was a purely intergovernmental process, the new bloc has embraced the private sector and civil society. East Africa has also seen political and economic reforms since the 1980s that have acted to erode the previous faith in the omnipotent state. Such optimistic analyses have led to a belief that the new EAC stands a better chance of success than its predecessor.

First, however the community must navigate a host of political, economic and social challenges if it is to realize its dream of a political federation as the penultimate stage of its integration process. These challenges include:

#### **4.8.1. Loss of Sovereignty Fears and Concerns**

The basic doctrine of sovereignty in a federal set-up is to differentiate the holder of sovereignty and to spread more than one state's sovereignty on one people and one territory. Ceding international legal personality is complex and comes with issues of state succession in terms of debts contracted, property acquired and agreements entered into with international organization and other states, rights, duties and obligations. Questions also arise over the management of new joint resources, budgetary considerations, taxation and resource allocation.<sup>24</sup>

Understandably federation in the East African Context entails the surrendering of sovereignty of each member state to a regional government to be formed thereof. The new polity will take over defense, foreign policy, fiscal and monetary policy; have

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<sup>23</sup> Ibid p3

<sup>24</sup> Reinicke, W.H., Global Public Policy, *Foreign Affairs*, Volume 76, NO 6, November 1977, P100

substantial legislative authority and final appellate jurisdiction<sup>25</sup>Such a transition will face hurdles in the EAC case since there is disparity in political culture and practice among the five partner states

There exists potent fear in the community that a federation would lead to individual states losing power and the independence of decision making. Citizens were apprehensive of how federation will modify individual state sovereignty and the nature of sovereignty that will be possessed by the federal polity.

Many people were reluctant to have their states cede the supreme authority they enjoyed in terms of making and enforcing decisions, the legitimacy to wield power within their respective territory and the international legal personality that came with the said sovereignty<sup>26</sup>

#### **4.8.2 Lack of Clarity on Model of Federation**

While a draft model of the proposed East African Federation has already been drawn up, most East Africans are not aware of how the proposed federation would look like. This has created a fear of the unknown.<sup>27</sup> While the treaty envisages a political federation as its ultimate goal, it left the issue of the Federation and its model to subsequent protocols. This exposes an insufficiency of the Treaty as a guide in the process, nature, model and outcome of the federation. As long as East African citizens

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<sup>25</sup> Mwaseba, J., Proposed Political Federation of East African Countries; Benefit to Tanzania, U.S.W.C, Carlisle, Pennsylvania, 2010, p14

<sup>26</sup> E.A.C, Report of the Team of Experts on addressing the Fears, Concerns and Challenges of the East African Federation, Arusha, 2011, p5

<sup>27</sup> Muga, S., Interview with Kiangoi. O. Member E.A.LA, Nairobi August 2014.

are not aware of the model and nature of federation, to them it will only remain a distant project by bureaucrats and politicians<sup>28</sup>

#### **4.8.3 Disparities in Governance**

Many East Africans are apprehensive that poor governance practices e.g. corruption, human rights violations, failure to observe constitutionalism and the rule of law in some partner states may spill over into other states that enjoy better records on the same scores. Citizens also expressed concerns that democratic deficits and lack of accountability that exist in some member states may assume a regional dimension. It is also important to stress the challenge posed by the dissimilar political systems and constitutional arrangements in partner states.

A vast majority of East Africans expressed concerns about the militarization of politics, peaceful handover of power or the lack of it, electoral violence, and promotion of human rights and equal opportunities among others.<sup>29</sup> Addressing these challenges would demand that the East African states expedite and conclude a protocol on good governance and put in place a strong enforcement mechanism. Additionally, individual state constitutions should be harmonized to ensure caps on presidential term limits, harmonized electoral cycles and electoral process management. Up to this moment none of the above has been achieved

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<sup>28</sup>EAC,op cit,p7

<sup>29</sup> Ibid p9

#### **4.8.4 Effect of Political Federation on Existing National Foreign and Defense Policies**

East African Community member states still pursue separate individual foreign, security and Defense policies even in the face of the Foreign Policy, Security and Defence Coordination instrument that has not been sufficiently deepened to assume a harmonized status.<sup>30</sup> A common external trade policy is an essential part of the common market but is still lacking .A common defense and security policy is crucial to address internal, cross border conflicts and external threats.

This becomes an imperative considering the conflict-ridden nature of EAC neighbours. Such a protocol, if implemented would result in states losing security and defense authority. Such a scenario raises considerable fear especially in post conflict member states such as Rwanda and Burundi.<sup>31</sup>

#### **4.8.5. Conflicts and Political Instability**

Kasaija <sup>32</sup> points out that the instability in the region has the potential of destabilizing the region. Examples include the simmering ethnic undertones in Rwanda and Burundi and the adventurous incursion by Ugandan and Rwandan troops into the Republic of Congo that present a significant challenge to E.A.C political integration

Internal tensions continue to pose a potent danger to efforts at federation. Kenya has a political culture characterized by ethnicity. Ethnic tensions revolve around access to

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<sup>30</sup>Ibid, p9

<sup>31</sup> E.A.C op cit,p9

<sup>32</sup> Kasaija,P.A.,Regional Integration: A Political Federation of East African countries, *Journal of International Affairs*, vol 7,nos 1&2,pp21-34;p30

economic opportunities and distribution of resources.<sup>33</sup>With ethnicity being the determining factor in resource allocation, politicians resort to political tribalism i.e. manipulating the ethnic identity in competition with other groups<sup>34</sup>

Uganda is faced with a proliferation of kingdoms and chiefdoms which have increasingly sought more recognition. Calls for regionalism in Uganda do not augur well for the idea of a political federation because in its narrowest sense may be applied to mean ethnic purity and exclusivity in regard to access to resources and citizenship rights within ethnic territory<sup>35</sup>

In its extreme form, such regionalism may lead to ethnic cleansing. Whether this restoration of kingdoms is a sound political move capable of providing a basis for later federal arrangement of a regional scope or a tragic miscalculation will be judged by the lapse of time. Already disloyalty to the central government by these regional kingdoms is apparent e.g. the Buganda kingdom enjoys a historic importance, strategic geographic location, economic power and cultural identity, attributes they will not let go easily in exchange for anonymity in a federal polity<sup>36</sup>.

Rwanda and Burundi, the other two members have been characterized by civil wars since the dawn of their independence. Ethnic rivalry and competition for land has contributed to these conflicts. These differences have been reinforced by discriminatory

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<sup>33</sup> Oyugi, W., 'Conflict in Kenya: A Periodic Phenomenon', CAFRAD, Addis Ababa, 2000, p6

<sup>34</sup> Smedt, D.J., No Raila, No Peace! Big Man Politics and Elections in the Kibera Grassroots in *African Affairs, Journal of the Royal African Society*, Vol 108, No 433, Oxford University Press, p583

<sup>35</sup> Mwaseba op cit, p 16

<sup>36</sup> Ibid p17

policies in education and the public service<sup>37</sup> Efforts at national reconciliation in Rwanda have failed to heal the rifts between the majority Hutus and minority Tutsis in charge of the military and government. Burundi has been in turmoil since the 1993 assassination of a Hutu president by the Tutsi-dominated army.

One of the fundamental principles of the E.A.C is the recognition of the sovereign equality of member states. This is seen as a possible obstacle to deeper integration that would threaten such a status quo in exchange of a federation where sovereignty will have to be ceded<sup>38</sup> Can a region in such a state of tension and instability both, real and imagined achieve a process as politically delicate as federating?

#### **4.8.6. Other Political Concerns**

Smaller communities are afraid of domination by larger groups. Should the leadership of the federation be decided by universal suffrage, smaller groups see themselves as perennial losers never able to marshal adequate numbers to compete with larger communities. Mukandala<sup>39</sup> decries the lack of a clear timetable with explicit benchmarks to guide the process towards federation. He said that while the political federation has been identified as the ultimate goal, the process to actualize it is not specified

The Treaty specifies the process of economic integration but is silent on the political process to federation, perhaps on the assumption that economic integration will automatically spill over into political federation along the neo-functionalism model encapsulated in the bloc-by-bloc approach adopted by the Treaty. Research and

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<sup>37</sup> Gatwa, T. Resisting Democracy in Rwanda: Genocide and Reconciliation in *Reformed World*, Volume 4, No 4, December 1998, p1

<sup>38</sup> Ibid, p31

<sup>39</sup> Rwekaza, M., Political Cooperation in Perspectives on Regional Integration in East Africa, Proceedings of the 1<sup>st</sup> Ministerial Seminar on East African Cooperation, Arusha, 25-26 March 1999, pp 87-106; p100

experience have proved that this is not always a given in all instances. Therefore a clear roadmap to establish the political federation is of the essence.

Poor management of electoral competition in the past has dampened optimism about regional stability and democratic consolidation. The trend of disputing election results in almost all partner states, electoral malpractices and related violence has cast doubts as to whether the management of internal electoral competition has matured enough to allow for regional wide competition<sup>40</sup>

#### **4.8.7. Economic Imbalances**

There are concerns that weaker economies may be dominated by stronger ones leading to an imbalance and inequitable distribution of resources of integration. The lingering question is how the federation will ensure that differentially development economies transit into a single market without significant disadvantage to some members.<sup>41</sup>

The EAC partner states have diverse socio-economic and political backgrounds as well as gaps in skills set. The result is an imbalance in entrepreneurship, competitiveness in manufacturing and service provision. This is a concern that must be addressed if the integration process is to be deepened.<sup>42</sup>

#### **4.8.8. Labour Mobility and Competitiveness**

There are concerns that with deeper integration and realization of all the aims of the common market protocol on free movement of labour, the resultant labour mobility will harm less qualified and unskilled persons in the labour market and put them at a

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<sup>40</sup>EAC, op cit, p27

<sup>41</sup> Ibid,p12

<sup>42</sup> Ibid p12

competitive disadvantage. This situation is made worse by the EAC Treaty that lacks provisions to address skewed labour mobility effects e.g. how economically vulnerable groups will be protected or compensated.

Majority of Tanzanians have a negative attitude and opinion of Kenyans who they consider to be economically ‘aggressive’ and equipped with better skills. This raises the possibility of xenophobic tendencies which will work counter to the EAC objectives to cultivate an East African identity for the federation.<sup>43</sup>

#### **4.8.9. Loss of Land and Disparity in Land Tenure Systems**

Fear is rife that the free movement of people across partner states and the right of residence will lead to loss of land. This is informed by varied population densities of partner states.<sup>44</sup> Those who lack security of tenure yet depend on land for their livelihood are fearful of the possibility of losing their land to the more economically empowered. E.A.C member states have divergent land laws and policies e.g. some have customary, others statutory land tenure systems, varying ownership systems e.g. communal, fixed term, leasehold, or right of occupancy.

Again, Tanzanians are wary of an influx of Kenyans and Ugandans into their county due to their rapidly growing populations and supposed economic might. Tanzania is also seen as a target destination by Rwandans and Burundians due to its large land mass that still remains unoccupied.<sup>45</sup> Without harmonization of the land laws and tenure

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<sup>43</sup> Interview with Dr. Kisiangani E. Lecturer Kenyatta University. Nairobi. August 2014

<sup>44</sup> E.A.C, Report by Team of Experts, op cit p15

<sup>45</sup> Mutebi-Gooloba, F., Why Tanzania drags its feet in the E.A.C, Posted in the East African, 21<sup>st</sup> August 2013 retrieved from <http://www.theeastafrican.co.ke/OpEd/comment/Why+Tanzania+drags+its+feet+in+the+EAC+/-/434750/1974520/-/nl4i0fz/-/index.html>

systems, the potential for conflict cannot be gainsaid. This negates the primary aim of the federation as a means of reducing intra and inter-state conflicts

#### **4.8.10. Sharing of Costs and Benefits**

East African citizens are concerned about the additional taxation likely to be imposed to finance the additional tier of government and how this cost would be shared. The sharing of benefits and how these will trickle down to the general citizenry is another source of concern.<sup>46</sup> As a federation creates a new federal tier of government to execute federal powers two basic financial implications are apparent namely new administrative and adjustment costs associated with redistribution policies to develop socially and economically disadvantaged parts of the federation.

Numerous benefits also occur from the federation if well managed e.g. efficiency, effectiveness, economic growth and development welfare programmes, improved social services delivery and infrastructural development. Concerns emerge on how these anticipated costs and benefits will be equitably distributed and shared. There is fear that a disproportionate sharing or perceptions to that effect may plunge the community down the path trodden by its predecessor.<sup>47</sup>

#### **4.8.11. Other Economic Concerns**

Questions have been raised about the financial commitment of member states to the community based on low financial contributions. The partner states lack a clear sustainable formula for funding the community. With debate suggesting a shift from equal contribution to proportionality, relatively bigger economics are already

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<sup>46</sup> EAC,op cit,p16

<sup>47</sup> Ibid, p16

apprehensive of over taxation. Other citizens also fear the federation may divert resources from priority domestic programmes and projects<sup>48</sup>

Some countries have heavy domestic and external debt portfolios that may be passed over to other partner states in the event of a federation. There exists a lack of clear fiscal and monetary policy guidelines, a situation that may regionalize bad practices and fuel inflationary vulnerabilities, reduce competitiveness and affect investor confidence

There is also fear that the free movement of people provided for by the federation may spread cross border crime and weaken security gains made in some of the countries<sup>49</sup>

A federated East Africa will require a robust transport and communication infrastructure, yet East African infrastructural capacity is still low and under developed while faster economies too are concerned that poor performers will slow them down<sup>50</sup> Lack of harmonized/standardized education system predisposes citizens of some partner state to a more successful exploitation of regional employment opportunities than their neighbours.

In relation to the Monetary Union, the creation of a single currency has raised concerns in some states. Kenya and Ugandan technocrats have urged the EAC to delay the process towards a single currency as they argue that the legal requirements for a full transfer of monetary sovereignty to the regional level would expose their financial sectors to external shocks<sup>51</sup>

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<sup>48</sup> E.A.C, The East African Political Federation; Addressing East African Fears, Concerns and Challenges and Consolidating its Pillars, Arusha, August, p24

<sup>49</sup> Ibid p24

<sup>50</sup> Ibid, p24

<sup>51</sup> Kazooba, C., Kenya, Uganda now want Monetary Union delayed, The East African, 24 January 2010, p 2

#### **4.8.12. Loss of Social Cohesion and National Identity**

Despite socio cultural linkages and ties emanating from pre-colonial times the region cannot be said to enjoy a socio- cultural homogeneity The E.A.C member states have over the years since independence pursued different policies and priorities in building their national identities. Some of the countries have been unable to shed an ethnic centered mode of interaction while others have pursued and achieved a semblance of a national identity.

Tanzanians, thanks to the Ujamaa systems view themselves more nationally while Kenyans, Rwandans and Burundians are still captive to tribal chauvinism and stereotyping. If the region is to successfully federate there is fear that social cohesion and national identity will be undermined.

#### **4.8.13. Erosion of Cultural and Traditional Norms and Values**

Citizens in some East African States are concerned that membership in a bigger entity may lead to indigenous languages, cultures and traditional norms getting lost or eroded. There exists a diversity of cultures and traditions that need to be maintained but at the same time the unifying tendencies also be encouraged to ensure the best of unity in diversity

#### **4.9. Cross-Cutting Issues**

There are other recurrent challenges in the management of E.A.C political integration.

#### **4.9.1. Institutionalization of the East African Political Federation**

The treaty sets out the decision making process of the E.A.C but major fundamental decisions and commitments remain unimplemented<sup>52</sup>Agreements on the free movement of people and labour mobility are either flouted, or remain unimplemented. This betrays lack of a mechanism to ensure compliance that applies sanctions to non-execution of commitments. This can be achieved in the setting up of a regional mechanism possessing adequate political authority to ensure enforcement and compliance.

While significant progress has been seen in economic integration the institutionalization of EAC structures has at best been minimal.<sup>53</sup>The political control of the process is still state-centered. A Political Federation would demand a steady and greater transfer of political control to a new supranational centre. Unless states commit in principle and actions to provisions of Article 8(4)<sup>54</sup>to confer precedence of community organs institutions and laws over national ones, the challenges enumerated above will be difficult to overcome.

#### **4.9.2. People Participation and Citizen Awareness**

Article 7(1)(a)<sup>55</sup>of the Treaty provides that the EAC will be people centered and market driven. But this conception in itself is a contradiction of sorts since markets are normally not people centered and promote pursuits that do not deliver on popular

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<sup>52</sup> Ibid,p27

<sup>53</sup> Ibid,p20

<sup>54</sup> E.A.C Treaty Article 8(4)

<sup>55</sup> Ibid Article 7 (1) (a)

expectations<sup>56</sup>. From the initial stages of the integration process free market forces have been at the forefront and consequently have been the major beneficiaries. The masses are neither adequately informed nor given an active role in the process<sup>57</sup>

A major concern is the state of awareness of EAC affairs among the general public. It is made more challenging by the fact that sensitizing the populace will require the need to change attitudes and perceptions which is a long haul indeed<sup>58</sup>. The task of creating a new identity as East African as opposed to Kenyans, Ugandan, Tanzania, Rwandan is quite daunting and will require time to achieve. The level of public awareness about the process remains low in much East Africa.

East Africans have not adequately accessed information on the opportunities and benefits likely to accrue from federation. At the moment, it is correct to state that there is no notion of an East African identity that exists among the East African citizenry rather it is nationalism and ethnicity that assume more prevalence. In principle had domestic politics not been so orientated to parochial issues, elections campaigns would have provided the excellent platform to whip up an East African consciousness but as matters stand, no politician seeking election would be so foolhardy as to promote East African policy issues.<sup>59</sup>

At the regional level, the East African Legislative Assembly is in place but its members are not directly elected and therefore cannot be said to provide an avenue for broad citizen participation. The first EAC suffered from a domestic deficit that arose

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<sup>56</sup> EAC, op cit, p28

<sup>57</sup> Ibid, p28

<sup>58</sup> Kibua and Tostensen, op cit, p26

<sup>59</sup> Ibid, p27

from little consultation of the feelings of the vast majority of the indigenous inhabitants of the East African region<sup>60</sup>

It is pertinent to note that while the need to cure the lack of citizen awareness and participation in the addressed through extensive consultation and participation by the wide possible range of private sector and civil society, there is an ironical interpretation to this development. Mukandala and Killian<sup>61</sup> have pointed out that this need to rope in citizens' participation may achieve the exact opposite.

To them, citizen participation may engender consolidation of nation states as well as an increase in territorial nationalist demagoguery about the need for non-interference in each other's internal affairs which ultimately will promote the status quo and undermine the goal of the political federation.

This paper argues that based on effort by Kenya, Uganda and Rwandese Heads of States, there is sufficient political will at least in theory by the current crop of leaders<sup>62</sup>. But the transition to federation will require more than political will. The leaders must carry the people with them.<sup>63</sup> As such a people centered integration is the only antidote against the possible collapse of the second East African community. It is the citizens that would determine whether the EAC is people –centered or not. Citizen participation must include ordinary citizens expected to benefit from the EAC political federation.

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<sup>60</sup> Lwaitama, A.F et al(eds), A Synthesis Research Report on the Participation of Citizens in the E.A.C Integration Process, Friedrich Ebert Stiftung, Dar-es-Salaam, 2013, p13

<sup>61</sup> Mukandala, R and Killian, B., *Political Cooperation in East Africa* in Mushi, S.S et al(eds) Democracy and Social Transformation in East Africa, Dar-es-Salaam, R.E.D.E.T, 2004, p16

<sup>62</sup> Mutebi-Gooloba, F, op cit

<sup>63</sup> Ibid p20

This includes an extensive consultation of citizens in decision making and by being facilitated to influence policy making. During a High Level Dialogue held in Kampala, a former Justice of the Ugandan Supreme court, Justice George Kanyeihamba<sup>64</sup> argued that the people of East Africa have been excluded from the process of East African political integration. He said “None of these self appointed spokespersons of the EAC project have consulted the populations of the states that are supposed to be parties to the treaty”<sup>65</sup>.

In his paper to the dialogue, Kanyeihamba pointed out that instead, these spokespersons were busy focusing on how they can individually benefit from the federation ignoring the interest of the general population<sup>66</sup>. If the political federation is to be successful it requires the participation of and genuine ownership by the people through their institutions of choice. The final decision of when and how to federate must be put to East Africans in a referendum to endorse or reject a widely negotiated federal constitution. Of course this must be preceded by thorough and all inclusive consultations<sup>67</sup>

#### **4.10. The Viability of Fast Tracking**

East African leaders decided to fast track the establishment of the political federations. A fast track committee was even set up to expedite the modalities. Museveni for example was influential, making public pronouncements on the need to federate,

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<sup>64</sup> Nabudere, D.W, Pan-African and the Challenges of East African Integration; Paper prepared for presentation at the 10<sup>th</sup> EAC Anniversary Symposium, Arusha, 13<sup>th</sup>-14<sup>th</sup> November 2009 pp1-37;p30

<sup>65</sup> Ibid, p30

<sup>66</sup> Ibid, p30

<sup>67</sup> Ibid, p31

industrialize and integrate. The fast track committee<sup>68</sup> was bold enough to advance a shock approach towards political federation that entails two options.

The first approach would follow the pattern enshrined in the treaty i.e. Custom Union, Common Market Monetary Union to Political Federation. They argued that the process called for a stage by stage implementation of the treaty. The second option was the overlapping approach where parallel activities of the different stages would be undertaken at the same time. If this was to be realized, the four phases envisaged under the treaty would be allowed to intertwine and overlap.

The first option offered the advantage of conforming to treaty provisions while the second option by compressing all the stages would offer the advantage of sooner political federation. The Fast Track committee was supportive of ensuring economic integration succeeded first before embarking on the political component as it will enable the people to realize tangible benefits and build support for a political federation.<sup>69</sup>

To achieve this, the committee recommended the need for urgency in economic integration and that economic and social disparity in partner countries be addressed. But how can this be done in such a short time especially when these disparities cannot even be addressed within member states themselves?<sup>70</sup>

The committee opted to recommend the ‘overlap approach’ where the political federation should not wait for all the expectations of East African integration to be realized. What needed to be put in place was a transitional and preparatory phase that would focus on areas critical and necessary for the initial establishment of a political

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<sup>68</sup> Ibid,p26

<sup>69</sup> Ibid,p26

<sup>70</sup> Ibid,p26

federation. Nabudere<sup>71</sup> is less optimistic saying that Museveni, like other leaders seemed to have a minimal understanding of political economy to realize the difficulty in fast tracking a Common Market and Monetary Union without long periods of concerted programmes.

Nabudere<sup>72</sup> argues that the experience of 1963 showed that placing economic considerations ahead of political unity as a basis for eventual federation will achieve very little success if any. To him the lessons from the failures of 1977 shows that the decision to federate must not be an economic one but a political one with economic consequences coming later.<sup>73</sup>

Nabudere suggests that East African leaders should be bold enough to recommend to their parliaments to pass binding and irrevocable resolutions abolishing the existing boundaries between the countries and then ask the people of East Africa to re-constitute themselves into new cultural linguistic states that would be the basis for a political federation

Nabudere then challenges the political commitment of East African leaders saying they were keen to adopt hasty fast tracking roadmaps that would not achieve any meaningful results. He questions their commitment to fast tracking the federation while still retaining membership in other custom union arrangements i.e. COMESA and SADC<sup>74</sup>. There arises problems with the harmonization of policies and socio- economic convergence.

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<sup>71</sup> Ibid,p19

<sup>72</sup> Ibid,p19

<sup>73</sup> Ibid,p20

<sup>74</sup> Nabudere,op cit,p23

Politically the One Man Rule and One Party System provided by the Ugandan Movement System flies in the face of Article 46<sup>75</sup> requiring a broad based party representation in electing members to the East African legislative Assembly and other principles of good governance and democratization espoused in the treaty

#### **4.11. Addressing the Challenges**

The majority of fears, concerns and challenges upon examination are related to inadequate information and misinformation about the process of implementation of the stages of integration preceding federation. There are concerns about incoherence and inconsistency between Partner States 'policies and practices on one hand and the regional integration agenda on the other hand, as well as country-specific challenges which give rise to scepticism and mistrust.

Some concerns also emanate from the historical experience of failure of the defunct Community and the fact that some factors that could have contributed to the collapse have not been addressed. Broadly, the set of fears that have been identified fall into institutional incoherence, varied levels of commitment to implement regional decisions and different levels of development of the Partner States, especially in matters of human resources and industrial productivity.

With respect to EA Political Federation, the fears revolve around fear of the unknown and about the implications of a political federation as well as the anticipated challenges in implementation. An examination of the activities of the EAC since the

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<sup>75</sup> Ibid,p23

completion of the national consultations shows deliberate actions specifically targeting some of the concerns expressed

While various integration activities and measures dealing with earlier stages of integration have substantially mitigated some of the challenges, achieving a sustainable EAC Political Federation will largely depend on how successfully the preceding stages of integration, viz., the Customs Union, the Common Market and the Monetary Union, are implemented and harnessed.

The implementation of the Customs Union has so far registered a number of benefits thereby reducing some fears. e.g. the removal of some Non-Tariff Barriers (NTBs), gradual and asymmetrical removal of tariffs on goods originating from within Partner States thereby promoting intra-EAC trade, enactment of EAC Customs and Trade Act, EAC Competition Act and establishment of a Directorate of Customs and Trade increasing coordination and monitoring of implementation of integration instruments and programs and establishing one stop border post program thereby expediting clearing processes for goods and persons at the borders<sup>76</sup>.

As a result, specific beneficiaries within the EAC partner states have included consumers, traders, some manufacturers, service providers related to trade (such as clearing and forwarding), some border communities and tax authorities, resulting in increased confidence in the integration agenda in these sectors.

A number of the economic Fears, Concerns and Challenges raised during the various surveys have broadly been related to the progression to a common market. Some

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<sup>76</sup> E.A.C, East African Political Federation; Addressing East Africans' Fears Concerns and Challenges, Arusha, 2010, p28

measures have been taken by the Partner States and the EAC Secretariat in streamlining the progress to and the launch of the Common Market Protocol. It is noteworthy that the negotiations of the Common Market Protocol has promoted confidence and as a result, the negotiations took the shortest time compared to experiences in other regions that have undertaken similar exercises;

Many contentious issues were resolved by application of the principal of pragmatism and gradualism which is provided for in the Treaty by allowing some aspects of the Customs Union and the Common Market Protocols to be implemented progressively. Awareness creation and sharing of information among stakeholders on the opportunities that exist within the integration process has also assuaged some of the fears.

The EAC publicity programme targeting policy makers, professional associations, political parties, ordinary citizens through outreach programmes, media programmes has gone a long way to address concerns about awareness and sensitization of stakeholders. The social mobility and access to opportunities of market integration should facilitate organic linkages and thus, social cohesion among East Africans and contribute to increased confidence and stake in the Community<sup>77</sup>.

Progress has been made in initiatives towards harmonization of fiscal and monetary affairs. There is improved macro-economic policy synchronization and coordination, especially the fiscal regimes through initiatives like the close cooperation by Governors of the Partner States' Central Banks, institutionalization of the pre-Budget meetings and the regular consultations on tariff and taxation measures in the Budgets, the

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<sup>77</sup>East African Community, Strengthening Popular Participation in the East African Community: An E.A.C Guide to E.A.C Structures and Processes, Arusha, 2012, p35

reading of the national budgets on the same day, cross-listing of shares at the stock exchange market and currency convertibility.<sup>78</sup>

However, most of the activities and initiatives are not known to the public and other stakeholders outside the relevant sector. In addition, the extending of the Uganda list of sensitive products by the Ministers of Finance and subsequent approval by the Council of the Uganda list thereby reverses the commitments in the run up to the Monetary Union<sup>79</sup>.

#### **4.11.1. Other Activities**

There are also other programs of EAC not necessarily under the Customs Union, Common Market and Market Union. For example, joint management and utilization of Lake Victoria as a common resource through the Lake Victoria Basin Commission and the Lake Victoria Fisheries Organization are among measures adopted to ensure sustainable natural resource use<sup>80</sup>

The Community has made tremendous success in its attempts aimed at implementing the Regional Strategy on Peace and Security. For example, cooperation and common initiatives to curb criminality and movement of criminal gangs within the region by security agencies through common patrols, operations, surveillance and sharing of intelligence. In addition confidence has been built among the armed forces, enabling consultation on security threats within the region. Onyango-Obbo opines that the

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<sup>78</sup>East African Community, Strengthening Popular Participation in the East African Community: An E.A.C Guide to E.A.C Structures and Processes, Arusha, 2012, p35

<sup>79</sup>E.A.C, East African Political Federation; Addressing East Africans' Fears Concerns and Challenges,

<sup>80</sup>Ibid, p30

involvement of soldiers from the East African states in the East African Standby Brigade and experiences gathered therein, is a huge step towards political federation<sup>81</sup>

An instrument to provide for legal mutual assistance in cases of needs for extradition of criminals is under development<sup>82</sup>. There is demonstrated commitment to adherence to the fundamental principles of good governance, democracy and protection of human rights as prerequisites to successful integration and development.

The process is underway to harmonize and develop common regional benchmarks, standards and institutional frameworks to fight corruption, protect human rights, enhance ethics and integrity, and promote the rule of law and constitutionalism. There is a deliberate effort to involve and consult with a wide range of stakeholders including political parties, civil society, media, legislators and oversight institutions to improve accountability, responsibility and promote the EAC principles of people centeredness<sup>83</sup>.

Marketing the Community as a single tourist and investment destination and Development and/or implementation of EAC infrastructure Master Plans and mapping key transport corridors; Power Master Plans, EAC Railways Master Plan, roll out of the fibre-optic cable linking all the EAC countries and hooking them into the international broadband infrastructure, easing electronic and telephone communication in the common market and the launch of the Standard Gauge Railway have improved connectivity of the

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<sup>81</sup>Onyango-Obbo, C., Kenya army joins regional force: Are soldiers making a political federation? Daily Nation 11<sup>th</sup> September 2014,p12

<sup>82</sup> Ibid,p30

<sup>83</sup> Ibid,p30

region and opened it up considerably<sup>84</sup>. Under this ambitious infrastructural initiative is the plan for the petroleum products pipeline from Eldoret to Kigali under the Northern Corridor Integration Plan seeking to open up the region for economic development.<sup>85</sup>

Activities aimed at providing a platform for institutions and professional associations to effectively participate in the integration process continued to be undertaken. Such interventions have the effect of reducing fears among East Africans. These measures have contributed to the significant increase in region-wide activities by actors that are building a sense of an East African identity in some circles, with some initiatives taking place independently of the EAC.

The examples of such actors include universities, local governments associations, and political parties, private sector bodies like the East African Business Council, non-governmental organizations and professional bodies like the East African Law Society. Activities include formation of regional associations, establishment of regional platforms to lobby for improved contribution to policy formulation and access to benefits of integration, establishment of regional standards, and so on. The EAC has played a role in creating an enabling environment by sensitization, facilitating linkages and recognizing observer status for some groups.<sup>86</sup>

Additional measures, however, need to be employed to further address the fears, concerns and challenges more effectively. Such measures will go a long way to build on

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<sup>84</sup>East African Community, Strengthening Popular Participation in the East African Community: An E.A.C Guide to E.A.C Structures and Processes, Arusha, 2013, p37

<sup>85</sup>Karambu, I., East Africa plans oil pipeline to Rwanda, Daily Nation, 11<sup>th</sup> September 2014

<sup>86</sup>E.A.C, East African Political Federation; Addressing East Africans' Fears Concerns and Challenges, p30

the efforts being deployed in the various areas of cooperation, with a view to locking in the gains already attained in the integration process.

The success of the stages preceding political federation and of any additional measures to address fears, concerns and challenges about political federation is dependent on consolidation of the pillars of each stage and creation of an appropriate regional economic and social infrastructure.

Ultimately, the success of regional integration, and the confidence of East Africans in it is premised on its ability to deliver development and meaningful change in quality of life for East Africans in the social, economic and political spheres. Regarding challenges involving the political aspects of the federation, some of the milestones achieved concern elections as a key factor in democratization and in efforts to address this important pillar.

All EAC Partner States have embraced democracy through the holding of regular elections and it is encouraging to note the increasing participation of political players in the electoral processes. However, the low rate of acceptance of electoral results is testimony that more needs to be done towards enshrining democratic culture within the bloc. There is need to embrace electoral competition in a mature, consensual and non-adversarial spirit.

Thus cooperation among National Electoral Commissions is being strengthened through development of a policy framework for the EAC Forum of Electoral Commission to guide their cooperation at the regional level. In addition, the development of the EAC Principles on Election Observation, Monitoring and Evaluation is near completion. There is need to expedite the conclusion of the EAC Elections Monitoring, Observation, and

Evaluation Manual. Once adopted, it will institutionalize a structured way of observing elections in the region, in a manner that adds value and builds on democratic development<sup>87</sup>.

Negotiation of the EAC Protocol on Good Governance is near completion, and EAC continues to engage and consult with all institutions and agencies that constitute pillars of the EAC Good Governance Programme to ensure ownership. The Protocol once adopted will evolve a dispensation that cements the recognition of good governance as a prerequisite for successful regional integration, peace and stability

The EAC Annual Conference on Good Governance has become a significant annual event that facilitates dialogue and debate on core issues of political governance in the region. Its main objective is to enhance cross sectoral political dialogue among institutions responsible for promoting good governance as well as create synergy between national, regional and international organizations.

The national agencies responsible for preventing and combating corruption have a regional platform to articulate common challenges in fight against corruption through common strategies for the region. In this regard, the EAC Protocol on Preventing and Combating corruption is in its final stages of completion<sup>88</sup>.

Upon adoption, it will set in motion regional mechanisms for sharing information, recovery of proceeds and assets from corruption and judicial and legal assistance. Other institutions with which the EAC has sustained engagement include the Forum of Human

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<sup>87</sup>EAC Development Strategy, 2006-2010,p50

<sup>88</sup>East African Community, Strengthening Popular Participation in the East African Community: An E.A.C Guide to E.A.C Structures and Processes,Arusha,2013,p40

## Rights Commissions, the Forum of EAC Chief Justices and Rule of Law and Access to Justice Sector

A protocol to coordinate the foreign policies is already in place and some success has been witnessed in the joint support the region accorded to Ambassador Amina Mohamed, Kenya's Foreign Affairs Cabinet Secretary in her quest to assume W.T.O Director General position<sup>89</sup>, the joint EAC-E.U EPA negotiations<sup>90</sup> and joint military drills by E.A.C member states.

In the same vein, the EAC jointly with COMESA and IGAD have embarked on implementing a joint programme on promotion of human security in the Eastern and Southern Africa region. The joint programme seeks to contribute to increased levels of human security in the region that builds on democratic development<sup>91</sup>. Providing a peaceful, secure and stable environment is an imperative for EAC integration given the Eastern Africa region is conflict-prone. A number of regional policies and instruments have so far been undertaken to implement coordination of security matters<sup>92</sup>

To increase the participation of political parties in the integration process and address concerns over the apparent democratic deficit, the EAC Secretariat has facilitated meetings of all political parties at the Partner States level with a view of culminating into

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<sup>89</sup>African Manager, Kenya's Amina Mohamed formally launches campaign for top W.T.O post. Retrieved from

[www.africanmanager.com/site\\_eng/detail\\_article.php?art\\_id=19540](http://www.africanmanager.com/site_eng/detail_article.php?art_id=19540)

<sup>90</sup> Ibid

<sup>91</sup>East African Community, Strengthening Popular Participation in the East African Community: An E.A.C Guide to E.A.C Structures and Processes, Arusha, 2012, p 36

<sup>92</sup>These include the Regional Strategy on Peace and Security and the Protocol on combating illicit drugs which have been adopted. The Draft Protocol on Peace and Security is under consideration. A framework on Conflict Prevention, Management and Resolution is being developed. Within the framework of the MOU on Cooperation in Defence, the defence forces have carried out several joint military exercises and training sessions. The process for upgrading the MOU on Cooperation in Defense into a Protocol to provide for wider common defense mechanisms is ongoing.

a regional Forum that will promote exchange of ideas among political parties to allow for the gradual creation of regional parties. It is expected that political parties will sustain consultation at regional level as a way of enhancing their participation in EAC affairs and dispel the fears that some may be sidelined in the integration process.

Protection against arbitrary violations of human rights was identified among the concerns expressed during the national consultations, therefore the EAC has developed a draft EAC Bill of Rights that once enacted, will ensure that the Partner States advance in the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. It also examines national constitutions and other international instruments with the ultimate aim of standardizing and adopting of best practices.

The stakeholders under the sector of rule of law and access to justice have been meeting regularly and among other key recommendations to the Council, they recommended that alternative dispute resolution mechanisms be recognized in the EAC judicial systems<sup>93</sup>.

From the foregoing analysis, it suffices to say that the arguments for a federated East Africa are strong and compelling and the benefits the region stands to gain from successful federation are enormous and transformational. Of an equally influential nature are the political, economic and socio-cultural challenges, fears and concerns that threaten this grand vision. Granted, the community has already missed its targeted timelines for achieving various phases of its multi stage integration towards political federation.

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<sup>93</sup>EAC Development Strategy, 2006-2010,p52

On the other hand an objective critique of the process reveal the substantial milestones achieved by the community in ameliorating this host of challenges that give hope that all is not lost and is perhaps a harbinger of successes and more good things to come for the Community on the road to the Federation of East African States

## **CHAPTER FIVE**

### **Conclusions and Recommendation**

#### **5.1. Introduction**

This study sought to study the prospects and pitfalls of a political federation in the East African Community. Specifically it aimed to review the history, theory and practice of Political federation in other parts of the world. It also sought to examine the history of the East African Community as regards the proposed political federation that would be the culmination of a series of economic integration initiatives. Lastly the study sought to provide an analysis of the opportunities for and challenges against the same said federation.

To imbue the study site the academic rigour required of an academic pursuit of this nature the study set to test two hypotheses. Hypothesis One related to how the progressive achievement of economic integration objective affected political federation positively through spillover. Secondly, the study sought to test the hypothesis two that was based on the premise that insufficient political will and inadequate awareness among the East African citizens was largely responsible for the slow progress towards achieving the political federation.

The study borrows from theories of regional integration i.e. neo-functionalism that explained the stage by stage integration encapsulated in the EAC Treaty aspiring to establish a Political Federation through benefits accruing from economic integration that would help shift peoples' loyalty from the state to the regional federation.

Additionally, the theory argued that economic integration in non-political technical fields would have 'spillovers' effects on to political co-operation that would

make federation possible without a frontal attack on sovereignty. The theory provided for the inclusive and involvement of non-state actors in the integration process. The second theory; federation largely explained motives, imperatives, pre-requisites and structural-constitutional arrangements among established federations around the world. The study analyzed the above stated issues as related to federation and established critical similarities between the other federal polities and the proposed E.A.C political federation in relation to motives, pre- requisites and model.

## **5.2 Conclusions**

On Hypothesis One that sought to test the link between economic integration and political federation, the study found out that economic integration can lead to political integration in a number of ways i.e. economic integration builds a sense of confidence that make political federation possible. As part of economic integration the Common Market Protocol enables a free movement of people across national boundaries. This acts to show the obsolescence of the artificial borders erected as part of the Berlin colonial compromise that divided the African people into different states. It would prove to the citizens the possibility of and justification for a regional federation.

Natural prejudices can be shed when East Africans are enabled to move freely and access other Partner States without the stringent immigration requirements. This freedom of access enhances interaction and helps engender understanding of different peoples and cultures, appreciation of diversity and help counter negative stereotypes. The study found out that an East African spirit and identity is one of the pre-requisite for a successful federation. Strict border requirements send the message that one is a foreigner in the country of destination and reinforces that feeling of alienation.

A relaxation of such red-tape achieves that opposite effect. As advanced by neo-functionalism, expected benefits from economic integration would ensure a transfer of loyalty from the state to the federation. Such benefits include better efficiency, economic development, better infrastructure capacity, employment opportunities and welfare programmes. These would convince the beneficiaries (the East African citizens) that these advantages are pointers to opportunities and benefits possible under a federation, more so, if the drivers of the agenda were to sensitize the populace of the connection between the economic stages of integration and the eventual Political Federation.

This is likely to shift their loyalty from the state and its inadequacies to the federation and the hope of a better life that it offers. The ability to transfer factors of production increases profits for entrepreneurs and provides other benefits to the citizenry e.g. employment opportunities. Economic integration can also encourage the establishment of a political federation through the spill-over mechanism. With increased harmonization and synchronization of policies, there would be a corresponding demand for a bureaucracy to ensure seamless coordination.

This bureaucracy would be best provided by a political superstructure equipped with sufficient political authority to ensure compliance and adherence by recalcitrant states. The only outfit capable of that supranational oversight would be a political federation. Such supranationalism would also result from an increased transfer of economic competences i. e budgetary control, external trade policy and custom union, common market and monetary union coordination.

The full transfer of economic competence without a political federation will be handicapped by a democratic deficit since more and policies and decisions will now be

made at a supranational level yet the structure expected to make these policies is yet not granted the necessary democratic mandate to make and enforce such decisions. Only a corresponding political transfer of sovereignty to the centre will equip the new decision-making organ e.g. the Secretariat with the necessary legitimacy.

This is so because when economic competences are transferred to a supranational level without a corresponding political integration, where will the organ mandated to operationalize these economically integrated components (Customs Union, Common Market and Economic Union) derive their legitimacy to initiate and enforce policy? Only a political federation wrought of a popular mandate would be equipped with the legitimacy to perform such new roles e.g. equitable distribution of the benefits and gains of federation

As regards Hypothesis Two that concerns citizens' participation and awareness and political will, the study found out that the community still suffers a democratic deficit borne out of a lack of citizen involvement. The EAC Treaty (1999) made big steps towards ensuring peoples participation through inclusion of the private sector and civil society. To the contrary, country surveys discovered that there is still minimal understanding and awareness of the aspects of political federation among East Africans, East Africans are not properly sensitized of the benefits, purpose, objectives and model of the proposed federation and the necessary sacrifices needed to realize the federation. As a result, the community has not harnessed popular support for the idea of federation.

To most East Africans, the Federation is an elitist pipedream without immediate benefits to them. Unless a consistent and robust sensitization campaign is carried out, apathy and stereotypes will remain deep-rooted towards the federation and fellow East

Africans respectively. The severe lack of people participation in the process of integration results in the democratic deficit discovered herein. The only way to have East Africans participate fully in the East African integration process would be to have ordinary citizens have a say in EAC policy making through organs of their choice and not just through civil society and the private sector.

Government bureaucrats meeting in seminars and conferences and designing policy for the community is hardly a people driven process. A perfect avenue would if the people were involved in electing their representatives to the regional legislature through universal franchise. The current practice where representatives are nominated by constituent states parliaments deprives the EAC of the popular mandate that it is strategically placed to enjoy. Unless the people are enabled to determine policy through their elected representatives, the Federation will always lack the requisite legitimacy to exercise sovereignty on behalf of the people and East African Constituent States.

This sovereignty can only be donated by East Africans through universal suffrage. Regarding political will, this study finding are two fold; i.e. there is sufficient evidence to suggest that at least a section of East African leadership are more committed in word and deed to a fast tracked political federation. The Heads of states of Kenya and Uganda and Rwanda collectively known as the Coalition of the Willing (COW) have shown their impatience with bureaucratic bottlenecks towards faster integration.

Exploiting the principle of variable geometry, the leaders' have initiated grand infrastructure projects e.g. the Standard Gauge Railway, the oil pipeline to run from Eldoret through Uganda to Rwanda. Efforts at telecommunications development by the Coalition of the Willing is expected to open up to the region and fast-track economic

benefits. Economic benefits realized earlier and equitably distributed may also make for a sooner political Federation

The COW has also expedited the abolition of some of the hurdles including cumbersome roadblocks that make the cost of transporting goods across the region expensive. Other critical developments include the implementation of the protocol on free movement of people, employment (labour mobility) and right of residence among the three states. On the flipside, the COW has exposed an emerging ideological split pitting the Coalition of the Willing against Tanzania and Burundi. Tanzania has been variously accused of foot-dragging and reluctance to implement several protocols that are necessary for the integration process to move forward.

Tanzanians appear to be overly wary and distrustful of their East African neighbours. These fears emerge from what they view as impending loss of jobs and land should the Common Market provisions regarding free movement of labour and right of residence be fully implemented. Apprehensive of losing land to the more economically empowered and aggressive neighbours, Tanzania has been reluctant to open up its borders and markets as demanded by the East African Treaty for successful economic and political integration.

This dicey situation is compounded by perceptions that Tanzania is only paying lip service to the EAC while its real ideological and political orientation commitment is more South African than East African. This attachment to the south by Tanzania has roots in the struggle for independence from colonialism when Tanzania provided a safe haven and moral support to several liberation movements from southern African states. It is these long standing ties of fraternity that Tanzania appear reluctant to sever.

Threats by Tanzania and Burundi to form a rival integration with the mineral rich but politically-fragile democratic Republic of Congo in relation for isolation by the COW is testament to this divide. Personal and political differences between Tanzanian and Rwandan leaders are threatening to derail gains already made in East African integration. The spat started when Tanzanian president Jakaya Kikwete suggested to Rwandese President Paul Kagame to negotiate with Rwandese Hutu rebels operating in Eastern DRC. This unsolicited advice was not well received in Kigali and thus began a diplomatic row that saw Tanzania expel thousands of Rwandese nationals who had lived in Tanzania for decades on grounds of being in Tanzania illegally and thus choking the scarce resources in their region of residence.

This ideological impasse is made more complex when either side is blaming the other for being responsible for the situation. The COW blames Burundi and Tanzania of filibustering and foot dragging in respect to implementing protocols and frustrating the bloc. Burundi and Tanzania blames the COW for sidelining them from the process. When meetings are convened Tanzania and Burundi explain their absence by claiming they were not invited. The COW counter this accusation by saying the two countries intentionally and maliciously snubbed the events. This has been the case with several meetings held by the C.O.W that approved significant infrastructural initiatives that would have been of great advantage to the bloc had everyone been carried on board.

Political will can also be seen in members' commitment to footing the financial burden of the EAC. At the moment the bulk of the EAC budget is financed by external donors. This presents the risk of the integration process being hijacked by a host of

expatriate ‘consultants’ whose ‘western’ interpretation of the route EA integration needs to take may not be in sync with the desire of most East Africans.

While members have regularly honored their monetary commitments to the EAC, political will can only be demonstrated by a stronger financial involvement in the affairs of the community. Partner States should foot the bulk of EAC budget to stake a claim of ownership i.e. it is the piper who calls the tune. This wavering political commitment is also evidenced in the continued membership EAC member states in rival custom arrangements e.g. SADC and COMESA

Regarding Research Question One that relates to the theory and practice of federation in other parts of the world, the available information that would enable this study reach conclusions are the motives, pre-requisites and models of the EAC political federation vis-à-vis other established federal polities. This study can draw similarities between the model of age-old federations around the sound and the proposed EAC model. The doctrine of separation of power among the executive with its presidential system, the bicameral legislature comprised of Senate and House of Representatives and a judiciary possessing final appellate jurisdiction is the norm in most federations formed out of the same circumstances as the EAC proposed political federation.

The division of competences between the two tiers of government along the lines of federal and non-federal matters also draws from experience of other federal arrangements. The competence exclusively reserved for the federation e.g. security and defense, foreign affairs and those allocated to consistent state i.e. health, education follows common practice all over the world. The driving motives for states to form federations in other parts of the world also seem to hold a lot of relevance in the East

African experiment i.e. the desire for more security and defense capacity and the expected economic efficiency and benefits. The necessary pre-requisite for successful federation i.e. close social and cultural linguistic linkage and geographical continuity are satisfied in the EAC's case

On Research Question Two that concerns progress made in the EAC as regards to political federation, the study found out that several protocols meant to actualize the federation e.g. Customs Union and Common Market protocols have been ratified with the Customs Union protocols already in operation. Its operationalization has provided significant benefits for the EAC and its citizens. The custom exemptions for EAC member states and the Common External Tariff (C.E.T) have boosted intra East African trade. The Common Market Protocol has promoted ease of movement of persons and factors of production, labour mobility and right of employment and residence at least on the part of the COW

Significant progress has been made in relation to the pillars of political integration meant to build the basis for political federation. The completion of protocols on good governance corruption, electoral management and observation, peace and security coordination among others builds an important foundation when complemented by the significant progress in foreign policy coordination. Still much remains unfulfilled. The missing of the timelines set by the EAC illustrates the uphill task the community faces to build upon the achievements to test and accelerate the federation

The progress made and mentioned above relates to Research Question Three seeking to explain how the fears and challenges to the EAC of have been addressed. Evidence shows that the EAC has made tremendous progress in mitigating some of the

political, economic and social challenges facing political federation. Political concerns i.e. governance issue, little citizen awareness and participation and political instability remain but some attention has been devoted to address the same said concerns through the development of the protocols mentioned above

Economic concerns about employment and labour mobility, loss of land among others have been addressed partly by the COW but remain a bottleneck on the part of Tanzania. Social cohesion concerns endure as not much progress has been made in crafting a Pan-East African identity. Stereotypes' and nationalistic chauvinism still reign supreme in the region .The reluctance to cede sovereignty is still a reality but it is hoped that with increased economic benefits there will be a transfer of loyalty from a national mindset to a more regional consciousness

The opportunities and prospects for a successful federation exist in the fact that the EAC fulfils most of the criteria that influences federation to ensue. The East African region has compelling motives and has satisfied a raft of pre-requisite conditions that make for success at federation. As long as these enabling conditions and motivating factors remain alive in the EAC case, the idea of an East Africa political federation is not too remote a possibility

### **5.3 Recommendations**

The conclusions drawn in this study prompts several recommendations. This study hopes that the recommendations would be of invaluable help to policy makers in Partner States and to scholars and students of regional integration. Most of the recommendations are in response to the challenges facing the East African community proposed political federation. Towards solving the fears, concerns and challenges and

alleviating the identified institutional deficiencies the study makes the following recommendations:

### **5.3.1. Reform of EAC Institutions and Organs**

The EAC Secretariat is uniquely positioned to play a pivotal role in EA integration. This potential is hampered by the lack of independence and authority. Along the lines of the European Union Commission, the study recommends that the Secretariat be vested full supranational executive authority. Such empowerment would enable the Secretariat to become more responsive to the demands of the integration process. Under institutional reforms, core functions, mode of work and reporting, monitoring and evaluation mechanisms of the EAC Secretariat need to be strengthened

This would put the secretariat in good stead to effectively implement regional development programmes, exercise the shared sovereignty in ways that would build confidence in fostering a culture of progressive sovereignty pooling among partners states. Elections to the EALA should be through universal adult suffrage to replace the method of nomination by national parliaments as this mode hampers the representation function of the EALA and infects the whole EAC with a democratic deficit. Direct elections would provide the much needed democratic mandate to make EALA an effective regional parliament in both form and function

The EACJ should be empowered with more jurisdiction that moves beyond interpretation of the treaty provisions to dispute resolution competence and human rights jurisdiction. By equipping the EACJ with the power to arbitrate inter-state disputes the first step to transforming it into a regional Supreme Court shall already have been made. The EAC needs a Panel of Eminent Persons to spearhead peer review mechanisms,

champion and popularize the idea of EAC political federation and continuously offer advisory input towards resolving emerging challenges, concerns and fears.

Important actors in the integration process e.g. political parties, electoral bodies, media, regional research institutions should strengthen functional linkages so that their influence can stretch beyond national borders. Participation, ownership and cross linkages by these actors must be nurtured and enhanced. Towards strengthening the joint infrastructural programmes pillar, a Regional Development Authority needs to be created for coordination. Projects in energy industry, infrastructure, ICT and joint investments will require joint synchronization that only such an Authority can competently execute.

The EAC stands to benefit immensely from an increased financial autonomy and a reduced dependence on donor funding. Alternative domestic sources of financial East African integration would greatly help in achieving this fiscal independence. External resource should only complement home grown sources. EAC Partner States should increase their contributions to the EAC budget so as to claim an ownership of the process and reassert their commitment to the community. The EADB should be strengthened and developed as lead investment financing institution.

In order to advance economic development, research would need to be enhanced and consolidated; cooperation and coordination among institutions of higher learning would best be coordinated by an enhanced capacity for the Inter University Council of East Africa (IUCEA). I.U.C.E.A should be equipped with enough executive competence to be capable harmonizing and standardizing university and tertiary education for meaningful labour mobility. This could be done through exchange programs for students

and instructors and through a standardization of academic qualifications throughout the region.

### **5.3.2. Expedite Process of Political Federation**

Towards the political imperatives for the EAC federation, the study recommends that Partner States should decide the model of the political integration most appropriate for the region. This should be informed by a detailed study of political and socio-economic dynamics. Such dynamics includes the extent of willingness by member state to cede sovereignty to the centre. The possible mechanisms would include; a direct entry into a political federation where a single question is put to all East Africans in single day to approve establishment of federation or a gradualist process that involves beginning with a confederation with its loose centralization as a confidence building measure for ultimate federation. Alternatively the community could maintain its incremental model via Customs Union, Common Market and Monetary Union as means to a political union along the lines of the European Union with the issue of political federation left open.

The Summit thus should expedite a study to be held to examine the options and recommend the most viable instruments of political federation. Of course this should happen alongside a deliberate and concerted effort to implement the fundamentals stages of East African integration. Full implementation of the Customs Union Protocol, Common Market Protocol and expediting the Monetary Union negotiations would lead to tangible benefits accruing to East Africans in ways that could increase support for federation. Such an achievement may help ease fears concerning ceding of sovereignty.

Fears that relates to loss of sovereign decision making power should be addressed through initiating a gradual ceding of select competences to an organ of supranational

nature e.g. an empowered Secretariat. To address geostrategic and political stability concerns, the EAC need to strengthen the foreign policy and security and defence coordination in the face of globalization and the conflict ridden nature of the region.

The EAC needs to build on the success already achieved e.g. taking a common stand on international issues, e.g. W.T.O elections, the I.C.C and joint negotiations in international fora. Observing the fundamentals principles of good governance and democracy i.e. through establishing minimum standards as contained in the protocol on governance and implementing them would be an achievement of an integral pillar of political federation. Such standards would include; abolishing impunity, upholding constitutionalism, zero tolerance to corruption, observance of human rights and fostering pluralism.

People participation in the integration process should be enhanced through a sustained sensitization and awareness campaigns in all member states. This would assuage most of the fears and concerns, some of which are influenced by stereotypes, perceptions and memories of the failed process of 1997.

Information on the expected benefits, sacrifices, model and opportunities to accrue from federation and each of its preceding stages when availed to citizens would replace doubt and uncertainty with hope, trust and confidence. Of course, this should be accompanied by tangible development programmes that will demonstrate the success and efficiency that a federation portends. Finally the EAC needs to negotiate a treaty to establish the political federation and initiate the drafting of the federal constitution.

### **5.3.3. Cultivate Social and Cultural Cohesion**

Finally socio-cultural fears over cohesion and identity should be addressed through sensitization on the shared historical linkages and commonality of norms and cultures. Implementing the movement of people should be fully activated to help shed the stereotypes that continue to colour East Africans perception of each other. Socio-cultural festivals and competitions would suffice.

Perhaps setting up of joint regional teams in various sports or bidding together for international sporting events e.g. the African Cup of Nations would help achieve this objective. The efforts at achieving unity and regional cohesion should not be misconstrued to mean an affront on diversity. In fact deliberate programmes should be implemented to embrace and enhance particular diversities that enrich the East African experience. Forging an East African identity is not impossible with concerted and sensitively crafted policies.

### **5.4 Suggestions for Further Research**

In the course of this study, several ideas came up that could not be adequately addressed by the scope of this research project. This opens up an avenue for students of international relations in general and regional integration in particular to take up the challenge and undertake academic research towards studying such topics. Among the suggested topics areas for further research include:-

- i) Sovereignty and regional integration in East Africa. Such a study would analyze the extent to which the reluctance to cede sovereignty impedes faster regional integration in the region. Another related area of academic interest would be how the proposed East

African Federation would alter/ modify the sovereignty / international legal personality of individual East African Countries.

ii) The East African Political Federation and the international political system. The East African Political Federation is informed by the need to acquire a greater economic weight and bigger political voice in international politics. This would have far reaching consequences on the balance of power in the continent and the world. Such a study would explore how the international community would respond to such a development and how this would influence the interactions between the EA and the outside world.

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