

**TOWARDS ACHIEVING POLITICAL FEDERATION IN EAST AFRICA
COMMUNITY: CHALLENGES , SUCCESSES AND OPPORTUNITIES**



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the requirements of the Degree of Master of Laws*

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DECLARATION

I, **OKWAMA HOLLY EDWARD** hereby declare that this research is my original work and has not been submitted for a degree at any other university.

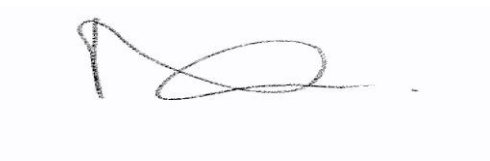


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DEDICATION

I dedicate this research study to my late brother George Gicheru kibet and the late Eunice Gicheru Kelemba who closed her eyes from this world on the 15th November 2020, may she RIP

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I wish to acknowledge all the support I have received during the process of carrying out this research. I am heavily indebted to Dr. Nkatha Kabira, her dedication and commitment are unmatched and unmeasurable.

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TABLE OF CASES

Prof. Peter Anyang' Nyongo and Others v Attorney General of Kenya and Others, EACJ

Ref. No. 1 of 2006

Okuda vs Republic (1970) eKLR 457

East African Centre for Trade Policy and Law vs Secretary-General of the East African Community (2013) eKLR

Law Society Of Kenya V Attorney General & 2 Others [2013] eKLR

Calise Andrew Mwatela & Others vs East African Community, No 1 of 2005

Samuel Mohochi v The Attorney General of the Republic of Uganda, East African Court of Justice, First Instance Division, 5 of 2011.

Christopher Mtikila vs The Attorney General of The United Republic of Tanzania; EACJ

Ref. No. 1 of 2008

The East African Law Society and Others v Attorney General of Kenya, EACJ Ref. No. 3 of 2007;

Hon. Sitenda Sebalu v The Secretary-General of the EAC, EACJ Ref. No. 1 of 2010

TABLE OF STATUTES

The Treaty for the Establishment of the EAC, 1999.

Protocol for the Establishment of EAC Customs Union, 2005

Protocol for the Establishment of EAC Common Market, 2010.

The Vienna Convention on the Law of Treaties, 1969.

The European Union Treaty, 1993

.

TABLE OF INTERNATIONAL INSTRUMENTS

Universal Declaration of Human Rights,1948

African Charter on Human and Peoples Rights of 1981

African Union Assembly, 1963

Intergovernmental Authority on Development (IGAD),1986

International Conference on Great Lakes Region (ICGLR),2000

The Montevideo Convention on the Rights and Duties of States, 1933.

The European Union (EU) 1993

LIST OF ABBREVIATIONS

EAC	East African Community
EALA	East Africa Legislative Assembly
EACJ	East Africa Court of Justice
COMESA	Common Market East and Southern Africa
ECOWAS	Economic Community of West African States
SADC	South African Development Community
AU	African Union
EU	European Union
ECJ	European Court of Justice
EPA	Economic Partnership Agreement
EPC	European Political Community
AGOA	African Growth and Opportunity Act
ECOMOG	ECOWAS Monitoring Group
FTAs	Free Trade Agreements
REC	Regional Economic Community
ICCPR	International Covenant on Civil and Political Rights
NMC	National Monitoring Committee
ECCAS	Economic Community of Central African States
CET	Common External Tariffs

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ABSTRACT

This study assesses the challenges, successes and opportunities in the realization of a political federation in the East African Community (EAC) as the ultimate object of the treaty. It argues that although the Summit has a duty to initiate the establishment of a political federation in East Africa, nevertheless, it has failed to realize the political federation status because the East African Community Treaty does not provide proper checks and balances within the structural architecture. The study relies on legal realism and the doctrine of separation of powers to demonstrate that the EAC's structural architecture contains gaps in the legislative, institutional, and policy framework and this has hindered the realization of the federal status that the EAC treaty envisages. The study is justified on the grounds that until now existing literature not only ignores the need and importance of EAC accountability mechanisms but also fails to address frameworks in efforts to open democratic space and parameters necessary for a political federation. This study is carried out in Kenya, it employs doctrinal research methodology to investigate the historical events and factors of the EAC from the pre-colonial era, colonial, post-independence era leading to the famously known Arusha Declaration of 1999. It investigates the strength of the structural architecture of the checks and balances between the summit and other organs of the EAC. The study also compares lessons from other regional unions that have applied separation of powers approach to achieve political federations. Specifically, the study draws on lessons from the European Union, the African Union and Economic Community of West African States (ECOWAS). The study concludes by recommendations on the steps the East Africa community can adopt to achieve the dream of a political federation.

CHAPTER ONE

1.0 INTRODUCTION

The East African Community (EAC) is an organization of East African States, formed as a legal entity and a Body Corporate¹. The organization was formed through the concept of regional integration. According to Hans Van Ginkel, regional integration is the process by which neighboring States increase their level of interaction in terms of economic, social, security, political, and cultural interests.²various reasons have been pondered towards the formation and realization of regional integration, Prof Anyang Nyong'o explains that interest in regionalism is both a response to and a consequence of emerging trends in the global political and economic order.³while others may see it as a purposeful concept where states come together for a particular purpose, like resource mobilization to steer a common development agenda, or even for regional security purposes.it, therefore, makes it a very critical component in modern-day democracy.

From the onset, at the independence of East Africa states, the founding head of States of East Africa had a clear intention to form a political federation for the East Africa Community member states. The then presidents, (Kenyatta, Nyerere, and Obote) meeting in Nairobi, made the famous declaration that was the vision behind the formation of EAC, and vision towards political integration of the EAC, in their quote; *“We the leaders of the people and government of East Africa, Assembled in Nairobi on 5th June 1963, pledge ourself to the political federation of East Africa driven by the spirit of Pan-Africanism and not by mere regional interests⁴”*

In August 2004, during the Special Summit meeting held in Nairobi, the major concern to the heads of states attending the meeting was the slow pace of integration, this made them make a resolve to examine the modalities of speeding up the process through a Fast Track Mechanism, to achieve the ultimate goal of a political federation. It is against the backdrop of this resolution that this study seeks to assess the sixteen (16) year challenges that the Summit has faced in the effort to achieve a political federation.

¹ The East Africa Community Treaty, Article 4

² Van Ginkel, H. and Van Lanenhove, L: “Introduction and Context” in Hans van Ginkel, Julius Court and Luk van Langehove (Eds), *Integration Africa: Perspectives on Regional Integration and Development*, .2003.

³ Nyong’o, Anyang’. *Regional Integration in Africa: Unfinished Agenda*

⁴ Nabudere D W ;Fast Tracking of Federation and Constitutionalism in East Africa,2009

The EAC member countries are the founding tripartite states being, Kenya Uganda, and Tanzania, with Rwanda, Burundi joining later, while Southern Sudan are on interim membership pending full approval and finally the latest application by the Democratic Republic of Congo to join the community who are waiting for Summit approval having gone through the formal stage.⁵ The EAC was originally founded in 1967 by the tripartite members, before its collapse in 1977. It was, however, re-established in 2000 when three heads of states of Uganda, Tanzania, and Kenya signed what is famously known as the Arusha Declaration of 1999. The Community has since then been expanding its membership with annual rotating leadership⁶, nevertheless, the progression of the Treaty towards achieving a political federation through the role of the EAC Summit records very little progression and is what this study seeks to assess.

1.1 BACKGROUND TO THE PROBLEM

Efforts to Politically integrate the East African States has not been fruitful since the establishment of the Community, and various reasons may be attributed to this. While Some of the factors include the lack of political will in the member countries, non-observance of commitments undertaken within the respective agreements, and the insufficient use of the instruments set up by this treaty and related policy instruments.⁷

The EAC is unique from other Regional Economic Communities in Africa, by reason that its founding treaty has enshrined a Political Union as the ultimate objective. It also has set goals that must be achieved within the stipulated timelines, to allow or pave the way to the ambitious political federation status. Responding to the wisdom of the founding fathers in the quest to unite East Africa states under a single political authority, in 2004, the heads of states in east Africa established an office responsible for the political federation, which came up with report title, *“Towards Political Federation in the East Africa Community: Achievements and challenges”*.⁸ whose aim was to assess the progress of political federation to that far, however that report remained a history in itself since then.

⁵<https://www.theeastafrican.co.ke/news/ea/DR-Congo-seeks-to-join--EastAfricanCommunity/4552908-5157244-rldjtsz/index.html> <accessed on 30 September 2019

⁶ The East Africa Community Treaty, Article 12(2)

⁷ Kapstein E, The East African Community, why this time is different, 2010

⁸ Report of the committee on Fast Tracking East African Political Federation, 2004

Regional integration is ideal for the common development of states in the interest of democratization, it is against this backdrop that the integration concept mostly begins with economic development to end with a political federation just like envisaged under the EAC treaty.⁹ Article 5 of the East African Community Treaty sets the ultimate integration stage as the establishment of political federation. This is meant to see the community integrate into one political authority.¹⁰ In celebrating twenty years of the existence of the treaty, this research seeks to find out the reasons why the community has failed to achieve the political federation despite the clarity of the Treaty in this regard.

Formally established in 1967, the East African Community progressed well with its founding ideologies before its collapse in 1977. Various reasons for the fall emerged, ranging from ideological differences, ego, aggression, suspicion to political differences among others. While others have alleged that, by the time of the collapse, the already divided E.A. Community by economic confrontations was further damaged by the excesses of the then Uganda's President Idi Amin.¹¹ "history remains to tell".

It was not until the negotiated Arusha Declaration in 1999, which bore the new community, signed by the then three heads of states of Tanzania Kenya, and Uganda, outlining specific objectives of enhancing regional integration among the members with the ultimate objective of a political federation¹², and further to ensure development, human rights and adherence to the rule of law and democracy became the core principles under the treaty. The Treaty assigned the top structural organ to the Summit¹³. The Summit comprises of Heads of Government of Partner States tasked with giving strategic direction towards the realization of the Community's goals and objectives¹⁴.

In the structural organs outlined in the Treaty, the second main decision-making authority is the Council of Ministers. It comprises ministers drawn from partner states and are responsible for regional cooperation and other duties as the Partner States may determine. The third structure is the Coordinating Committee. This comprises the Permanent Secretaries from the partner states and

⁹ Balassa B. *'The Theory of Economic Integration'*, (London: George Allen & Unwin Ltd, 1961) p.2

¹⁰ Article 5(2) of the East Africa Community

¹¹ Hughes A, *Disintegration of the Community of East Africa*, New York times ,6 march 1977)

<<https://www.nytimes.com/1977/03/06/archives/disintegration-of-the-community-of-east-africa.ht>> accessed on 29 January 2019.

¹² The East African Community Treaty, Article 2

¹³ The East African Community Treaty Article 3

¹⁴ The East African community Article 4

is charged with the regional cooperation. Its roles include the coordination of activities of the sectoral committees and reports to the Council. The fourth structure is the Sectoral Committees, established by the Council on the recommendation of the respective Coordinating Committees. This organ is mandated with developing and monitoring the implementation of the programs of the EAC. The fifth organ is the East African Court of Justice (EACJ) which has the juridical jurisdiction and finally the East African Legislative Assembly(EALA) which is in charge of legislation and policy-making and other organs as may be established by the Summit.¹⁵Drafters of the Arusha declaration were keen on addressing the problems that had contributed to the fall of the earlier Community and to ensure that the new arrangement did not meet the same fate. Thus, from these structural organs, this study is keen on assessing the structural architect as provided under the treaty capable of providing the checks and balances that is key to achieving the political federation as would be discussed in chapter three is this research project

In the commitment to the progression of the EAC agenda, the Treaty provides that the summit must meet at least once a year to pass resolutions or assent into law the legislations that have been passed by the legislative organ for enforcement, however, sometimes years pass without the Summit meeting ,thus causing delay on to the programs of the community and further delay to addressing the urgent needs of the Treaty, for example, the periods between 2017 & 2018), the summit was not able to transact its business due to lack of quorum, specifically resulting from the non-attendance of Rwanda and Burundi, which is a violation of a mandate provided by the treaty¹⁶,this led to the postponement of the 20th Ordinary meeting for summit which was to take place in November 2018 and later moved to 27th December 2018, ¹⁷ further cold war between Rwanda and Uganda led to the postponement of the summit in 2019 .This begs the question whether we can really achieve full implementation of the treaty at the will of the Summit¹⁸, and where the existing structures can ensure they push the summit to perform? This study seeks to find the answer.

¹⁵ EAC Treaty, Article 9

¹⁶ EAC Treaty, Article 12,

¹⁷ www.eac.int/ <accessed on the 27th December 2018>

¹⁸<https://www.theeastafrican.co.ke/news/ea/Rwanda-at-centre-of-bad-broken-and-repaired-relations/4552908-5400224-six9aiz/index.html><accessed on 28th December 2019>

From general assessment on the realization of the treaty and functioning of the EAC, The Treaty accords the Summit enormous powers over the general operation of the Community.¹⁹The role of the Summit is crucial and thus this study seeks to assess this concentration of decision making powers to one entity, as a factor constraining the process of achieving the political federation, while at the same time trying to come up with possible suggestions that may allow faster implementation of the pillars of integration that are key to achieving political federation of the EAC.

Article 6 of the EAC Treaty lays a fundamental principle, that the Community shall be guided by “good governance including adherence to the principles of democracy, social justice, equal opportunities, the rule of law, gender equality, accountability, and transparency, as well as the recognition, promotion, and protection of human rights.”²⁰ These fundamental principles are also echoed in the provisions in the African Charter which is a guiding charter to the EAC treaty.²¹

On fulfilling the key principles mentioned above as a key parameter of achieving political federation as the treaty provides, this paper argues that by concentrating decision making powers to the heads of state and governments and in other political units, where under their direct appointment and control, Council of ministers, judges, and legislatures lies, means that the said political class, may be afraid of losing such power grip of sovereignty part of their state to the integrated government or political federation in which achieving the political federal status may demand, thus my observation that the Summit will be reluctant to accord executive powers to any other organ or structure of the community that would enhance full implementation of the treaty, and to ensure political federation of the EAC, as is the success case with European Union²².

This reluctance has made the EAC agenda to be driven more by issues of state to state politics as has seen in the reasoning advanced by Burundi against Rwanda and even Uganda to the EAC on aggression. This, therefore, makes it hard to reach a consensus on established common interests especially when the parties fail to appear for the annual Summit meeting as demanded by the

¹⁹ EAC Treaty, Article 11

²⁰ East African Community Treaty, Article 6

²¹ African Charter on Human and Peoples Rights, Articles 13,14

²²Editor, *EAC Integration in Doubts as Summit Aborts for The Second Time*, *The East African* (23 December 2018) <https://www.thecitizen.co.tz/News/EAC-integration-in-doubt-as-summit-aborts-second-time/1840340-4907836-f85niv/index.html>> accessed on 29 January 2019

Treaty²³. Such reasons have made it ripe to revisit the fundamental Relationships between democratic governance, and particularly democracy in principle and practice within the EAC as a basis of the foundation for political federation.

1.2 STATEMENT PROBLEM

Although the EAC Treaty obligates the duty of initiating the establishment of a political federation on to the Summit, nevertheless, the summit has failed to realize the political federation status, because, from the structural architect of the EAC, there is lack of the checks and balances that are geared towards the realization of a political federation in the East Africa Community.

1.3 RESEARCH QUESTIONS

This study seeks to answer the following questions;

- a) What are the successes, challenges and opportunities facing the realization of a political federation in the EAC?
- b) What are the historical factors that have constrained the Summit from achieving a political federation in the East Africa Community?
- c) What is the legislative, institutional and policy framework of the EAC and its relevance to the realization of a political federation in EAC?
- d) What lessons can be drawn from the African Union, ECOWAS and the European Union in achieving federal status is concerned?

1.4 STATEMENT OF OBJECTIVE

The objective of this study is;

- a) To identify the successes, challenges and opportunities facing the realization of a political federation in the EAC.
- b) To investigate the historical factors of the EAC, that provided challenges to the Community in efforts to achieve political federation.
- c) To examine the extent to which the legislative, institutional and policy Institutional architecture of the EAC supports the realization of a political federation in EAC

²³Editorial, Does *collapse of the EAC herald cracks in the bloc?* *TheEastAfrican* 1 December 2018) <
<https://www.theeastafrican.co.ke/news/ea/Does-collapse-of-EAC-Summit-herald-cracks-in-bloc/4552908-4876694-un1n1o/index.html>> accessed on 28th January 2019

- d) To examine lessons from best practices that can be drawn from established regional integration units like the African Union, Ecowas and the European Union in achieving federal status is concerned.

1.5 HYPOTHESIS

Whereas the East African Community celebrates twenty years of renewed existence after the collapse of the first community in 1977, the disparity in the democratization of member states exposes little achievement toward attaining a political federation. This is because there is no clear-cut provision in the EAC treaty regarding the separation of powers, that provides a model for proper checks and balances necessary for the full implementation of the EAC treaty.

1.6 THEORETICAL FRAMEWORK

To support the structure and rationale of my study, this study is guided by legal realism theory, the practical theory of Integration and the separation of powers doctrine within it. Collectively, these theories are premised on the fact that laws are not made for society; instead, societies create laws to ensure social-factors like order, prosperity, security, and harmony which are key to societal circumstances. These shall apply in an attempt to provide answers to my research questions.

1.6.1 Legal realism

In simple literal definition, legal realism refers to the sense of being realistic to the circumstances as they are. Justice Holmes refers to legal realism as an elaborate commentary towards law²⁴. This theory is premised on the legal theory of formalist assumption, where the proponents believe in constraints on the power of law by asserting that the law is what it is against what it ought to be. Oliver Wendel Holmes in his work *Path of the law* argues that a fundamental part of bringing a changed attitude to law is being *Realistic* to the circumstance that defines the law.²⁵ He warns that

²⁴ Gilmore G, Yale Law Journal, Legal realism ,its curse and cure

²⁵ The Common law, 1881, p1

distinction must be made between law and morality which this study believes are key to political integration.

This theory is radical in challenging the norm, provoking introspection, and advocating for the present and future prospect of the law, this means the Legal realist theory cannot upstart without looking back to the past to realize the mistake or challenges that might have bedeviled the society then that put them in the present circumstances. as we shall argue in this paper, to locate the law that has not favoured the quest for unity and common political authority, notwithstanding that the law in books has had a call to this unity, but change to the circumstance that favour the unity of the East African citizens and the ambition of the founding fathers was. Thus, to validate law in action, against law in the books.

This theory shall help this study to assess whether the institutional architects as provided in the treaty is capable of providing the checks and balances in a manner that will enable the community to achieve its political federation objective. The place of legal realism in this study is to help understand what the law in practice has been and how it works in the realistic circumstance, versus what the law actually is. The theory should help the structural architecture of the EAC to work together as an institution to achieve a common objective of the political federation, through the checks and balances that form the focus of this study.

1.6.2 Theory Regional integration

The theory of regional integration seeks to explain the trend in regional integration, where the focus is laid on the institutional design with an emphasis on the road to achieving regionalism.²⁶This theory applies other theories such as Neo functionalism and Intergovernmentalism for precision in explaining the trend in the integration of regions. Neo functionalism theories are concerned with the new forms of integration and the limited roles of partner states in fulfilling the integration agenda, this works where a development duty on behalf

²⁶ Borzel, T.A ,Golterman L. et al(eds) (2012)*Roads to Regionalism;Genesis,Design and Effects of Regional Organisation*,Ashgate Publishing Limited ,England pg. 5

of the community may be assigned to a corporation rather than directly to a member state to perform.²⁷

The research project is guided by neo functionalism theory which suggests that an entity can be created to steer the EAC into the political federation. The entity should be free from interference and control but amenable to checks and balances from the structural organs of the community to enable fast-tracking the achievement of political federation. Similar to this proposition is the doctrine of the separation of powers. This holds that good governance is ensured only if the functions of legislation, administration, and adjudication in a state are not placed in the hands of one body of persons,²⁸ as is the case in EAC Summit, but are rather distributed to a greater or less degree among distinct or separate bodies in the structural architecture to ensure checks and balances. It was a popular theory for the European Union in the 70s and 80s, while the Intergovernmental theory criticizes that position and argues that it is the states that have the right to determine the integration agenda.²⁹

The 'separation of powers' phrase has been used to refer to different ideas (not all of which are compatible), including a triad of mutually exclusive functions; a prohibition on plural office-holding; the isolation, immunity, or independence of one organ of government from interference from another; or a scheme of interlocking checks and balances which is necessary recommendation democratic progression³⁰. However, like other theories, it can never go without criticism. Arguments have been posed that the classic tripartite separation of powers was articulated in the eighteenth century and is archaic and anachronistic, therefore, fails to account for other sources of power in the modern state, most notably, the 'fourth branch of the 'administrative state:" Since administrative agencies combine adjudicatory, rule-making, and executive functions, they are 'abhorred by separation of powers traditionalists. ³¹

²⁷ Biswaro, J.M (2011) *the quest for Regional Integration in the Twenty First Century* 20-22

²⁸ R. H. Brookes & K. C. Wheare, *Political Theory: The Separation of Powers*, Pg 53-60

²⁹ *ibid*

³⁰ J. Finnis, 'Separation of Powers in the Australian Constitution: Some Preliminary Considerations' (1967) 3 *Adelaide Law Review* 159; Vile, above n 4, 12; Marshall, above n 9. 22 Marshall, above n 9, 100..

³¹ Marshall, above n 9, 118; A. Vermeule, 'Optimal Abuse of Power' (2015) 109 *Northwestern University Law Review* 673, at 680.

Some scholars have argued that the strict '*one branch—one function*' view cannot be sustained in a modern-day democracy, as this may lead to multifunctionality which may make it hard for the government to capture the complicated institutional realities of modern states³²

However, the foregoing criticism notwithstanding, it's is evident that none of the scholars in the theories have cared to investigate, the dissonance between the letter of the law and law in action. The selected theories confirm the gaps between the law in books and law in practice, the study confirms that the Summits wield so much powers under the EAC treaty, in matters concerning the decision making on the affairs of the EAC, hence the relevance of these theories to this study is to help find a proper roadmap that can be applied in the EAC structural construct, in order to achieve a sustainable political federation that is real and people based on the will on the majority

1.7 RESEARCH METHODOLOGY

The study employs a mixed research methodology of doctrinal, historical, and comparative methodologies. The research concentrates on the analysis of the written law, which includes the EAC Treaty, policies case laws, and propositions thus making it majorly doctrinal. Doctrinal research is useful in the analysis of the legislative, institutional, and policy framework including binding agreements other statutes, international conventions, and judicial decisions, judicial texts and opinions, books, articles, journals, and relevant reports. The historical research methodology in this study shall involve the systematic analysis of events that appreciate the concept of regionalism and integration of political states it helps to trace the place integration in east Africa from the colonial, independence, and post-independence eras, as seen in Chapter 2 of this study. Further, the **comparative research methodology** will help to study and compare the best practices of political accountability in other jurisdictions that have been successful in the regional integration concept, as addressed in chapter 5 of this research project. This methodology will particularly be useful in identifying, analyzing, and explaining the differences of the practices in Ecowas, European Union, African Union, and finally outlaying my research findings and recommendations in Chapter 6.

³² . Lawson, 'The Rise and Rise of the Administrative State' (1994) 107 Harvard Law Review 1231; see further M. E. Magill, 'The Real Separation in the Separation of Powers' (2000) 86 Virginia Law Review 1127, at 1136-47.

1.8 LITERATURE REVIEW

This review looks at the work of various scholars in relation to the political federation and regionalism in integrated states. The review investigates the realization of the ultimate objective of the EAC which is to establish a regional political federation, that as the Treaty provides, was to be achieved through a gradual model culminating into full integration of economic systems within the EAC treaty objectives, some of which are the Customs Union, Common Market, Monetary Union and finally the Political Federation.

1.8.1 Concept of Federalism and democracy

World federation in plain definition implies a revolutionary exercise of the sovereignty of the people, it is a new social contract comprehending the whole human race, the family of man³³. Harris Wofford, the founder of American Student Federalists, called it “man’s greatest peaceful revolution, ... the revolution to establish politically the brotherhood of man. In the realization of federalism, the people of the world would have to establish a democratic, federal Republic. Which is ideally the monopolization of force by a single political authority that governs by law reaching its citizenry.”³⁴

Further, political federation refers to a political organization in which two or more states agree to form a unity government with a central authority while retaining its municipal autonomy. At the regional level, however, federalism thus is the call for the coming together of independent states to form a federal government. In regional integration, a political federation is a mean between political cooperation and political union., this cooperation involves mutual policy arrangements among member states aimed at attaining common interests and objectives and does not necessarily require the surrendering of one’s jurisdiction to a central unit³⁵.

The first step towards the realization of a political federation of EAC was established in 2004 by the then heads of states of East Africa states where summit directives were given after national stakeholders’ consultations that would create awareness and prepare the EAC citizen on the

³³ Robertson P, *The New World Order* (Dallas: Word Publishing, 1991).

³⁴ Dead End: Federalism Limited,” *Common Cause*, 1 (May 1948): 388.

³⁵ Kasaija *African Journal of International Affairs*, Vol. 7, Nos. 1&2, 2004, pp. 21–34 *Regional Integration: A Political Federation of the East African Countries?*

envisaged political integration.³⁶ However, a lot of literature has been written and published in the political federation agenda and objective of the EAC treaty but none fails to study the significance of the EAC Summit in achieving this historical milestone, hence this reviews seeks to analyze the following thematic areas in trying to assess the implementation of the political federation of East Africa, hence, the general concept of integration, structural importance of EAC organs, democracy and governance as a key impetus to political unity.

1.8.2 Concept of Integration

Christopher Omolo and Wanyama Masinde in their book *the road to East African Integration* explains that the concept of regional integration was bolstered by a trend towards globalization, which was to see the world come under a world society for economic and political purposes, especially after the world wars one and two (WWI & WWII), and Africa was not to be left out in this discourse for the regional integration of its states³⁷, this led to the official formation of Organization of African Union in May 1963 with thirty-two states signing at its formation and a further twenty-one who joined along the historical lines.³⁸, further African states divided into more regional integrated blocks among them the EAC and the South African Development Community(SADC), Economic Community Of West African States(ECOWAS).

The EAC Treaty stipulates the objectives that must be achieved,³⁹ to include economic and the ultimate political integration, which was to be achieved through enhancing democracy to its greater citizens, promoting mutual trust and political goodwill among member states. With the integration of EAC states under the renewed Arusha Declaration, the discourse was emphasized into three fundamental pillars that obligate state parties to promote and achieve democracy, and accountability⁴⁰ as the treaty further stipulates. These pillars are fundamental tools that provide an enabling environment for good governance and adherence to the human rights principles which is

³⁶ Waffubwa I & Birungi J.C ,Drive towards political integration in East Africa.

³⁷ Wanyama Masinde and Christopher Omolo, *the road to East Africa Integration*, in *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, edited by Emmanuel Ugirashebuja et al., Brill, LEIDEN; BOSTON, 2017, pp. 1–21. <JSTOR, www.jstor.org/stable/10.1163/j.ctt1w76vj2.5> accessed on 29 January 2019

³⁸ <https://www.sahistory.org.za/dated-event/organisation-african-unity-formed-and-africa-day-declared> <accessed on 25 February 2019.

³⁹ . East Africa Treaty Article 9

⁴⁰ . Supra n 1 above (Article 5)

a key impetus for democratization and achieving the ultimate political unity in the Community as the treaty envisages.

However, in the weekly East African newspaper editorial series, titled *Integration, A question of Hard Choices*, observers argue that the current structure governing the EAC is not up to the task in promoting the full implementation of the treaty towards achieving its objectives, and have thus failed to achieve rule of law, democracy, human rights and accountability which are the necessary recipe for political unity objective, and foresee that the EAC may be headed for disintegration and fall as previous community which resulted from the failure by partner states to find a rational response to nationalistic problems and pressures.⁴¹

It means there exists a difficulty in finding a balance of duty between these national and regional responsibilities which was left to the final decision of the elected political leaders in the rank of a president of each member state, a fact which supports these observers opinion that the EAC Leaders are yet to a leap of faith that would allow them to accept the inevitable disruption, challenges, and pains associated with achieving a fully functional East African Community under a single political Unity⁴².

1.8.3 The structural importance of the Summit.

Structural Organs of the EAC are the key foundation for the political federation to member states, democratic governance which is governance infused with among others principles of equity, political participation, rule of law, transparency, accountability, and Human development are necessary for the common political trend as far as political Unity is concerned⁴³. International law believes that actors from outside of the national development arrangement are key to achieving a political federation to which political unity of states is the key as the success story of the EU narrates. However, the many scholars who have written on the structural importance of the organs of the EAC in implementation of the objectives of the EAC Treaty have failed to capture specific

⁴¹Editorial, *Integration, A question of Hard Choices*, *The East African* (11 September 2018) <<https://www.theeastafrican.co.ke/oped/editorial/East-African-Community-integration/434752-4739250-qgilhoz/index.html>> accessed on 30 January 2019

⁴² *ibid*

⁴³ Daniel Sakyi, Isaac Bonuedi and Eric Evans Osei Opoku, Trade facilitation and social welfare in Africa, *Journal of African Trade*, 10.1016/j.joat.2018.08.001, (2018)

scrutiny on the role of the Summit as the highest decision-making organ, thus the gap this study seeks to assess.

It is through embracing democratic Indicators that the progress of a single political Authority may be realized in the EAC, such indicators are thus valuable tools in informing partners and recipients who are the citizens of what works, what does not work, and why, especially in achieving a federal status,⁴⁴ a role the Treaty assigns to the summit as the highest decision making organ, and to which this study seeks to assess with regards to the establishment of a political federation in East Africa.

Andreas Maurer⁴⁵ in his analysis of the decision-making process of EU points out the importance of having inclusive decision-making mechanisms that have sufficient checks and balances that inspires confidence in members of the EU citizen, he stipulates how the EU has carefully balanced the decision-making process between the head of states who sits at the council, the commission the EU parliament and the EU court of justice where all the three institutions work harmoniously to ensure that the directives proposed by the EU promote the implementation purpose of the EU objectives.

The EAC Treaty provides a legal dimension for operations by assigning the top governing structure made up of the head of states of each member state referred to as the Summit⁴⁶ amidst expectation to steadily implement the Treaty, each member of the summit faces political pressure from their originating countries, thus it may become a challenge for the summit to effectively discharge its mandate under the Treaty due to such pressures.⁴⁷ The fact that each president has his/her national political challenges, it would make them shy away from embracing a political umbrella that may affect total control of the state of sovereignty.

The Council of Ministers is the second in the organizations' management structure, it is composed of ministers of each member state.⁴⁸ The ministers are direct presidential appointees from their respective member states, and advisers to their state on affairs of the community, and particularly their appointing authority who are the sitting presidents. By this virtue, they will hardly go against

⁴⁴ <https://onlinelibrary.wiley.com/doi/abs/10.1002/pad.178> <accessed on 26/03/2020>

⁴⁵ . Maurer, A., 2003. The Legislative Powers and Impact of The European Parliament. *JCMS: Journal of Common Market Studies*, 41(2), pp.227-247.)< <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-5965.00420>> accessed on the 30 January 2019

⁴⁶ Supra (Article 10)

⁴⁷ Supra (Article 11)

⁴⁸ Supra (Article 34)

the will of their appointing authority, hence may not seem independent in ensuring that the decisions they make adhere only must reflect the will of the appointing authority.⁴⁹ Aloo Obura observes that whereas the decision making process by the Summit is by consensus.⁵⁰ This still puts the head of states in a political dilemma to carefully balance their effective mandate under article 5 to protect democracy, uphold good governance and observe the rule of law and their geopolitical and foreign policy between community member states.⁵¹

1.8.4 Democracy and the political federation

A political federation is a status of achieving democracy, where member states submit part of their sovereignty to the bigger democratic block. In a politically integrated setup, democratic management is key to avoid majoritarian oppression or inequality. That the decision by the majority may assert onto other members or citizens. Article 6 of the EAC Treaty stresses the need to uphold democracy and its principles for the sake of implementation of the treaty fully. In Kenya, the post-election violence of 2007 was a test of upholding democracy within the EAC region, when the then Electoral Commission declared Mwai Kibaki as the winner, which was followed by his subsequent swearing-in at night/ late evening, led to post-election violence which affected most parts of the country.⁵²

The then chairman of the EAC president Jakaya Kikwete, together with other members of heads of states immediately sent their congratulations to the sworn Presidential candidate despite alarming allegations of electoral injustice. This poses a question as to whether the summit as currently structured can effectively live to the spirit and the letter of Article 5 of the EAC treaty to effectively discharge its mandate in providing proper stewardship among its member states in observing the rule of law, enhancing good governance and protection of democratic principles.

According to Leonard Aloo, the manner in the implementation of the directives defeats the democratic purpose of the treaty, citing the case of *Tom Kyahurwenda vs Attorney General of Uganda*⁵³ in where the court stated that provisions relating to the political integration are

⁴⁹ (Aloo, 2017) [online] Available at: <https://www.jstor.org/stable/10.1163/j.ctt1w76vj2> <Accessed 9 Jan. 2019>

⁵⁰ibid

⁵¹ East African Community Treaty, article 5

⁵² N. N. Elekwa and Okechukwu I. Eme *The Indian Journal of Political Science* Vol. 72, No. 3 (JULY - SEPT., 2011), pp. 833-844 POST-ELECTION VIOLENCE IN AFRICA: A Comparative case of Kenya and Zimbabwe

⁵³ REFERENCE NO. 1 OF 2014

injusticiable and further argued that the consensus way of making decisions gives each member state a veto power that renders the decision-making process at the summit a daunting task. Aloo is of the view that for the summit to effectively realize its objective, which is to promote the rule of law, uphold democracy and human rights, the decision-making process ought to be changed to comprise a vigorous mechanism that is objective oriented.

Aloos' view affirms the position advanced by this thesis that the EAC summit should adopt the theory of separation of powers which emphasizes powers upon the institutional architecture to provide checks and balances against one and the other so that the EAC can effectively realize the goals stated in the treaty agreement from the preamble, as read with Article 5(2), which rest upon the summit, the role to undertake the establishment of the political federation as the ultimate objective of the treaty.

Andreas Maurer⁵⁴ in his journal, *the Legislative Powers and Impact of The European Parliament*, while analyzing the decision making process of the EU, points out the importance of having inclusive decision-making mechanisms that have sufficient checks and balances that inspires confidence in members of the EU citizen, he stipulates how the EU has carefully balanced the decision-making process between the head of states who sits at the council, the commission the EU parliament and the EU court of justice where all the three institutions work harmoniously to ensure that the directives proposed by the EU to promote common objectives.

1.8.5 East African Court of Justice in promoting political federation

Further on, this study examines how the EACJ in ensuring that the directive and decisions of the summit adheres to the rule of law and promotes observance to democratic principles whose aim is geared towards achieving the political Federation. This concern has also been raised by John Eudes Ruhangisa⁵⁵ in his article discusses the role of the East African Court of Justice in promoting pillars of political unity such as rule of law, human rights, and good governance. This study finds the gap in that the appointment of judges of the EAC.

⁵⁴ Maurer, A., 2003. *The Legislative Powers and Impact of The European Parliament*. *JCMS: Journal of Common Market Studies*, 41(2), pp.227-247.)< <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-5965.00420> >accessed on the 30 January 2019

Prof Ruhangisha critically examines the question of the independence of EACJ from the influence of the Summit and how the EACJ can effectively give oversight on the powers of the summit who are guided by political agenda. From the observation of the Treaty, he opines that the manner in which the judges are appointed does not give confidence as to whether the court is impartial and free from influence from the summit.

Under the treaty, it is the president of a member state who appoints judges sitting at the court representing each state therefore it is difficult for the court to provide proper checks and balances concerning interpretation and enforcement of the treaty.⁵⁶ For example in the case of Anyang Nyong'o and others vs EAC⁵⁷ where the applicant proposed for the recusal of Justice Lee Muthoga who had previously presided over the case and ruled against the applicant, however, the court declined the motion of recusal citing that the treaty did provide for the procedure of recusal and the applicants would have to wait for the summit to hold its plenary sitting to remedy such legal deficiency.

The sitting of the Summit takes place once in a year⁵⁸, and this interprets that the heads of states have powers even over the judicial organ of the EAC in that when such sitting does not take place then serious legal remedy where gaps exist may not be addressed till such a time that the heads of states meet, hence common parlance that for the overall objective of the treaty regarding promoting rule of law, protection of human rights and good governance there is need of proper distribution of power between all organs of EAC or a restructure of some sort for efficiency purpose.

This study also interrogates the interplay of national law and the EAC treaty to find the challenges that face the Summit in the quest to form a union of democratic political jurisdiction. The that some of the member states are monist and dualist poses the challenge of the extent of the submission to the law of the treaty, and especially when it means surrendering powers of nationally elected leadership to the regional Authority level.

⁵⁶ EAC Treaty ,Chapter 8

⁵⁷ {REF No 1. of 2006} & {APPEAL NO. 1 OF 2009}

⁵⁸ Regulation no11 of the Summit Procedure

1.8.6 Rule of law as a democratic principle

This study seeks to further interrogate the adherence to the rule of law and social justice by the Summit as a basis of goodwill to forming or foreseeing a regional political Unity. Prof Yash Ghai in his program paper number 5 of 2001 titled *Towards Democratization and social justice*, discusses the aims of promoting social justice and assesses to what extent has democracy and social justice have been implemented in recent years, this is key to achieving democratization as a basic foundation to political integration.⁵⁹In this order, Prof Ghai examines that we must assess the nature and implications of globalization and its dynamism, which has a profound effect on both the relevance and prospects of democracy and social justice, which are important ingredients to achieving political federation.

Further on, Professor Ghai opines that Human rights are a component in achieving democratic concepts. To explore the human rights framework's potential, it is necessary to briefly describe the human rights system as a component of democracy. Those essential components of the system are actors, procedures, substantive rights, functions, ideologies, and the levels of operations of both human rights and democracy.⁶⁰ Human rights are based on cultures which vary so much and more at the integrated regional level, hence the study focuses on the integration of various cultures with different perspectives to achieve political federation through the democratization and effective checks and balances that is the gap in law and practice that no scholarly work has taken cognizance of, on and until now.

1.8.7 Facets of regional integration

Belenos Bonilla in his, "*A Step Further in the Theory of Regional Integration*, argues that regional integration strategy can be analyzed from at least three facets.⁶¹ first, the *economic integration*, which he says encompasses various degrees or stages of integration, e.g. preferential trade agreements,(free trade areas (FTAs), customs unions (CUs), common markets (CMs), and

⁵⁹ Yash Ghai, Human Rights and Social Development, *Towards Democratization and social justice*, Democracy, Governance and Human Rights Program Paper Number 5 October 2001

⁶⁰ *ibid*

⁶¹ Belanos Bonilla A, *A Step Further in he Theory of Regional Integration: A look at the Unasur's Integration Strategy*, <<http://www.theses.fr/2015LYO22009>> accessed on 6 February 2019

economic and monetary unions),” such as provided in Article 5(2) of the EAC treaty as the steps towards achieving the final political objective.

Second is political *integration*, which takes into account greater depth coordination, and harmonization of actions among members in the governmental and institutional level, this emphasizes regional governance and last is *physical integration*, which features key drivers to the political milestone of a single democratic regional authority. All these three dimensions are closely related to each other when it comes to achieving the concept of regional integration.⁶² However, the gap in Bonilla's work is failing the link between fulfilling the facets of integration and the leadership role of those entrusted to implement the regional agreement which this study seeks analyses.

The rebirth of regional arrangements aiming at furthering the integration of Africa was witnessed from the nineties (1990s) where the Continent witnessed the span of second liberation strive. However, in EAC, political integration faces a variety of obstacles that this study seeks to find out through assessing the roles assigned to the top organ that is tasked with implementation and ensuring the full realization of objectives of the EAC.

This study looks at the various dynamics favouring or disfavouring regional integration in East Africa with regards to the ultimate objective being political federation as Articles 11(3) and 123(6) of the treaty provides.

In conclusion, this study recommends more formal and practical efforts that the EAC Summit may apply to achieve common political unity, for example by attempting to adopt Bonilla's tri-faceted approach,⁶³. Further, the study examines the role of the Summit as the epicenter of the EAC management organ tasked with providing the road map ultimate to initiate political federation, this study shall assess the structural impediments and policy-related impediments to the summit as an obstacle achieving political federation in the East Africa Community.

Hon. Abdulkarim Harelimana presenting on the "*the east African political federation; addressing fears, concerns and challenges* at the EALA's 10th Anniversary symposium on 2nd June 2011 in Arusha, Tanzania, believed that the people should be able to express, a brave and bold vision of

⁶² supra

⁶³ ibid

the Federation that would be competitive in the era of globalization, and further believes that to realize high and sustainable growth trends in the Federation, there should be a commitment to timely, effective and time-bound decisions from those entrusted and be followed by their implementations⁶⁴.

Harelimana in his presentation concludes that to achieve political integration, the pillars of a political federation must first be established and strengthened, which are, common foreign policy, peace and security, and good governance. there must be the need for structural transformation of regional policies, institutional arrangements, and capacities to support the deeper goal of development. However, the EAC Political Federation's legitimacy and sustainability are dependent on the extent of achievement of development of member states. A positive environment backed by a strong political will, the presence of a viable regional structure, and commitment are key to the success of the process.

1.8.8 Political will and public participation

Philip Apuuli Khasija In studying the political integration in the EAC member states, argues that the current leaders may have the desire for the establishment of the political federation, he, however, notes that the realization of the federation will take more than a political will as currently stands, He further notes that the leaders failed to incorporate the people in the integration journey, thus lacking public awareness as to what the processes should be nor the progress.

The major problem facing the integration of Africa in general and East Africa, in particular, is the top-down approach. This was the case with the Organization of African Unity (OAU) and now the African Union (AU) where down at the grass-root level, people have little or no knowledge nor role in the establishment and consolidation nor progress of the integrated units. He concluded by posing the question as to whether existing regional conditions advance the project of an East African federation, which is the basic objective of this study.⁶⁵

⁶⁴ Hon Harelimana A, " *the east African political federation; addressing fears, concerns and challenges* ", 10th EALA anniversary Symposium, 2nd June 2011.

⁶⁵ <https://www.ajol.info/index.php/ajia/article/view/57213> <accessed on 5 November 2020>

Korwa Adar, a scholar, believes that there is no clear link between the East African political integration's fast-tracking statutory organ of the EAC and its people in the integration process, he means that any statutory organ established for fast-tracking the political federation, as long as it is under the control of the political leadership, there shall be no progression. Instead, he recommends "commissions and task forces" should be established to drive political integration project, far from the hands of political linchpins.

Korwa opines that, right from the beginning, there was the need for a critical review of the Wako committee recommendations of the fast-tracking East Africa political federation together with those of the national consultative committees. These committees should offer specific recommendations that are relevant for the regions' single political authority⁶⁶

In conclusion, this literature review through the various scholars reviewed in this literature, reveals that there is an existing gap in the structural architecture of the EAC that cannot allow for holding the Summit into account, the highest decision making organ on the affairs of the EAC for the non-achievement of the common political status.

1.9 JUSTIFICATION OF THE STUDY

Until now, the existing literature has failed to identify the existing gap in the powers of the EAC summit in relation to checks and balances, that may be obligated to other structural organs of the EAC, through the application of the theory of separation of powers, for effective implementation of EAC objectives.

Among other international statutes, the African Human Rights Charter, as a guiding statute on democracy and integration, stresses the adoption of virtues of 'African historical tradition and the values of African civilization' as an inspiration to African democracy which is unity/integration.

African charter further stresses the right to development, and the duty of states, individually or collectively in ensuring the exercise of democratic rights within the Africa continent, thus this

⁶⁶ Korwa G Adar , [Africa Insight](#), Fast tracking East African political federation : the role and limitations of the East African legislative assembly
Volume 37, Issue 4, Mar 2008, p. 76 - 9

research analyses to what extent does this individual duty promote collective benefits. thus, a document proving the roadmap on the Unity of states of Africa, this study finds its justification on the premise of the unity of Africa states as an obligation of states pegged on the responsibility of their Leaders who must be held accountable for their actions for the purpose of fast tracking the common good of the people.

Chapter Breakdown

Chapter One; Introduction to the research project.

Chapter Two; History of the East Africa Community.

Chapter Three; Legislative, Institutional, and Policy Framework of the East Africa Community.

Chapter Four; Challenges facing the EAC Summit in achieving Political Federation

Chapter Five; Lessons from other Jurisdictions

Chapter Six; Findings, Conclusion, and Recommendations

CHAPTER TWO

2.0 THE HISTORY OF THE EAST AFRICAN COMMUNITY

2.1 Introduction

This chapter traces the history of the East Africa Community, this chapter aims to distinguish whether each underlying historical account informed the democratization process that aimed at achieving political federation.

The idea to rejuvenate the then collapsed Community was conceived by the initial three members in their pursuit of more concrete social, political, economic, and cultural ties amongst themselves. The collapse of its predecessor, which lasted merely a decade, was associated with the Political, economic, institutional, structural, Ideological, and personality differences between the three founding presidents of the initial member states.⁶⁷

Despite these differences, however, it is believed that the collapse was accelerated by political developments in Uganda in 1971, which fundamentally worsened the relationship between Uganda and her counterparts.⁶⁸ So timely and quite overdue was the idea of regional integration that both Burundi and Rwanda joined in 2007, with South Sudan coming later in 2016.⁶⁹

In analyzing this historical path, this study is divided into three sections, outlining the historical era as, the pre-colonial period, colonial period, and post-independence Community which

⁶⁷ Korwa G. Adar, 'East African Community: The democratization of international organizations' International Democracy Watch p.4. http://www.internationaldemocracywatch.org/attachments/458_EAC-adar.pdf Accessed on 1st April 2019.

⁶⁸ Vincent Lissu Mughwai, 'The East African Community: Progress, Challenges and Way Forward'(University of Bridgeport, Winter 2010) p. 2. https://www.academia.edu/10806139/The_East_African_Community_Progress_Challenges_and_Way_Forward Accessed on 1st April 2019.

⁶⁹ East Africa Community, 'Joint Communique of the 17th Ordinary Summit of the EAC Heads of State' <https://www.eac.int/communique/374-446-526-joint-communique-17th-ordinary-summit-of-the-east-african-community-heads-of-state> Accessed on 8th April 2019.

collapsed in 1977, and finally, the Arusha Declaration of 1999 leading to the establishment of the EAC.

2.2 Historical Overview

Commitment to regionalism was part of the broader African integration agenda which led to the formation of the Organization of African Union (OAU) in May 1963. Steering the Continent towards Pan Africanism and Economic unity through inter-trade within the integrated states.⁷⁰, the trend towards globalization was/is the reason for the world states coming under world society, for various interests but more especially economic and political reasons, the integration concept grew stronger especially after the world wars one and two (1 & 2), thus Africa Continent chose not to be left out in this discourse for the regional integration and purpose for its population⁷¹.

Regional integration which is common parlance of states unity is defined as a common place in the contemporary world in which a group of States deliberately come together to pursue a common purpose where Interest in regionalism is both a response to and a result of emerging global political and economic trend.⁷² Therefore makes it necessary to understand the history of the EAC in the discourse of globalization among political states. necessary to research, is to understand how historical background has supported the realization of a common political objective that the EAC Treaty envisages in the ultimate.⁷³

⁷⁰ Dinka ,T Kennes ,W. 2007.*Africa's Regional Integration Arra* (ECDPM discussion paper 74).Maastricht.

⁷¹ Wanyama Masinde and Christopher Omolo, *the road to East Africa Integration*, in *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, edited by Emmanuel Ugirashebuja et al., Brill, LEIDEN; BOSTON, 2017, pp. 1–21. <JSTOR, www.jstor.org/stable/10.1163/j.ctt1w76vj2.5> accessed on 29 May 2019

⁷² Nyong'o Anyang' *Regional Integration in Africa: Unfinished Agenda*, 1990 Academy Science Publishers, Nairobi Kenya

⁷³ EAC treaty, Article 123

2.3 History of the EAC

The first formal Community came into existence in 1967 after the signing of the treaty by the three founding member countries (Kenya, Uganda, and Tanzania). The major purpose was aimed at strengthening their ties through a Common Market, a common Customs tariff, and a range of public services to achieve balanced economic growth within the region and ending at political unity through a political federation.

2.4 Pre-colonial and Colonial Corporation in East Africa

The inception of the EAC can be traced to around late 1890s particularly during the Kenya-Uganda Railway (famously referred to as the Uganda Railway) construction which was seen to have formed be the basis of integration at that early stage of around 1901 between Kenya and Uganda. This early relationship between the two states, Kenya and Uganda were under the British colonialist as Tanganyika, was a German colony by then⁷⁴. However after the First World War in which Germany lost, Tanganyika joined Kenya and Uganda to form the East Africa Community under the British African protectorate⁷⁵.

The post-1st world war dispensation must have been the cause for unified British control of the regional entities marked by the colonial agenda and the underlying pre-colonial formations around such nations, being Kenya Uganda, and Tanzania⁷⁶.

⁷⁴ Khoti C. Kamanga, "An Enquiry into the Achievements and Challenges of the East African Regional Integration," *African Review*, 43(1), 2016, pp. 51-74

⁷⁵ Msuya W. Mangachi, *African regional integration: East African experience*, 2011. Pages:

36, Ibadan: Safari Books Ltd. ISBN

⁷⁶ Prof Oyugi E, *East African Community-the Third Round, A people or state-driven regionalization project?*

The aspirations for this regional cooperation took a Centre stage during the post-colonial state in the 1960s and were largely driven by the then leaders of the EAC states; Jomo Kenyatta (Kenya), Julius K. Nyerere (Tanzania), and Milton Apollo Obote (Uganda)⁷⁷. In 1967 the East African Community Founding Treaty was officially signed soon after the three founding countries gained their independence.

2.5 The fall of the East African Community

Some ten years after coming into existence, 1997 would see the collapse of the East African Community. Reasons advanced for the fall varies, while some attributed the fall to the persistent problems arising from the competing ‘national’ interest, divergent Ideologies, parochial sovereignty, and the Socialist economic system of Tanzania versus Capitalism in Kenya.⁷⁸ Strong political goodwill was lacking the same as the private sector and civil society the cooperation activities. Being that Community owned common economic driver projects, the disproportionate sharing of benefits among the Partner States was a major factor that contributed to the collapse due to their differences in their levels of development and lack of adequate policies to address such situations;

The political differences, especially between the two countries of Uganda and Tanzania, escalated the collapse of the federation as Uganda’s Idi Amin accused Tanzania’s Julius Nyerere of giving overthrown Milton Obote Asylum (though the actual quarrel and eventual war peaked in 1978-79, long after the collapse of EAC).

⁷⁷ Korwa G.Adar ,East Africa Community, International Democracy Report 2011,ed Govana Finizio,Lucio Levi and Nicolla Villinoto<accessed on 29 August 2019

⁷⁸ Kas International Reports 9/10/2011 P.91

Ideological reasons that pitied Tanzania's Mwalimu Julius Nyerere against Kenya's Jomo Kenyatta, culminating in the infamous "*man-eat-man society*" by Nyerere and "*man-eat-nothing society*" by Kenyatta, in reference to the other's economic ideologies.

In all the reasons and the excuse for the fall of the Community, different levels of economic development occasioned the actual collapse of the EAC, in which case the lion's share of the EAC benefits went to Kenya compared to the rest of the Partner States.⁷⁹ This *primus inter pares* sense made Kenyan officials question the relevance of the East African Railways and Harbours being headquartered in Dar es Salaam, and the East African Posts and Telecommunications being in Kampala, while Kenya had substantive ministries in charge of these sectors⁸⁰.

By ignoring The Kampala Agreement contributed to the collapse as it sought to establish a rationalized and even distribution of industries across the region, as a means of ensuring balanced development and mutual benefits from the Community. However, partner states ignored and or refused to ratify the agreement which among the reasons that contributed to the collapse of the first EAC. If not handled well, It is predicted that the same fate could be awaiting the current EAC, which instead of building on strong economic pillars which are key to supporting a political federation and strong democracy, is built more on conventions and treaties.⁸¹

2.6 Revival of the East African Community

After the fall of the first EAC, the tripartite shareholders felt there was a need to manage the shared common owed property, on 14th May 1984 the partner states signed the East African Community

⁷⁹<https://www.theeastafrican.co.ke/oped/letters/Crucial-lessons-for-all-members-states-from-the-collapsed-EAC/434756-1653656-pqeab0z/index.html> accessed on 21st September 2019

⁸⁰ *ibid*

⁸¹<https://www.theeastafrican.co.ke/oped/letters/Crucial-lessons-for-all-members-states-from-the-collapsed-EAC/434756-1653656-pqeab0z/index.html> accessed on 21st September 2019

Mediation Agreement 1984, referred to as “the Mediation Agreement in Arusha, Tanzania, the agreement was meant to harmonize the division of the assets and liabilities of the former East African Community.⁸²

In the Mediation Agreement through Article 14.02, the partner states agreed to explore and identify areas for future cooperation and to explore opportunities for such cooperation. On 30th November 1993 a provision was made in the Agreement for the establishment of a Permanent Tripartite Commission for Co-operation Between the three founding states, for the establishment of the “the Tripartite Commission” which was to be responsible for the coordination of economic, social, cultural, security and political issues among the said countries .further a Declaration was also made by the Heads of State of the said countries which would see closer East African Co-operation;

2.7 ARUSHA DECLARATION OF 1999

A Secretariat was established On the 26th November 1994, for the Permanent Tripartite Commission to enhance the Cooperation between the initial partner states of the Republics of Kenya, Uganda, and the United Republic of Tanzania.

This saw the efforts for another East African co-operation, the commission was launched at the EAC Headquarters in Arusha, Tanzania. After a series of meetings, the Heads of States after reviewing the progress made by the Tripartite Commission, in the development of closer cooperation between the said countries in the fiscal Cooperation Development Strategy for the period 1997 – 2000 which included infrastructure and political cooperation among others, directed the Commission to embark on negotiations for the upgrading of the Agreement establishing the Tripartite Commission into a Treaty;⁸³

⁸² http://eacj.eac.int/?page_id=33#toc-preamble accessed on 21st September 2019

⁸³ http://eacj.eac.int/?page_id=33#toc-preamble accessed on 21st September 2019

Later on, the three countries resolved to sign the Treaty re-establishing the EAC, with main objectives outlined in the Treaty and organs and secretariat created to ensure the letter of the treaty was/is fully implemented to the ultimate political Federation. Hence the current East African Community (EAC) was a rebirth of the one that collapsed in 1977 due to political and managerial disagreements among the partner states.

2.8 CONCLUSION

In appreciating the historical import of the integration concept to the EAC, the historical factors reveal that we need to look beyond the state-centric notions of member states and put the focus on the common acts and the combined agenda that may aspire the greater masses of the community towards steering the Community into a political Unity without making the same mistakes that led to the fall of the first community in 1977.

CHAPTER THREE

3.0 THE LEGISLATIVE, INSTITUTIONAL AND POLICY FRAMEWORK GOVERNING THE EAST AFRICAN COMMUNITY

3.1 INTRODUCTION

This chapter examines the legislative and institutional and policy framework governing the East African community. 30th November 1999 remains significant in the history of integration of the East Africa region as the Arusha Declaration was signed, marking the renewed journey of regionalism. This has since been bolstered by the subsequent and gradual increase of the EAC membership from three states to six states. The chapter discusses the efficacy of the EAC treaty, its strengths and weaknesses and evaluates the extent to which to captures a strong checks and balances framework that would enable it to realize the vision of achieving a federation status in the East African Community.

3.2 THE EFFICACY OF THE EAST AFRICA COMMUNITY TREATY

3.2.1 Analysis of the EAC treaty: positive attributes of the treaty

The legal framework of the EAC had been designed to foresee a uniform transition from the disjointed state parties to the formation of a well-coordinated regional body with enshrined checks and balances capable of achieving the objective of Political federation as articulated in the treaty. The Treaty has enabled concurred competence between the community and its member states, through which the state parties can still make policies on issues that the community has the competence to deal with.⁸⁴

⁸⁴ Elvis Mbembe Binda, p. 104.

The EACJ has offered a robust interpretation of the Treaty in a manner that guarantees a clear distribution of labour and minimal overlap on the roles of the organs. The Court has pronounced that the Treaty, by dint of Article 23, 33 (2) and 34, confers upon it overall supremacy over the interpretation of the Treaty, in the pursuit of harmony and certainty of the emanating jurisprudence.⁸⁵

Further, the structural architecture of the Community is designed to deliver a kind of interdependence amongst the organs themselves in the discharge of their mandates but geared to fulfilling the object of the treaty within the member states, however, the structures are not fully empowered to hold the Summit accountable under the principle of checks and balances that this seeks to explore. The appointment of the Secretary-General of the EAC is an all-inclusive process that involves the Summit, and the state parties on a rotational basis.⁸⁶ The Secretariat is the pivotal link between the Council and the Assembly, majorly on its role in receiving and forwarding resolutions to the Council and the Legislative Bills forwarded to the Assembly.⁸⁷

3.2.2 The shortcomings of and the negative attributes of the treaty

To some extent, there lacks sufficient legislative framework to support the checks and balances necessary to buttress the novel idea of integration amongst the Member states. and the general competence of the regional body. Some of the inefficacies of the EAC are associated with the inherent nature of the treaty, especially when it's scrutinized against the standards set by its successful regional counterparts like the EU.

⁸⁵ East African Law Society and 4 Others v Attorney General of Kenya and 3 Others, EACJ Reference No. 3 of 2007.

⁸⁶ Article 67 of the EAC Treaty.

⁸⁷ Article 27 of the EAC Treaty.

The EAC Treaty does not provide for the competence of the EAC as an intergovernmental organization.⁸⁸ The regional instrument lacks a single article that comprehensively enumerates the mandate that the member states wish to confer to the Community. If anything, the competence of the EAC community can only be implied from the general objectives of the community.⁸⁹ A critical reading of the objectives of the community demonstrates that the competence of the EAC is confined to enhancing cooperation on the particular areas in which the member states have agreed to act in common.⁹⁰

Furthermore, the concurrent competence between the member states and the EAC has hindered the legal competence of the Community. The partner states are under an obligation to work closely with the EAC institutions in the pursuit of a coordinated framework to achieve the ultimate objectives.⁹¹ This duty has been interpreted to mean there exists a concurrent competence between the EAC and the Partner states.⁹² As a matter of construction, it is apparent that the conference of competence on the EAC on some issues does not mean that the partner states have automatically lost their authority to act on the same matters.⁹³ This interpretation is prejudicial to the functionality of the treaty particularly due to the possibility of conflicting policies and the general lack of uniformity of the policies across the member states.

The partner states have not placed the promotion and protection of democracy at the top of their priority list. The Court lacks express jurisdiction to receive and adjudicate complaints on key

⁸⁸ Elvis Mbembe Binda, *The Legal Framework of the EAC* (Brill 2017) p. 103. <https://www.jstor.org/stable/10.1163/j.ctt1w76vj2.9> Accessed on 7th April 2019.

⁸⁹ Article 5 of the Treaty.

⁹⁰ Elvis Mbembe Binda, p. 104.

⁹¹ Article 8(1) (b).

⁹² A.G. Toth, 'The Principle of Subsidiarity in the Maastricht Treaty', (1992) 29 *Common Market Law Review* 1079, p. 1080.

⁹³ Elvis Mbembe Binda, p. 104.

democratic elements such as human rights free and fair elections.⁹⁴ However, the extension of the court's jurisdiction to hear and determine human rights complaints can only be provided for on a future date, upon the completion of the enabling legal instruments.⁹⁵ The State Parties' laxity to legislate on these complaints stands conspicuously considering that, for the last 20 years of the Treaty's existence, they have not demonstrated any intention to the extent the Court's competence. Furthermore, the Community has in subsequent legislative enactments excluded human rights jurisdiction from the EACJ, on the unjustified rationale that they should exclusively preserve the jurisdiction for the African Court, established under the African Charter.⁹⁶

3.3 THE EFFICACY OF THE ORGANS AND INSTITUTIONS ESTABLISHED UNDER THE TREATY

The Community has a comprehensive institutional framework comprising permanent organs and temporary institutions jointly designed to propel the integration agenda. The Community's organs are the five permanent organs established under the Treaty comprising the Summit, the Council of Ministers, the Court of Justice, the Legislative Assembly, and the office of the Secretary-General. The Community's institutions, on the other hand, comprise of the temporary and specialized bodies established to carry out a particular mandate within the Community; the Inter-University Council of East Africa, the East African Development Bank, and the Lake Victoria Fisheries Organization. While as the organs are permanent by dint of being anchored on the Treaty, the institutions are established by the Summit and are made to deliver a certain mandate, and their existence is pegged on the achievement of the assigned task.⁹⁷

⁹⁴ Victor Lando, p. 60.

⁹⁵ Article 27 (2).

⁹⁶ Report of the 13th Meeting of the Sectoral Council on Legal and Judicial Affairs Ref EAC/SCLJA/13/2012 and Report of the 16th Meeting of the Sectoral Council on Legal and Judicial Affairs Ref: EACJ/SCLJA/16/2014.

⁹⁷ Article 9 (1) and 9 (2).

The key organs of the community are sufficient safeguards guaranteeing a constitutional democracy within the community. The topmost organ of the community is the Summit comprising the Heads of States. The Council is the policy-making organ, and its major mandate involves setting the policy standards and the bare minimums expected from each member state for the ultimate achievement of the objectives across the region. Essentially, it is the executive arm of the Community clothed with powers to implement the decisions of the Summit.⁹⁸ The legislative arm of the community is the Assembly, with extensive powers on enacting legislative instruments and general oversight authority, the equivalent of a legislature in a constitutional democracy.⁹⁹ Lastly, the East African Court is the judicial arm of the Community, with the sole mandate of interpreting the Treaty, ensuring compliance with the Treaty and its application.¹⁰⁰

The EAC framework has positively influenced the development of the national policies and advancement of the role of non-state actors concerning the protection and promotion of human rights. The East African Court of Justice has taken a unique form and features, distinct from its predecessor. While the predecessor was an appellate court from the domestic jurisdictions, the EACJ is an international court that resolves disputes submitted to it as per the Treaty.¹⁰¹ Its relevance in respective national jurisdictions has been buttressed by its complementary function with the national courts, which are too conferred limited jurisdiction to hear and determine disputes concerning the law of the EAC.¹⁰² Further, the Court has a symbiotic relationship with the national courts, especially through preliminary rulings on the interpretation of the Treaty. Under this

⁹⁸ Article 13,14,15, and 16 of the EAC Treaty.

⁹⁹ Article 9 of the EAC Treaty.

¹⁰⁰ Article 23 of the EAC Treaty.

¹⁰¹ Victor Lando, 'The Domestic Effect of the East African Community's Human Rights Practice' (LL.D Thesis, University of Pretoria 2017) p. 58.

¹⁰² Article 33 of the Treaty.

practice, local courts are empowered to refer some matters to the EACJ, when such matters arise in the course of proceedings and the national court believes the question on referral is necessary for its judgment.¹⁰³

The institutions and organs established under the Treaty have mutual inter-relationship functions amongst themselves and also between them and the national institutions of the state parties. For instance, the council can request advisory opinions from the EACJ.¹⁰⁴ Further, the EACJ banks on the national legal regimes to implement its pronouncements.¹⁰⁵ EACJ judgments that impose monetary obligations on a litigant are executed per the civil procedure rules of the particular state party, from which the litigant comes.¹⁰⁶ On the other hand, EACJ depends on the council or the Partner States to implement and execute its judgments particularly those that do not impose pecuniary obligations on a person.¹⁰⁷

3.4 THE SUMMIT

The Summit is the most powerful organ of the community, invested with powers to steer the general implementation of the Treaty. It is constituted of the heads of states,¹⁰⁸ and it has monitory powers to access and issue reports on the achievements of the Community.¹⁰⁹ Also, it has supervisory powers which include receiving and considering annual progress reports.¹¹⁰ It's a role in the legislative process which is fundamental since it has the primary duty to ensure publication

¹⁰³ J E Ruhangisa, 'The East Africa Court of Justice: Ten Years of Operation (Achievements and Challenges)' A Paper for Presentation During the Sensitization Workshop on the Role of the EACJ in the EAC Integration, Imperial Royale Hotel, Kampala, Uganda, 1-2 November, 2011. See also Victor Lando, p. 58.

¹⁰⁴ Article 14 (4).

¹⁰⁵ Victor Lando, p. 61.

¹⁰⁶ Article 44 of the EAC Treaty as read together with Rule 74 of the EACJ Rules of Procedure.

¹⁰⁷ Article 38 (3).

¹⁰⁸ The heads have powers to delegate and be represented by a minister. Article 10.

¹⁰⁹ Article 11 (2).

¹¹⁰ Article 11 (2).

and gazettelement of rules and orders made under the Treaty.¹¹¹ To some extent, it lacks adequate fora to discuss the progress, steer and accelerate the process of the integration and the achievement of its objectives, considering that the Summits should ordinarily meet once a year.¹¹²

3.5 THE COUNCIL

The policy organ of the community is the Council. It has a vital role in monitoring and continuous review of the implementation of the community's initiatives, providing efficient running of the programs, and effective satisfaction of the community's objectives.¹¹³ These comprise the Minister for EAC affairs of each Partner States, other Ministers as may be determined by the partner State; and the Attorney General, each from Partner State.¹¹⁴ It has legislative powers, characterized by its power to make regulations,¹¹⁵ initiate and submit Legislative instruments.¹¹⁶ Besides, it can make rules for the employees of the community and special rules on financial matters of the Community.¹¹⁷ The Council is answerable to the Summit and support system in terms of preparing the agenda for the meetings of the Summit.¹¹⁸

The Council has been in touch with the felt necessities of the community and has timely taken requisite policy decisions intending to accelerate the process of integration within the Partner States. On its 27th Meeting, the council proposed a legislative framework to address the then perceived inefficiencies of the Sectoral Council on Interstate Security through the establishment of the EAC Peace and Security Council.¹¹⁹ And what is more, is the enthusiasm and the swiftness

¹¹¹ Article 11 (8).

¹¹² However, the Summit still has the right to call for a extraordinary meeting. See Article 12 (1).

¹¹³ Article 14 (2).

¹¹⁴ Article 13 (a) (b) (c).

¹¹⁵ Article 14 (3) (d).

¹¹⁶ Article 14 (3) (b).

¹¹⁷ Article 14 (3) (g).

¹¹⁸ Article 14 (3) (h).

¹¹⁹ East Africa Community, 'Towards Political Federation in the East Africa Community: Achievements and Challenges' (ed. Isabelle Waffubwa) (December 2013) p. 33.

with which the Council handled the matter on the establishment of the new body. In its 28th Meeting, the Council approved the drafted legal instruments, approved its establishment, and recommended the matter to the Summit.¹²⁰ These positive actions are fundamental in the pursuit of the political federation, which would just remain a pipe dream for as long as security issues remain unattended.

The composition of the Sectoral Councils has to a large extent impeded the efficacy of the councils, particularly on emergent issues facing the community. For instance, the Sectoral Council on Cooperation in Defense, Interstate Security, and Foreign Policy Coordination draws its members from a wide variety of offices.¹²¹ This overly large composition has proved inefficacious to responding to security matters, in terms of the decision-making process and the relaying of its decisions to the relevant security organs. The complexity of this council has hindered the implementation of its decisions hence prejudicing the Community in containing the security threats on time.¹²²

3.6 THE EAST AFRICAN COURT OF JUSTICE

It is the judicial arm of the community, with the exclusive mandate of interpreting and ensuring optimal compliance with the treaty. The court has a two-tier dispute resolution mechanism, comprising a court of the first instance and an appellate court.¹²³ The first instance division is composed of a maximum of ten judges, while the appellate division is composed of a maximum

<http://eacgermany.org/wp-content/uploads/2015/03/Achievements-and-Challenges-Towards-EAC-Political-Federation.pdf> Accessed on 7th April 2019.

¹²⁰ Report of the 28th Meeting of the Council, November 2013, p. 46.

¹²¹ East Africa Community p. 33. It draws from the Ministries for Defence, Finance, Justice and EAC Affairs, Home affairs and security. Further, it also incorporates experts from Military, Police and The Defence forces.

¹²² East Africa Community p. 33.

¹²³ Article 23 (3).

of five judges, appointed by the Summit.¹²⁴ The legislative framework is equally concerned with the competence and professional qualifications of the judges, with much premium being placed on their independence, integrity, and impartiality.¹²⁵ To some extent, there is the independence of the court as depicted by the security of tenure of its judges. Judges of the Court have a right to serve until they reach seventy years. The removal of a judge is a preserve for the summit, and this prerogative can only be exercised under strict rules and guidelines. For instance, the removal of a judge for misconduct must be determined and recommended by an ad hoc tribunal formed to investigate the alleged misconduct.¹²⁶

The court has been instrumental in promoting regional integration among the partner states. The court is accessible to a relatively broad class of litigants, including the partner states,¹²⁷ Secretary-General,¹²⁸ the local courts on matters concerning the Treaty interpretation¹²⁹ and both legal and natural persons resident in East Africa.¹³⁰ In pursuit of access to justice, the court has demonstrated flexibility concerning its permanent seat, and the place of conducting sessions and sittings. On some occasions, the court has held its hearings outside Arusha in a bid to bring justice closer to the people. This has been the case, particularly where it is difficult for a litigant to access the court due to its geographical location and more so where the litigants come from the same partner

¹²⁴ Article 24 (1).

¹²⁵ Article 24 (1).

¹²⁶ Article 26 (1)(a).

¹²⁷ Article 28 of the Treaty.

¹²⁸ Article 29 of the Treaty.

¹²⁹ Article 34 of the Treaty.

¹³⁰ John Eudes Rukangisa p. 3.

state.¹³¹ Furthermore, the Court has established sub-registries across the partner states through an agreement between the court and the national judiciaries.¹³²

The EACJ has engaged in some judicial activism, sandwiched by a broad and transformative interpretation of the Treaty, principally circumventing the limits placed on its competence to entertain human rights complaints. Despite its limited jurisdiction on human rights violations, the Court has on several occasions, nevertheless, pronounced itself on human rights complaints, under its general powers to interpret the Treaty.¹³³ According to the emanating jurisprudence, the Court has a competent mandate to interpret the Treaty, even where some of the matters requiring interpretation has aspects of human rights violations.¹³⁴ Through these creative interpretations, the EACJ has mutated from the initial economic-integration court to a human rights court.¹³⁵

To some extent, the court has not been effective in promoting regional integration within East Africa. The Court works on an ad hoc basis given that none of its ten judges resides at the seat of the court and this has proved an impediment in the composition of panels for several cases, occasioning delay in the disposal of the matters.¹³⁶ Besides, there has been laxity in reforming the current law to broaden the mandate of the court to include human rights and the appellate jurisdiction. The court does not have the power to hear and determine the human rights violation

¹³¹ John Eudes Rukangisa p. 4. In the case of Prof. Peter Anyang' Nyong'o and 10 Others v. Attorney General of Kenya and Others, (Application No. 1 of 2006), the court held its sittings in Nairobi, as the parties came from the same country.

¹³² Rule 8 (1). See also John Eudes Rukangisa p. 8.

¹³³ Independent Medical Legal Unit v the Attorney-General of the Republic of Kenya and 4 Others, EACJ Reference No. 3 of 2010. Attorney General of Rwanda v Plaxeda Rugumba, EACJ Appeal No. 1 of 2012.

¹³⁴ James Katabazi and 21 Others v The Secretary General of the EAC and Another. EACJ Reference No. 1 of 2007. See

¹³⁵ JT Gathii, 'Saving the Serengeti: Africa's new international judicial environmentalism' (2015) Vol. 16 *Chicago Journal of International Law* p. 391.

¹³⁶ John Eudes Rukangisa, 'The East African Court of Justice: Ten years of operation Achievements and Challenges' (2011) A paper presented during the Sensitization Workshop on the Role of the EACJ in the EAC Integration, Imperial Royale Hotel, Kampala, Uganda, 1st – 2nd November, 2011. p. 24. Their unavailability can be attributed to the fact that these judges still serve as such in their respective jurisdictions.

complaints from individual complainants.¹³⁷ Even though there has been an official acknowledgement of this shortcoming and an intention to amend the law, a proposed protocol to this effect is yet to be concluded.¹³⁸

More importantly, the jurisprudence emanating from the court demonstrates the unwillingness of the partner states to surrender their sovereignty to the Court. In most cases, the Partner States raise preliminary objections on the Court's lack of jurisdiction, to entertain the matter.¹³⁹ The parties' unwillingness to surrender their sovereignty triggered an amendment to the Treaty, which effectively exclude the court from entertaining some matters.¹⁴⁰ Lastly, the court shares concurrent jurisdiction with the African Court on Human and Peoples' Rights concerning the jurisdiction on human rights. In the likely event that the proposed protocol on the treaty comes into effect, the citizens of the partner states will have the option of either submitting their human rights complaints to the African Court or the East African Court. There is a looming uncertainty whether these citizens will be required to mandatorily exploit the East African Court first or that they will have an opportunity to approach the African Court directly.¹⁴¹

3.7 THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

The legislative process is inefficient and out of touch with the felt necessities of the Communities' populace particularly on matters touching on trade and the business world. The policy and law-making process are largely tedious, immoderate and it has not been insulated against extraordinary

¹³⁷ International Justice Resource Center (IJRC) East African Court of Justice <https://ijrcenter.org/regional-communities/east-african-court-of-justice/> Accessed on 8th April 2019.

¹³⁸ John Eudes Rukangisa p. 26.

¹³⁹ John Eudes Rukangisa p. 32.

¹⁴⁰ Article 30 (3) of the Treaty.

¹⁴¹ John Eudes Rukangisa p. 34.

interests.¹⁴² The mandatory processes of adopting motions and protocol are political processes characterized by political endorsements and the ever-insatiable urge to have annexes, which inherently require successful redesigning and changes.¹⁴³

3.8 THE SECRETARIAT

The Secretariat is the executive arm of the community clothed with a wide range of powers and functions, which essentially place it at the heart of the Community's administration. It has investigative powers through which it can examine whether a particular state has violated its obligations under the Treaty and issue recommendations based on the findings.¹⁴⁴ For instance, the Secretary-General has previously established a Task Force to investigate various Treaty-violation claims which had been made against Burundi.¹⁴⁵ The leadership of the Secretariat has been designed to foster regional integration amongst the partner states, and this is discernible from its mode of operation and appointment of its leadership composed of the Secretary-General, his deputy, a counsel to the Community and other staff of the Community.¹⁴⁶ The position of the Secretary-General is held on a rotational basis, granting each state an opportunity to lead.¹⁴⁷

In addition, the Secretariat has been applauded for its significant role in the promotion and protection of human rights within the Community and its role in upholding the rule of law and good governance. It has been argued that most of the critical EAC legislation on human rights protections owe their existence to the role played by the Secretariat.¹⁴⁸ Further, it has

¹⁴² Lugalla Tumaini p. 91.

¹⁴³ Lugalla Tumaini p. 91.

¹⁴⁴ Article 71 (1)(d).

¹⁴⁵ East African Law Society v Attorney General of the Republic of Burundi and the Secretary General of the EAC, EACJ Reference No. 1 of 2014, First instance Division.

¹⁴⁶ Article 66 of the EAC Treaty.

¹⁴⁷ Article 67 of the EAC Treaty.

¹⁴⁸ Victor Lindo, p. 69. EAC Policy on Disability, the EAC Policy on Gender and the Action Plan on Human and People's Rights.

institutionalized and implemented periodic meetings of various oversight bodies in which they get a forum for setting and harmonizing standards across the Member states. Most of these oversight bodies are central in setting a uniform threshold for good governance and the rule of law: EAC National Human Rights Commissions, Electoral Management Bodies, Anti-Corruption Commissions, and Chief Justices for the respective state parties.¹⁴⁹ Furthermore, the Secretariat has turned out to be the support system mainly to the Summit and the Council to developing and implementing the law and policy.¹⁵⁰

The Secretariat's efficacy in the discharge of its mandate has been hindered by overriding factors, majorly lack of political goodwill from the partner states. In one instance, the Secretariat's investigative powers were prejudiced by the Government of Burundi, which failed to offer positive cooperation to a fact-finding mission by a Task Force.¹⁵¹

It is made to serve political ends other than securing a tight and sound regulatory regime. Particularly it serves as a forum for treaty negotiations.¹⁵²

The current capacity of EAC organs is inefficient to guarantee a sound regulatory regime.¹⁵³

Lack of uniformity in terms of capacity to safeguard a sound regulatory framework. Discrepancies on the capacity levels.

¹⁴⁹ Cosmas Butunyi, 'EAC now proposes common Platform for fighting Corruption' Business Daily (Tuesday, June 23, 2009)

<https://www.businessdailyafrica.com/markets/539552-614074-v2np8x/index.html> Accessed on 12th April 2019.

¹⁵⁰ Article 71 (1) (a) of the EAC Treaty.

¹⁵¹ East African Law Society v Attorney General of the Republic of Burundi and the Secretary General of the EAC, EACJ Reference No. 1 of 2014, First instance Division.

¹⁵² Lugalla Tumaini, 'Effects of Political, Legal, and Governance Challenges: Case Study of East African Community' (Master's thesis, Harvard Extension School) p. 91.

¹⁵³ Lugalla Tumaini p. 91.

3.9 CONCLUSION

That the court is transformed from being an ad hoc institution to a more permanent body, by having the President and the Principal Judge permanently reside at the seat, in Arusha.¹⁵⁴

There is a need to develop capacities at the regional level that are more efficient to protect regional interests against national and special interests; increase the level of expert inputs into regulation; expand the proficiency and lessen the expense of the framework; increase the responsiveness of the framework to changing needs, and increase transparency and civil society involvement in policy.¹⁵⁵

¹⁵⁴ John Eudes Rukangisa p. 24.

¹⁵⁵ John Eudes Rukangisa p. 92.

CHAPTER FOUR

4.0 CHALLENGES FACING THE SUMMIT TOWARDS ACHIEVING POLITICAL FEDERATION IN EAST AFRICA COMMUNITY

4.1 INTRODUCTION

Introduction

East African Community still contends with a lot of challenges since its inception. Despite Article 6 on the Treaty's clarity on fundamental principles necessary to achieving objectives of the EAC treaty, least but not limited to democratic ideals.¹⁵⁶ Nothing much has been achieved on the democratic front to pave the way for the realization of common political unity. In which the Summit is at the Apex of the management structure and has the last word. This chapter seeks to analyze the challenges that the summit faces in its efforts to realize a political federation if any.

4.2 DEMOCRACY AND DEMOCRATIZATION

Democracy connotes the involvement of the people in the government through political participation. Democratization is understood within the realm of democracy which has been elaborated on in the theoretical framework chapter of this research, for regional integration of East Africa states, the 'people-centered principle' was enshrined in the EAC Treaty as one of the operational principles that the Community needed to adopt for better democratic growth¹⁵⁷, thus much placed on this chapter is how this principle is reflected in actual practice by the EAC Partner States through the role Summit and the Institutions of the Community in the democratization of the community as a whole. Hence necessary to understand this through the challenges and progress herein discussed;

¹⁵⁶ Treaty for the establishment of the EAC, Article 6.

¹⁵⁷ Article 7 (1) (a) of the Treaty for the Establishment of the East African Community, 1999

4.3 CONFLICTS AND POLITICAL INSTABILITY

For any development within an independent state, be it physical and non-physical development, peace, security, and stability are of necessity for economic growth and stability including the EAC. Such shortcomings continue to affect economic growth, development, and integration as well as the political stability of both individual states and regional bloc. For example, the 2008 post-election violence due to disputed election results in Kenya, resulted in a decline in the GDP of the country which by extension affected regional members like Uganda Rwanda, Burundi, and Tanzania, the democratic republic of Congo is not new to the vice caused by conflict and political instability within the EAC.

Notable conflicts that have affected political stability and democracy;

4.3.1.Rwanda and Uganda

There has been a hostile relationship between Presidents Paul Kagame of Rwanda and Yoweri Museveni of Uganda, each accusing the other of political assassination, espionage, and meddling against each other country's affairs.¹⁵⁸ For instance, on May 24th, 2019, the Rwandan soldiers were accused by the Ugandan security of entering the country and allegedly killing two men, a claim that the Rwandan authorities refuted saying that the alleged incident took place on its side of the border after their soldiers were attacked with machetes.

Rwanda has accused and complained formally and informally to Uganda about the presence of persons considered to be hostile to the government of Kigali within Uganda to which it claims the suspects are abusing their refugee status in Uganda and indulging in hostile actions against the

¹⁵⁸ <https://www.iol.co.za/news/opinion/inside-the-rwanda-uganda-conflict-19865757> Accessed on 14th august 2019

government of Rwanda. In retaliation to these actions, Rwanda has reduced its imports from Uganda and it has banned its citizens from crossing into Uganda.

Uganda has also been accused publicly by Rwanda of the abduction of Rwandan citizens and of offering support to rebels who are hell-bent on destabilizing the government. While the Ugandan President had admitted to having met the rebels, he says that he has not endorsed these rebels with a mission to destabilize the government of Paul Kagame. Museveni bears his suspicions about his erstwhile ally as his officials have accused Rwandans in Uganda of spying, and some have been detained or deported.¹⁵⁹ It is such political tensions between states that do not make it any closely possible to come closer to the reality of working under a unified political system envisaged by the treaty.

4.3.2 Burundi and Rwanda

After the failed attempted coup d'état attempt in 2015 Burundi's president Nkurunziza(as he then was) accused Rwanda of being behind the coup d'état attempt and continues to support the coup perpetrators with their efforts to oust his government.¹⁶⁰

In the ensuing cold war between the two countries, President Nkurunziza wrote to Museveni who was then chair of the Summit, asking him to convene an emergency summit of EAC heads of states to discuss the matter in detail. The alleged letter came only a few days after his country skipped a similar head of state summit meeting in Arusha and because of that non-attendance, the meeting was called off leading to the postponement of the summit agenda.¹⁶¹

¹⁵⁹ <https://www.theeastafrican.co.ke/news/ea/Uganda-Rwanda-in-row-over-border-killings/4552908-5131374-ssdd04/index.html> Accessed on 14th august 2019

¹⁶⁰ <https://www.trademarka.com/news/eac-news/we-need-new-approach-to-resolve-recurring-spats-among-eac-states/> Accessed on 14th august 2019

¹⁶¹ <https://www.africanews.com/2018/12/07/burundi-wants-special-regional-summit-on-conflict-with-rwanda/> Accessed on 14th august 2019

To the response of the then Chairman, President Museveni urged the then Burundi leader to attend the next EAC heads of states summit so that his concerns could be heard and discussed. Amazingly, Burundi decided to skip the first meeting where such a serious political problem could have been presented, discussed, and a possible solution chartered jointly, fortunately, or unfortunately, the Burundi leader passed the baton of leadership after the general election and unfortunately died before attending the Summit for the preceding five years and neither resolving the impasse.

Worse reaction to the cold war between the two East African states, In 2016, Burundi stopped food exports to Rwanda and closed down bus companies operating between the two countries, accusing them of being infiltrated by armed groups who wanted to destabilize the country. In doing so Rwanda stated the actions of Burundi violated the EAC Common Market Protocol.¹⁶²

The government spokesman, Philippe Nzobonariba, explained that the ban was aimed at accumulating food stocks in anticipation of an unusually long dry season, but a day after, the second vice-president, Joseph Butore, proclaimed that the ban had been imposed specifically to punish Rwanda, which the government believed was responsible for training Burundian rebels.¹⁶³ While the then Burundi President Pierre Nkurunziza declared that the Rwandan government was considered an enemy of his country. in consideration to the action of the two leaders who sit at the Summit, who are bounded by the EAC treaty and swore to fulfill the treaty obligation, this could be considered an overstretch,

¹⁶² http://country.eiu.com/article.aspx?articleid=1604482744&Country=Burundi&topic=Economy&subtopic=F_6
Accessed on 14th august 2019

¹⁶³ http://country.eiu.com/article.aspx?articleid=1604482744&Country=Burundi&topic=Economy&subtopic=F_6
Accessed on 14th august 2019

4.3.3 Kenya and Tanzania

Disputes have arisen between Kenya and Tanzania especially in regards to the trade of goods and products between the two countries, thus resulting to trade wars and making the movement of goods between borders difficult.

Some of the issues that have arisen include; -

Tanzania accusing Kenya of using imported industrial sugar that is zero-rated has imposed a 25 percent import duty on the confectionaries from Kenya such as chocolates, sweets, chewing gums, and ice creams.¹⁶⁴

Kenya has on the other hand imposed a ban on the tour van from Tanzania from accessing the Maasai Mara National Reserve accusing Tanzania of banning the Kenyan tour operators from accessing the Serengeti National Park.¹⁶⁵

In retaliation to Kenya's decision to impose similar conditions on goods from Tanzania, Tanzania then imposed fresh quality verification standards on Kenyan products thereby breaching the mutual agreement on the traded goods standards in the region. Tanzania further resorted to detaining products from Kenya on its borders for more than seven days pending quality verification in retaliation.¹⁶⁶

Kenya banned the importation of liquefied petroleum gas (LPG) from Tanzania citing consumer safety concerns as the reasons for the ban, made the Tanzania authorities block all milk and milk products and cigarettes from Kenya in retaliation.¹⁶⁷

¹⁶⁴<https://www.august2019businessdailyafrica.com/economy/Kenya-s-persistent-squabbleswithTanzania/3946234-4703888-13cfo4k/index.html> accessed on 14th

¹⁶⁵<https://www.theeastafrikan.co.ke/business/Tanzania-and-Kenya-work-to-resolve-trade-disputes/25605149280912i7kz/index.html> accessed on 14th august 2019

¹⁶⁶ <https://www.theeastafrikan.co.ke/business/Tanzania-and-Kenya-work-to-resolve-trade-disputes/2560-5149280912i7kz/index.html> accessed on 14th august 2019

¹⁶⁷<https://www.businessdailyafrica.com/economy/Kenya-s-persistent-squabbles-with-Tanzania/3946234-470388813cfo4k/index.html> Accessed on 14th august 2019

In October 2017 the action by the Tanzanian authorities to seized and auctioned 1,300 heads of cattle belonging to Kenyans alleged to have crossed over and furthered the burned alive about 6,500day-old chicks a month later, which sparked bitter protest from Nairobi.¹⁶⁸

4.4 INTERNAL POLITICAL CHALLENGES

A political federation is purely a political issue, to which achieving it, democratic principles must front for it to sail through. Among the challenges the region faces is the manipulation of the constitution by the incumbents to prolong their tenure, there is the shrinking political and civic spaces, limited citizen participation in politics in the democratic governance system, refusal to accept election results, and violation of human rights¹⁶⁹. In Kenya, the election period is characterized by violence and civil society under constant attack and increased criminal and political violence. Uganda is no different as it has experienced siege on some civil society organizations, media agencies, civil society leaders, and activists across the country. Burundi stands accused by the United Nations Human Rights Council for violating human rights. Torture, sexual violence, extrajudicial killings, and freedom of expression has been on the rise in the recent past in Burundi, and some of the factors that remain a challenge to the implementation of the political federation as discussed below;

4.4.1Autonomy as the core of democracy

A discourse into the democratic quality of the East African Community is a tricky affair because the definition of democracy is so dynamic. Autonomy refers to an individual's self-rule. In any

¹⁶⁸<https://www.businessdailyafrica.com/economy/Kenya-s-persistent-squabbles-with-Tanzania/3946234-470388813cfo4k/index.html> Accessed on 14th august 2019

¹⁶⁹ Ligami, Christabel (May 12 2018). *Democracy on the Decline in EAC States*. <http://www.theeastafrican-coke.cdn.amproject.org/v/www.theeastafrican.co.ke/tea/news/east-africa/democracy-on-the-decline-in-eac-states-1393538?>

given society, a person's ability to self-rule requires the capacity to equally participate in making collective decisions. Autonomy, therefore, has a private and public dimension¹⁷⁰. Consequently, democracy would be a means to organize governance in a normatively appropriate way, justified by the promotion and enhancement of autonomy, both for individuals as citizens and for the collective. The question that begs answers is whether citizens within the East African Society have the capacity to self-rule and participate in collective decision-making to achieve a political union. The answer is NO! The incidences that have been witnessed in the recent past in Kenya where there were election disputes in the general elections of 2013 and 2017 are an indication that there is a lack of democratic space in governance structures. The crackdown on civil society organizations in Kenya in 2013 also paints a grim picture of the existence of democratic structures within the East African Community.

4.4.2 Abuse of Term Limits

In April 2015, the attempt by the then Burundian President Pierre Nkurunziza (the late) to extend his tenure against the constitutional limit, sparked off violent protests across the country. Because of this problem of the incumbents seeking to extend their tenure beyond the constitutional limit, The Economic Community of West African States (ECOWAS) declared a presidential term limit to two terms. As a result of the pressure from both Togo and The Gambia, the declaration was tabled¹⁷¹. The Economic Community of East Africa Summit has no political goodwill to commonly support political structures that may have effects on Summit membership like the presidential terms term limits of member states.

¹⁷⁰ Habermas, Jurgen, (1996). "Three Normative Models of Democracy" in: Seyla Beinhahib (e.d.), *Democracy and Difference, Contesting the Boundaries of the Political*, Princeton: Princeton University Press, 21-30.

¹⁷¹ Freedom House (June 12, 2015). *5 Governance Challenges for Africa*. <http://freedomhouse.org>

4.4.3 The proliferation of restrictive laws

The legal frameworks are being exploited by authoritarian regimes in Africa and the East African countries for the elimination of opposition and political suppression. These countries regulate the activities of civic organizations or protect public order are manipulated to restrict the fundamental rights of citizens. Laws such as the NGO, public order, and counterterrorism laws are all used to harass, manipulate, and persecute democracy groups and human rights defenders¹⁷². Kenya recently canceled the licenses of several human rights organizations accusing them of ties to terrorism. There was mass deregistration of NGOs and civil societies in the run-up to the general election in Kenya in 2017, to which the High Court, however, overturned some decisions, other EAC members states are not left out in this autocracy, with Tanzania, Uganda being in the similar park begging the question as to whether such the EAC states will be ready to share an extent of their sovereignty for the common good of the Community.

4.4.4 The dismal state of press freedom

Over the past decade, press freedom has seen the largest decline of any other fundamental freedom in Africa. Authoritarian governments continue to use undue legal pressure, imprisonment, and other forms of harassment to suppress independent reporting¹⁷³. According to the Committee to Protect Journalists, journalists have been incarcerated, tortured, or forced into exile, from the so-called “democratic” states of the East African Community. In Tanzania of a more recent case, a journalist, Eric Kabendera was incarcerated for reporting what appeared to criticize President John

¹⁷² Freedom House (June 12, 2015). *5 Governance Challenges for Africa*. <http://freedomhouse.org>

¹⁷³ Ibid

Pombe Magufuli's government¹⁷⁴, Kenya was not left behind in this vice when it passed the controversial draconian media bill and the restrictive security bill to curtail the press freedom¹⁷⁵, other members of the EAC remain comfortable the same mess thus Free media does not thrive within the East African Community.

4.4.5 Weak Regional Human Rights Mechanisms

The East African Court of Human of Justice Jurisdiction may be extended to human rights at a suitable date to be determined by the Council. The Court can also hear disputes arising out of an arbitration clause contained in a contract or agreement, which confers such jurisdiction on the Court to which the Community or any of its institutions is a party. However, in practice, the jurisdiction to hear human rights matters is not explicit and is subject to the conclusion of a Protocol to operationalize such jurisdiction, despite Human rights being a core element and principle to a democratic nation/society to which the world came together after the second world war in 1945 for form the United Nations whose main principles was to ensure democratic principles especially Human rights to all humanity.

4.4.6 Economic competitiveness

Africa's overall economic competitiveness has stagnated over the past decade due to structural factors, such as poor infrastructure and high transportation costs, and socio-economic and political factors. High levels of corruption and government inefficiency, combined with low levels of education, make Africa and East Africa an expensive and risky place to do business. The region's

¹⁷⁴ <https://qz.com/africa/1710510/tanzania-journalist-erick-kabendera-arrest-as-magufuli-eyes-media/><accessed 10 august 2020>

¹⁷⁵ <https://cpj.org/2013/12/kenya-parliament-passes-draconian-media-laws/><accessed 10 august 2020>

democratic countries, however, are faring much better than their authoritarian counterparts. The key components of a functional democracy-efficient institution, responsible government policies, and a strong rule of law-are some factors that contribute to a competitive economy.

4.4.7 Ethnic fragmentation

The Berlin Conference by the European powers that carved Africa into small geographical units and further in colonization was to divide them into dialectical units without regard to existing cultural groups has haunted Africa to date. Large ethnic groups were split up while others with a history of warfare and enmity were forced to be part of a single new state. The colonial powers also created a class system based on race, laying a foundation for more social tensions. The ethnic divisions are a challenge to political stability because the clash of diverse cultural traditions fosters political tensions, this threatens a democratic system.

Problems created by such fragmented societies may even result in civil wars like in Rwanda and Burundi creating social and political chaos. This has had a toll on democratic governance to states and less policy action from the integrated states. Quite often, ethnic groups hold power at the expense of other ethnic tribes, neglecting the democratic principle of participation¹⁷⁶. This has led to dramatic cases of increased cases of ethnic hatred directly linked to multiparty elections, Burundi, South Sudan, and Uganda is a telling example. The country has a history of open ethnic conflict and had been dominated since independence by the Tutsi minority. Multiparty democratic elections inevitably handed power to a Hutu party. Tutsi officers who dominated the army did not accept the defeat. They staged a military coup that led to the massacre of the elected president. Many citizens went into exile after the genocide¹⁷⁷.the Baganda dominance in Uganda has seen

¹⁷⁶ Ogonga, Job (June 4 2017). The Future of Democracy: What Way for Eastern Africa? <https://www.osiea.org>

¹⁷⁷ Schuster, Lucia (2002). *What are the main impediments to democracy in Africa*. Southampton: University of Southampton.

the currency hide behind tribal strength to hold into power for over 35years at the helm, and Kenya is not left in the democratic hypocrisy of the tribal numbers in the notion of “*tyranny of numbers*” a fact that has caused tribal clashes and violence leading to deaths after every election.

4.5 OTHER NON-POLITICAL CHALLENGES

Article 6^{of} the EAC Treaty outlines that good governance in implementing the treaty obligation and adherence to the principles of democracy is one of the key means to achieving objectives of the treaty in general, hence failure to adhere has led to some of the challenges that the EAC summit continues to face in achieving political federation on member states.

4.5.1 Non-Tariffs And Tariffs Barriers

Non-tariff barriers (NTBs) remain a key challenge to east African political integration, Trade liberalization like the Customs Union is the central objective of the East Africa Community (EAC) and it cannot be achieved with the continuous persistence of old practices and emergence of new NTBs.

The NTBs are restrictions that result from prohibitions, conditions, or specific market requirements that make importation or exportation of products difficult and/or costly. The EAC Elimination of NTB Act 2017 defines NTB as laws, regulations, administrative and technical requirements other than tariffs imposed by a partner state, whose effect is to impede trade.¹⁷⁸

The objectives of the EAC Elimination of NTB Act, 2017, is to provide a legal framework for the removal of NTBs this is by providing a process for identification and monitoring the removal of

¹⁷⁸ <https://www.trademarka.com/news/eac-news/non-tariff-barriers-the-top-obstacle-to-regional-trade/> Accessed on 14th august 2019

NTBs. By removing all restrictions to trade a true single market will be created in the region with a populous of about 184 million people.

The EAC has made decisive advances in the elimination of non-tariff barriers (NTBs) affecting trade within the region. However, several NTBs have proved hard to solve and new ones have emerged especially with the emergency of the world pandemic of corona which has seen each EAC member state adopt their ways of dealing with the pandemic in terms of provisions of preventives and remedies. NTBs vary in terms of their type and breadth of application, suggesting that some NTBs will require much lengthier and complex multi-institutional processes to remove than others. Some measures have been addressed and applied several times, implying that some NTBs resurface from time to time.

NTBs are classified into the following categories this include: -¹⁷⁹

- a) Tax-like measures: These are measures that impose monetary costs on imports (including non-application of preferential tax arrangements).
- b) Quality and safety standards: these are quality and safety-related measures and their enforcement (excluding outright bans).
- c) Import ban
- d) Customs and trade facilitation measures: These are cost-increasing measures incurred as a result of the monitoring and enforcement of trade facilitation and customs rules (excluding the enforcement and monitoring of standards and quality and safety measures).

Countries have used NTBs to frustrate full democratization of EAC, Kenya-Tanzania, Burundi – Rwanda discussed above and Uganda-Rwanda have been common applicants of this strategy. In

¹⁷⁹ East African Community Secretariat (EACS) (2009) 'Draft EAC time-bound program for elimination of identified non-tariff barriers (NTBs)'. Arusha: EACS.

doing so the countries protect their goods and commodities made by citizens while frustrating similar goods and commodities made from other countries thus influencing and controlling the market.

This position is further supported where Tanzania imposed a 25 percent import duty on Kenyan confectionery, including juice, ice cream, chocolate, sweets, and chewing gums, claiming Kenya had used zero-rated industrial sugar imports to produce them.¹⁸⁰ Thus controlling the number of goods entering the country from Kenya and protecting their products made by their citizens.

Tanzania has gone further by imposing fresh quality verification standards for Kenyan products saying it was merely reciprocating Kenya's decision to impose similar conditions on goods originating from Tanzania. This is in breach of a mutual agreement on the standards of goods traded within the region.

Kenya has also used non-tariffs barriers to frustrate the free flow of goods as spirits and tiles are among Tanzanian products that are subjected to quality verification before entering Kenya even if they bear a Tanzania Bureau of Standards quality mark. In response to this Tanzania retaliated by detaining Kenyan products on its borders for more than seven days pending quality verification.¹⁸¹ Imposing double verification on goods and products in the EAC community this has and is frustrating the full democratization of EAC and slows development among the integrated citizen who depend on the schemes for income and sustainability. In doing so products are not able to flow freely as one would hope for, prices of the goods and products rise hence becoming expensive

¹⁸⁰ <https://www.businessdailyafrica.com/economy/Kenya-s-persistent-squabbles-with-Tanzania/3946234-4703888-13cfo4k/index.html>

¹⁸¹ <https://www.theeastafrican.co.ke/business/Tanzania-and-Kenya-work-to-resolve-trade-disputes/2560-5149280-912i7kz/index.html> Accessed on 15th august 2019

to acquire, mistrust between member states continues to grow and the option of a variety of products and goods is limited.

NTBs take some considerable time to resolve, however, it is important to note that progress is being made in the eliminations of the NTBs as it varies on the degree of political will in the imposing countries. The various stages involved in the resolution of specific barriers require bilateral and internal negotiations in the affected and imposing countries.¹⁸²

The business associations, which act as watchdogs for the process of elimination of NTBs forwards the reports to National Monitoring Committees (NMCs) of member states.¹⁸³

Based on an analysis of reported and unreported NTBs. The committees are given a short time to resolve the barrier, which may be a very short time to come back with a permanent solution for permanent ease of trade.

Finally, To facilitate faster elimination of the NTBs governments should seek to gather experts in trade and regulations from the EAC countries, relevant stakeholders, and government officials. These actors will be able to identify additional issues that will contribute to improving trade and the integration of partner states' markets. They will also bring attention to related overlooked issues that would help to build the common market hence easier political unity when common trade is taken as an integration factor among member states.

4.6 MULTIPLE REGIONAL ECONOMIC COMMUNITY (REC) MEMBERSHIPS

¹⁸² <https://www.tralac.org/news/article/11493-local-farmers-not-benefitting-from-regional-rules-of-origin-experts.html> Accessed on 15th august 2019

¹⁸³ <https://www.tralac.org/news/article/11493-local-farmers-not-benefitting-from-regional-rules-of-origin-experts.html> Accessed on 15th august 2019

Some members of the EAC states are engaged in multiple Regional Economic Community memberships which may affect their commitment and loyalty to the EAC, and slower the political federation envisaged in the Treaty, Burundi is a member of COMESA, EAC and Economic Community of Central African States (ECCAS), Kenya is a member of COMESA and EAC, Rwanda is a member of COMESA, EAC, and ECCAS, Tanzania is a member of SADC and EAC while Uganda is a member of COMESA, EAC.

This means partners apply different binding obligations according to the provisions of arrangements that such agreements may attract, for example, and preferential tariff treatment as prescribed in each of the EAC member States legislation. Burundi, Kenya, and Rwanda are members of COMESA.¹⁸⁴ thus they extend all preferential treatment to all COMESA member countries in all inputs. Kenya and Rwanda charge the CET rate on all imports from SADC countries for they do not have any trade agreements with SADC.¹⁸⁵

Tanzania charges CET rate on all imports from COMESA countries for its a member of SADC and SADC has no trade agreement with COMESA. It is however worth noting that all COMESA countries that are members of the SADC are accorded preferential tariff treatment under the SADC and EAC arrangement. It

From the above regard, the harmonization of the rules of origin of EAC members remains complicated because EAC member countries belong to different blocs. Members of various bloc must maintain border posts to enforce rules of origin that are meant to prevent preferential trade to countries that are not a party to the agreement.¹⁸⁶ this double loyalty and double commitment

¹⁸⁴ The EAC Customs Management Act (2004)

¹⁸⁵ EAC Report (2010) 'The EAC Trade Regime COMESA-SADC'

¹⁸⁶ Aryeetey E. and Oduro A (1996), *Regional Integration Efforts in Africa. An Overview*, FONDAD, The Hague

may be strategic to satisfy, political and economic needs and objectives of the member state, but in the long run, it affects full commitment to the Unity and regional political integration.

4.7 LACK OF PRIVATE SECTOR ENGAGEMENT AND CITIZEN AWARENESS

Private sector engagement has been considered as the bedrock of sustainable development of a state and regional community agenda, private sector can be used as key drivers in integration efforts and implementers and drivers of the EAC treaty mandate especially social objectives such as political federation.

In terms of economic growth which is the founding principle of the EAC treaty and a bedrock of a democratic state, member states have a responsibility of providing a business enabling environment, even though the treaty does recognize the role of the private sector, little has been achieved supporting the private sector or using the same to help the EAC in achieving its common political status.

Further, there is also inadequate anchoring of the civil society in the integration process; civil society to some extent is viewed as the ‘eyes’ of the people. An integration that is too strongly focused on a ‘small elite’ has a shaky foundation because it ignores the majority of the population. The lack of opportunities for participation by the citizens, the absence of transparency, and poor accountability threaten to undermine the originally strong support for the EAC integration process.¹⁸⁷

¹⁸⁷ Reith.S, Boltz, M (2011) ‘The East Africa Community; Regional Integration Between Aspiration and Reality’, *A Review*

A central principle of the EAC framework is people-centered cooperation, where the main beneficiaries of the Community are East African citizens. Under Article 127 of the EAC Treaty, member states agree to promote, “an enabling environment for the participation of Civil Society in the development of activities within the Community.”¹⁸⁸

The EAC secretariat highlights that for any stage of regional integration to be successful and sustainable, it is essential to incorporate full ownership and participation by the people, especially through their institutions of choice, for example, political parties, membership organizations, and civil society organizations. It follows then that inadequate involvement of the population of East Africa has serious consequences for the legitimacy of the Community and indeed, the ultimate objective, the East African Federation.¹⁸⁹

Most EAC citizens lack awareness of the regional integration process and cannot as such articulate the benefits that can be drawn from the EAC integration process.¹⁹⁰

4.8 CONCLUSION

Non-adherence to democratic principles like human rights and good governance among others discussed in this chapter are serious challenges that continue to bedevil the ambition of political federation in East Africa. In practice, the Court (EACJ) and other structural architecture of the Community should be empowered under the theory of separation of powers to provide the checks and balances that are essential for a progressive democratic society, that it can, boost confidence to the citizens of the integrated states, which ultimately will make it easier to realize the dream of political unity.

¹⁸⁸ Article 127 of the EAC Treaty 1993

¹⁸⁹ EAC Secretariat (2012) *‘Strengthening popular participation in the East African Community: An EAC guide to EAC structures and processes’* East African Community Secretariat, Arusha, Tanzania.

¹⁹⁰ Makame, A. (2012), ‘The East African integration: Achievement and challenges’, *Volume 1, Issue 6. Maastricht: ECDPM.*

Strengthening political participation will destroy the Colonial fragmentation of Africa which created problems that have led to civil wars like in Burundi and Rwanda, post-election violence, and inequality which has made democratic governance impossible? Finally, the legitimacy deficit can also be blamed for showing a bad example of achieving a common political future as the EAC.

CHAPTER FIVE

5.0 LESSONS FROM OTHER REGIONAL UNIONS

5.1 INTRODUCTION

Even though in its uniqueness, the EAC remains one of the few if not only the regional economic blocs in Africa to include political federation in its provisions, much comparison is drawn from the concepts of regional integrations that have been fulfilled in other jurisdictions. Thus this chapter seeks to coalesce the problems raised through the research and provide possible solutions whose efficacy and viability will be tested against already proven and established jurisdictions that have achieved political federation status, like the Ecowas, AU, EU among others

This chapter covers the attempts at resolving the challenges faced by the East African Community summit or by individual member states in solving the said challenges to achieve the ultimate political agenda. A concept well captured by Mr. Elvis Mbembe Mbinda when he states that the Treaty has enabled concurred competence between the community and its member states, through which the state parties can still make policies on issues that the community has the competence to deal with.¹⁹¹

Understanding the EAC progression throughout this research is key to providing assessment as a resultant comparison that this chapter seeks, we must therefore acquaint ourselves with the structure, mandate, and functions of the East African Community summit in achieving the political federation objective as well outlined in the Treaty and explicated in chapter three of this study.

Further, with the advent of regional integration of neighboring nations, successfully pioneered by the European Union and a near success story of the then Organization of African Union which is now the African Union, it is imperative to conduct a cognitive comparative study on how the

¹⁹¹ Elvis Mbembe Binda, p. 104

Summit power to steer the EAC objectives to the equivalence of the European Union and the African Union with a cross-reference on the functions and mandate may be a stumbling block to the political federation of its member states.

There is however need to exercise a sense of pragmatism when comparing the East African Community, an organization still grappling with integration of 6 states with the European Union, the African Union, and other integrated blocks based on:

- i. The years of existence.
- ii. Level of inter and intrastate cooperation.
- iii. The mandate of organizational policies and their ability to supersede local laws.

5.2 COMPARISON ON COMPOSITION AND FUNCTIONS.

Just like the Summit in the East African Community, the apex institution of the African Union is the Assembly of Heads of State and Government which is a self-explanatory manner that dictates the membership of its apex institution. This by definition and composition is the supreme organ of the Organization.¹⁹²

The Charter further enunciates that the Assembly of Heads of State and Government shall, subject to the provisions of the Charter, whose role shall be to discuss matters of common concern to Africa to coordinate and harmonize the general policy of the Organization. The Assembly of Heads of State and Government may also review the structure, functions, and acts of all the organs and any specialized agencies which may be created by the Charter.¹⁹³

¹⁹² Article 8 of the Organisation of African Union Charter.

¹⁹³ Supra 2

When it comes to establishing the mandate between the Summit as the apex institution in the East African Community and the Assembly of Heads of State and Government apex institution in the African Union. The one must be alive to the fact that most of such organizations use already established formats of treaties to establish their own as such,

There is a basic fundamental similarity in terms of constitution, mandate, and functions of the various institutions with key differences stemming from the strategic dissimilarities based on homegrown problems that differ from one country to the other.

Upon the formation of the Organization of African Union, democracy and democratization of its constituent countries was the main aim upon which political federation could be achieved, even though this concept has been met by skepticism and opposition by the major world powers since most countries in Africa were still under colonization and underdeveloped. The Organization of African Unity (OAU) played a crucial role in ending colonialism in Africa before its replacement with the African Union (AU).¹⁹⁴

Mr. Andre Mbata connotes that, unlike the Organization of African Unity, the African Union was more and better equipped to steer the continent and by far its member states to the attainment of democracy and democratization leading to a political unity of the integrated states.¹⁹⁵

Indigenous territorial sovereignty was the Organization of African Unity's biggest achievement but by the late 1990s, the African continent was bedeviled by wanton problems that the

¹⁹⁴ André Mbata Mangu (2014) The African Union and the promotion of democracy and good political governance under the African Peer-Review Mechanism: 10 years on, *Africa Review*, 6:1, 59-72, DOI: 10.1080/09744053.2014.883757

¹⁹⁵ *Supra* 4

Organisation of African Unity could not handle as a matter of mandate and policy thus rendering a united Africa handicap.

The sentiments of Mr. Andre Mbata were echoed by Mr. Charles F. Manga when he states that regardless of the existence of the Organization of African Unity, Africa as a continent was plagued by internal conflicts, wars, economic fluctuations, drought, and hunger, all these to a dissatisfied population. He further presages that the leaders also acknowledged that the Organization as it was constituted lacked the mandate to steer Africa into a democratic united continent. The Organization of African Unity was then transformed into the African Union through the Constitutive Act which would have the mandate to promote democracy and good governance. Fourteen years since its inception, the African Union has come up with a democratic framework within which it's implementing its democratic agenda.¹⁹⁶

Mr. Andre Mbata states:

“Unlike the Organisation of African Unity, the African Union takes democracy and good political governance seriously (AU Constitutive Act 2000, Arts 3 & 4). In July 2001, African leaders gathered in Lusaka, Zambia, and endorsed the Strategic Policy Framework and a New Vision for the Revival and Development of Africa or the New African Initiative, which later transformed into the New Partnership for Africa’s Development (NEPAD) (Mangu 2007, 355–356). The Lusaka summit established the NEPAD Heads of State and Government Implementation Committee (HSGIC), which met for the first time in Abuja, Nigeria, in October 2001. The AU held its inaugural meeting in Durban, South Africa, in July 2002, and adopted a Declaration on the Implementation of NEPAD that approved the NEPAD Progress Report and Initial Action Plan. It also adopted the NEPAD

¹⁹⁶ Charles Manga F.; *The African Union, Democracy and Good Governance*; pg 18

Declaration on Democracy, Political, Economic and Corporate Governance (DDPECG), which underpins the work of the African Peer-Review Mechanism (APRM) (Mangu 2007, 355), and encouraged its member states to accede to the APRM. On 9 March 2003, the HSGIC established the APRM as a voluntary self-monitoring mechanism for better governance because of the implementation of NEPAD.”¹⁹⁷

The African Union has taken a more hands-on approach to ensure that democracy and the democratization of African states are at a peak. However, this hands-on approach is contingent on the willingness of the constituent nation to accept the help and the friction between the African Union policies and the inherent legislations of the constituent nations. This breeds the issue of Dualism and Monism, which is a vast debate and being that the African Union is dealing with more than 50 states, then it becomes an issue more often than not that affects its core mandate to interfere with the functions or attempt to assist nations as the need may arise.

This can be well elucidated by the appreciation that all nations within the African Union umbrella have their laws and mechanism for elections. Some nations go for elections after 5 years other conduct their elections after 4 years. Some nations are still ruled by Monarchs while most others are under democratically elected leaders.

The question that begs the mind is, if carrying out an electoral process, exercise and adherence to democratic principles is the key to the integration of states under a single political Authority that the EAC treaty envisages. The African Union is guided by four legislations that illuminate the basic tenets of democracy.

¹⁹⁷ Supra 4

5.2.1 The African Union Constitutive Act

Right from the preamble of the act, the purpose of the African Union is to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law.

At face value and on paper, the Act prescribes far-reaching and cutthroat principles in promoting and upholding democracy among its member states for example under Article 3 of the Act, the objectives of the African Union are particularized as:¹⁹⁸

(g) Promote democratic principles and institutions, popular participation, and good governance.

(h) Promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights and other relevant human rights instruments.

This drives us to the next issue at hand because having far-reaching and clear cut principles can only get you as far as good intentions can without the actual prescribed actions. Article 4 of the Act under the various sub-articles prescribe the mode and tactic of interference and offers of assistance to member states in the capacity of the African Union:¹⁹⁹

(g) Non-interference by any member state in the internal affairs of another.

(h) The right of the union to intervene in a member state according to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide, and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability in the member state of the union upon the recommendation of the Peace and Security Council.

¹⁹⁸ African Union Constitutive Act, Article 3; also see Thomas Kwasi Tiekou, Multilateralization of Democracy Promotion and Defense in Africa, 56 AFR. TODAY 75 (2009) (discussing the promotion of democratic ideals in the reformed AU).

¹⁹⁹ African Union Constitutive Act, Article 4

(j) The right of member states to request intervention from the union in order to restore peace and security.

(m) Respect for democratic principles, human rights, the rule of law, and good governance

(o) Respect for the sanctity of human life, condemnation, and rejection of impunity and political assassination, acts of terrorism, and subversive activities

(p) Condemnation and rejection of unconstitutional changes of governments. These two provisions can be considered to be the legal basis of the AU's present democracy agenda.

It is upon the Premise of these provisions that Charles Manga Fombad connotes that the African Union can now intervene under the circumstances defined in Article 4(h) of this Act with respect of grave circumstances as specifically defined to amount to “war crimes, genocide, and crimes against humanity,” and a little controversially and grossly under-explained, where there is a serious “threat to legitimate order.”²⁰⁰

5.2.2 The Declaration on the framework for an African Union response to unconstitutional changes of government

According to the Lome Summit of 2000²⁰¹, this declaration was developed and adopted but later taken over by the African Union. Its main driving factor was to ascribe an interpretation to the equivocal and nebulously transcribed provision of Article 4(p) of the African Union Constitutive Act.²⁰²

(p) Condemnation and rejection of unconstitutional changes of governments. These two provisions can be considered to be the legal basis of the AU's present democracy agenda.

²⁰⁰ Charles Manga Fombad, *The African Union, Democracy and Good Governance*; 2012

²⁰¹ The Lome Declaration

²⁰² Supra 9

It would be of great cognitive importance to note that the declaration repeatedly refers only to action taken against a non-democratically elected government or one that refuses to relinquish power after losing elections. Mr. Charles Manga states that although it provides a series of measures that the AU can take progressively to respond to the constitutional change of government as well as an implementation mechanism, the interpretation of these defined and specified types of unconstitutional changes of government may give rise to difficulties in some situations. Since the declaration specifically prohibits coups against a democratically elected government, it is therefore inapplicable to a coup conducted against a military regime.²⁰³ This in furtherance of the earlier assertion that Article 4 of the African Union Constitutive Act is imprecise and equivocal and is susceptible to misinterpretation at the cost of democracy or democratization of a particular state.

This declaration also pertains to incumbents refusing to concede defeat after the loss of elections. This may exhibit itself by either the African Union acting and making arrangements to have such a leader deposed with the example of Gambia after the 2017 elections where he conceded defeat then later recanted the same and called for fresh elections and was deposed by Senegal under the umbrella of the Economic Community of West African States (ECOWAS) with the blessing of the African Union who through civic action though salient threatened not to recognize Yahya Abdul-Aziz Jemus Junkung Jammeh as the duly elected President.

This may also exhibit itself by the African Union refusing to act by protecting an incumbent in the event of an invasion whose specific aim is to topple him/her. This is well explicated by the Robert Mugabe versus Emerson Mnangagwa feud of Zimbabwe that took place in 2017.

²⁰³ Supra 10

5.2.3 The African Union Declaration on the principles governing democratic elections in Africa

On 8th July 2002, the final summit of the Organisation of African Unity in Durban, South Africa, this declaration was passed and it was based principally on a report by the Secretary-General of the OAU on strengthening the role of AU in election observation and monitoring and the advancement of the democratization process within the continent and specifically to member states of the organization.

The declaration in consonance to its foundation provides that democratic elections should be conducted:

- i) Freely and fairly.
- ii) Under democratic constitutions and in compliance with supportive legal instruments.
- iii) Under a system of separation of powers that ensures, in particular, the independence of the judiciary.
- iv) At regular intervals, as provided for in national constitutions.
- v) By impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics.

This declaration further bestows upon state members that are signatories the responsibilities where member states are supposed to obligate themselves. Member states commit themselves to among others:

- i) Scrupulously implement the above principles, establish institutions to deal with issues such as codes of conduct, citizenship, residency, age requirements for eligible voters, a compilation of voters' registers.

- ii) Establish impartial all-inclusive, competent, and accountable national electoral bodies and competent courts to deal with electoral disputes.
- iii) Safeguard all fundamental human rights, especially freedom of assembly, association, and speech during the electoral process as well as the promotion of civic and voter education.
- iv) Taking all necessary measures and precautions to prevent the perpetration of fraud, vote-rigging, or any other illegal practices throughout the electoral process.
- v) Ensuring security to all participating parties and ensuring transparency and integrity of the entire electoral process.

Some nations have committed to implementing these declarations while others treat them with contempt and this is usually propagated by sitting governments whose fear of loss of power cultivates a notion of fear thus propagates practices of unfair competition between candidates to an election.

Some governments have to a larger extent used the import of the above responsibilities to manipulate and frustrate their opponents in the upcoming elections. This includes but is not limited to;

- a) Withdrawing of security of opposition candidates in the period leading up to the general elections.
- b) Use of force against supporters of the opposition in the period leading up to an
 - a. election.
- c) Prosecuting opposition members and jailing them for crimes arising from trumped-up charges.

- d) Making changes to the judiciary and the respective electoral commissions in the period leading up to elections.

These and many more are recipes for disaster thus these rules on commitment were formulated to assist nations to conduct democratic elections and what some nations lack is the political goodwill to let the people decide who wants to lead them. This is the fundamental formula and the deciding factor in what is to be termed as a free and fair election.

5.2.4 The African Union guidelines on election observation and monitoring

The African Union under Article 4 (h) of the African Union Constitutive Act has the right to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability in the member state of the union upon the recommendation of the Peace and Security Council.²⁰⁴

Most war crimes within the continent and civil wars begin due to disputed elections that cause violence in proportions that cannot be contained by the incumbent government being that the said government is also a party to the conflict. To ascertain the genuine form or ingenuity of the claims between the incumbent government and the opposition, it infers upon logic to make arrangements and observe the said elections so that decisions on calming resultant civil unrest are not biased against the incumbent or the opposition.

Article 3 of the Guidelines for the African Union Electoral Observation and Monitoring Missions provides that:²⁰⁵

²⁰⁴ Supra 9

²⁰⁵ Guidelines for African Union Electoral Observation and Monitoring Missions

Formal invitation to the AU is to be made by the country organizing the elections, either through the National Electoral Commission (NEC), or electoral authority, or the said government, in accordance with the democratic legal framework of the country, as necessary elements for mounting observations.

The guidelines under Article 3 further states:²⁰⁶

The decision about dispatching an observer and monitoring mission in a member country holding elections must be informed by a preliminary assessment of the country's social, economic, political, and constitutional arrangements.

The guidelines underscore the importance of the existence of a “level playing field”, which determines the conditions of electoral competition, which is an important aspect that needs evaluation when determining the likely character of the electoral process. The assessment team will assess whether or not conditions of organizing credible, legitimate, free, and fair elections are in place in the country. Some of the issues to consider in the assessment will include:²⁰⁷

- i. Does the constitution and legal framework guarantee fundamental freedoms and human rights?
- ii. Is the electoral system premised on the right to freedom of association, and enables people to advance this right through the formation of political parties for electoral competition?
- iii. Is the Electoral Commission independent and impartial, and exercise its powers and perform its functions without fear, favor, or prejudice?
- iv. Are the rights of observers guaranteed?
- v. Is it likely that the security forces will maintain a neutral role in the provision of election security?

²⁰⁶ Supra 15

²⁰⁷ Supra 15

- vi. Is the situation in the country generally peaceful or is there political violence? If so will the government's security measures provide an environment in which a free election campaign or are there substantial restrictions on the freedom of expression, association, and assembly?
- vii. Are there clearly articulated rules for political party funding to be respected by all parties and candidates?
- viii. Is the Voter education that should be provided non-partisan, independent, and coordinated throughout the country?
- ix. Will there be equitable use or access to public resources for election campaigning?
- x. Is the registration of voters should be done without distinction or discrimination based on gender, race, religion, region, or ethnicity?
- xi. Does an Independent Media Authority responsible for monitoring and regulating the media to allow equitable access to the public media of all contesting parties and candidates function?

The African Union may decide not to take up the invitation but in the likely event that it does take up the invitation, then the rights accorded observers and monitors should remain the same. The rights enjoyed by observers and monitors alike such as listed below:²⁰⁸

- i. Freedom of movement within the host country.
- ii. Accreditation as election observers or monitors on a non-discriminatory basis.
- iii. Communicate freely with all competing political parties, candidates, other political associations and organizations, and civil society organizations.

²⁰⁸ Supra 15

- iv. Communicate freely with voters except when the electoral law reasonably prescribes such communication to protect the secrecy of the vote.
- v. Unhindered access to and communication freely with the media;
- vi. Communicate with and have unimpeded access to the National Election Commission or appropriate electoral authority and all other election administrators.
- vii. Communicate and seek the collaboration of the Judiciary, the National Assembly or Parliament, security personnel, and all other appropriate Government departments and agencies involved in the election process.
- viii. Free access to all legislation and regulations governing the electoral process and environment.
- ix. Free access to all electoral registers or voters' list.
- x. Unimpeded access to all polling stations and counting centers including those used by the military or other specific groups.

Since the inception of the Organisation of African Unity and later the African Union and in the period leading up to 2013, the body has sent missions to observe 131 presidential elections, 176 legislative elections, 37 general elections, and 55 referenda in the African states.²⁰⁹ Some reports whether on a preliminary basis or final basis from the observer missions have been treated with a great deal of contempt due to the inability of either the populace or the observer mission itself to differentiate their function from a diplomatic observer mission to an independent and technical mission.

²⁰⁹ Chika Charles Aniekwe and Samuel Mondays Atuobi: Two Decades of Election Observation by African Union.

The East African Community has in several instances attempted to replicate the idea of sending observer missions to elections within its member states, the latest being the Rwandan election conducted on 8th August 2017.

Political stability within states has been a long-standing factor and sometimes stumbling block to proper integration between states in such an organization and this is what prompted the Deputy Secretary-General of the East African Community to state that as the region moves deeper in the integration process with the ultimate goal of having a Political Federation, EAC Partner States need to standardize their governance practices and should take a keen interest in each other's' political and electoral processes.²¹⁰

The study ceases to be whether the East African Community can commission and election observation mission to any of its countries to monitor elections but rather the import of their report should there be the need for intervention and also the power to intervene as a community in efforts to save the democratization process within the member state.

5.3 LESSON EAC CAN LEARN FROM EUROPEAN UNION (EU)

5.3.1 Political Goodwill from Members

One of the factors that stand out from a comparison of the EU and other regional integration systems in Africa, Asia, and elsewhere in the political goodwill from member states. It is accepted that the lack of political goodwill and poor political leadership cannot make regional integration thrive smooth and fast. The leader or leaders must be willing as well to share power with other

²¹⁰ <https://www.eac.int/press-releases/154-peace-security/816-eac-to-deploy-election-observer-missions-to-the-forthcoming-rwanda-and-kenya-elections> accessed on 15th August 2019 at 3:09pm

partners for the sake of smooth integration. An example of political goodwill within the EU is where member states ceded some of the sovereign power to regional institutions within the EU so some of the important economic aspects could be handled by the EU institutions.

In the case of EAC, this scenario is very ironic as member states want to wield both political and economic power at the national levels. These levels leave the EAC institutions very weak which can only handle very shallow issues, as they do not hold such power to make their independent decisions with interference and influence from member states.

In the EU frameworks, these institutions have been achieved through structure heavily biased in favour of the smaller member states as unopposed to EAC where economically powerful countries like Kenya, Tanzania, and Uganda seem not to easily cede grounds to pull up other smaller countries like Rwanda and Burundi. In the EU, there must also be agreement on shared aims among the member states as the sequencing of integration is also important among the partners on the shared degree of ambition, the size and diversity, and convergence.²¹¹

5.4 FAST IMPLEMENTATIONS CUSTOM UNIONS AND COMMON MARKETS AGREEMENTS

The EU formed its Customs Union (CU) in the year 1968 after which the member states did not take long to unselectively sign and ratify the protocols within it. Its model has been successful since the initial formation of the European Free Trade Association (EFTA), which was a major success then.

²¹¹ Laursen, F. (2003). Comparing Regional Integration Schemes: International Regimes or Would-be Polities? in Jean Monnet/Robert Schuman Paper Series, Vol.3, No.8, Available at <http://miami.edu/eucenter> (Accessed on May 2016).

The next step that was undertaken was the formation of the single Common Market (CM) where goods/services/capital/people are free to move and trade leading to an economic union with (or without) a common currency first. The CM was already one of the objectives of the Treaty of Rome signed by member states in 1958. These two steps are recorded as the two major factors that facilitated the fast-economic integration of Europe to form a single trading currency-Euro.

The implementation of the Customs Union (CU) and the Common Market (CM), plays an important role in market integration. When compared to the regional integration bloc projects within the African region, it is evident that most of the integration models are still stuck in the stages of the CU and the CM despite taking more than twenty years of existence, and EAC is not spared in this case.

Analytically, economic integration involves the merger of the smaller economies to become stronger enough to bargain for trade and development as a bloc. In the specific case of the EAC, most of the CM protocols were signed years back have not been ratified by member countries simply because of disagreements on how to share the joint revenues generated by the community. But the worst case in the EAC is the economic suspicion held by some members against other members within the region.

5.5 ECONOMIC AND INFRASTRUCTURE INTEGRATION

Another lesson the EAC can learn from the EU is the economic and infrastructure integration that promoted fast EU integration. Policies that were singled out that helped achieve this included policy that touched on: fiscal; monetary; labour; immigration; rail; air; roads; communication; agriculture and economic trade policies. Member states gave their political will to create such policy institutions and invest powers with them.

The achievement of an economic union is based on the joint economic policy and the Union budget, which is not a common source of friction in the EU as compared to the EAC. Thus, leading to the lack of will to harmonize economic policies within the region as required by the IMF to pave the way for the creation of a single currency for the region.

In the EU, there is a clear regional development policy in the stabilization of the monetary policy. A key element of stabilization is the need to ensure coherence between the removal of trade barriers and the exchange rate regime, monetary and fiscal policies, and capital movements. Coherence is maintained in the EU through different monetary and exchange rate mechanisms.²¹² In the case of the EU, the budget is roughly Euros 100 billion which is just over one percent of EU GDP. Most of the budget is spent on redistribution common agricultural policy and regional trade policy. The limit on how much can be taken from national treasuries to run the EU is set by the member states themselves.²¹³

5.6 PUBLIC PARTICIPATION

The EU is the only regional integration with a collective identity that is functional despite its versed national dynamism. The EU citizen members have one passport to travel around, one work permit, and almost a unified culture of life.

The policies linking peoples together not only include those related to economic transactions, but also those intended to democratize the EU institutions and policies. James Caporaso argued that

²¹² Samwel Odoyo Njura “*University Of Nairobi institute Of Diplomacy And International Studies (Idis)A Comparative Analysis Of The European Union (Eu) And The East African Community (EAC) Economic Integration Models: Lessons For Africa*” 2016

²¹³ European Union, (2008). The EU Budget: Available at: http://www.aueb.gr/statisticalinstitut/europeancitien/budget_en.pdg (Accessed on 10 July 2016)

democratic practices within some collective institutions have strengthened the European identity of citizens greatly.²¹⁴ Within the European Council, there are directly elected representatives. These scenarios entail what the European call the public citizen participation in the EU foreign policy which is missing in almost all the African regional integration blocs.

The identity of EU citizens within Europe is strengthened in their rights established by the jurisprudence of the European Court of Justice.²¹⁵ The sense of identity may derive from common national interests, which, in the case of Europe, is reflected in the postwar era and the Cold War. Sixty years ago, a common European identity was the stuff of dreams. Twenty years ago, a united Europe was thought to be dependent on the cold war struggle.²¹⁶

In the case of the EAC, there is a missing sense of the EAC region identity that creates the common spirit of belonging and togetherness as member states still get embroiled in their different distinct ethnic cultures which makes it difficult to harmonize the EAC.

The process under which the EAC integrates other member states like South Sudan is clouded with a lot of regional political dynamics based on the individual state interests in the region. There is the nonexistence of foreign policy within the EAC which deals with the citizen engagements and participation of the member states for the public to know what is going on within the EAC, or the EAC agenda being driven by the institution.²¹⁷ Likewise, the member states do not articulate and promote well the citizen engagements in the foreign policy processes which should focus on building citizen awareness regarding the benefits of the regional integration. On the contrary, these

²¹⁴ bragia, M. (1992). Thinking About the European Future: The Uses of Comparison," in Alberta M. ed., Euro-politics: Institutions and Policymaking in the 'New' European Community

²¹⁵ Gary, M. (1993). Policy and Multilevel Governance in the European Community

²¹⁶ Gary, M. (1993). Policy and Multilevel Governance in the European Community

²¹⁷ Samwel Odoyo Njura "University Of Nairobi institute Of Diplomacy And International Studies (Idis)A Comparative Analysis Of The European Union (Eu) And The East African Community (Eac) Economic Integration Models: Lessons For Africa" 2016

are the areas where the EU has scored most to achieve its economic agenda for the European region.²¹⁸

Within the African continent, the EAC can learn lessons from other regional institutions like the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC). ECOWAS is a regional political and economic union of fifteen countries located in West Africa. It is meant to foster interstate and regional economic and political cooperation within the member states. In able to achieve their goals ECOWAS has made tremendous achievements through the creation of infrastructure that links the member states. For example, the road construction between big cities highways from (Lagos-Abidjan), (Nouakchott-Lagos), made the movement of people and goods much easier than it was before.

The issuance of the passport has also significantly eased the movement of people within the member states. It is however important to note that the EAC has also begun issuing its citizen with the East African Passport to facilitate regional identity. However, member states should take the initiative to inform their citizens of their progress. A common communication infrastructure should be implemented thus to connect the member states.

As the EU and ECOWAS have shown the movement of people and goods should be made easier at the borders in doing so a sense of unity and togetherness is shown and built. Member states should be discouraged not to prevent or frustrate the movement of goods and people at the border as by doing so the common market is strengthening.

²¹⁸ Samwel Odoyo Njura “*University of Nairobi institute Of Diplomacy And International Studies (Idis)A Comparative Analysis Of The European Union (Eu) And The East African Community (Eac) Economic Integration Models: Lessons For Africa*” 2016

As part of its plans to make Africa a more integrated continent, leaders of the ECOWAS have adopted the name 'ECO' for a planned Single Currency to be used in the region in 2020. The decision to create a single monetary zone was reached by the Heads of State of all 15 member countries at a summit of the ECOWAS, held in Lome, Togo in 1999. Though it requires the region to align with its monetary and fiscal policies. The EAC should also take the initiative to achieve a single currency within its borders.

Conclusion.

The EAC should speak in one voice in dealing with matters of security. The EAC secretariat should take a leaf from ECOWAS and take on leaders who have refused to step down after an election and have been defeated. Election malpractices should not be condoned in all shapes and forms. They should ensure free and fair elections are held.

In 2011 ECOWAS intervened in Côte d'Ivoire after the elections where the incumbent president Laurent Gbagbo, refused to leave power following the democratic presidential elections of November 2010. In December 2010, ECOWAS gave a final ultimatum to Laurent Gbagbo to comply with its request on ceding his throne. Otherwise, ECOWAS warned, it would be compelled to use legitimate force to serve the demands of the Ivorian people.²¹⁹

These regions, among others, have dealt with the integration concept, it is common that democratic parameters are key to the realization of the political federation, so that, such initiatives should be enforced by the EAC in solving problems to instill democratic principles which are the basic requisites achieving political federation .the community can learn from such regional unions.

²¹⁹ <https://scholarship.law.nd.edu/ndjicl/vol3/iss1/3/> accessed on 24th September 2019

CHAPTER SIX

6.0 FINDINGS, RECOMMENDATIONS AND CONCLUSION

6.1 KEY FINDINGS

This study sought to examine the gaps in the legislative, institutional, and policy framework as far as holding the EAC Summit accountable through the necessary checks and balances within the structural architecture of the EAC is concerned, with respect to achieving political federation in EAC. and more importantly, to recommend mechanisms that may enhance accountability through the separation of powers theory in the structural architect of the EAC.

The study found that the cooperation between the member states can be categorized as being in a state of becoming in regards to the status of political federation. In essence, this means that the incremental achievement of the integration process in East Africa will only be possible if clarity certainty is made as to the roadmap on the integration process especially to achieve political federation.

While strategic development plans like the Millennium Development Goals (MDGs) were being evaluated in terms of aspirations versus actual results ahead of their landmark review in 2015, the two decades of the existence of the EAC Treaty is ripe for revisiting the fundamental relationships between the role of the Summit, and checks and balances that are geared toward fast-tracking the achievement of political federation status. Thus, this study identifies various findings that the Summit may apply in the Long and short-term in an attempt to find solutions to the problem statements of this research project and finally concluding.

6.2 LONG TERM FACTORS

6.2.1 The Law

Instrumental to progress and prosperity is the binding consideration of integration which is the law, that is the EAC treaty. To uphold justice and defend the dignity of citizens, it must be open to scrutiny through institutionalized checks and balances, and continuous enrichment through amendments are necessary in order to attain the political federation. The study recommends that on the long-term strategy, the EAC treaty needs to have a clear legal implementation structure with time limitations that will ensure the sustainability of the political federation.

6.2.2 The EAC Structure/Organs

Article 11 of the EAC, gives the Summit as the Highest decision-making authority over the affairs of the EAC. This means that in case of none achievement of the EAC objective due to lack of performance, the Summit has been the stumbling block to growth and development geared towards the realization of the political federation status. The EAC must relook on such structure to hasten any prospect that may have value addition and benefit to the Community, the reluctance of the summit in this is a clear impediment.

6.2.3 Decision-making Organ

As currently provided, the Summit as the major decision-making body is supposed to sit once every year as also provided under the Summit Procedure Rule no 11, so that they can pass resolutions or assent into law legislation that has been passed by the EAC's legislative organ. The law is supposed to be enforced within EAC member states. However, in the period between 2017 and 2018, the Summit was unable to transact its business due to a lack of quorum as a result of absenteeism caused by member squabbles or the cold war.

As then was The situation between Rwanda and Burundi has had a spill to the EAC and even spreading between Rwanda and Uganda leading to the postponement of the Summit in 2019, whereas Burundi accused Uganda whose president Museveni as the then head of the summit of not doing enough to help Burundi's' claim of aggression from Rwanda, Rwanda too had its fair share of problems with Uganda which led to serious economic sabotage leading to the two countries closing their borders. These fore-goings have necessitated the need for revisiting the fundamental relationships between democratic governance of the community to which central political command can provide a faster solution at the time of need. A lot of focus is put on the Summit on whether it is capable of delivering its mandate.

6.2.4 Democratization

The democratization of EAC member states has come under sharp focus, especially now (at the time of this research) as the union of states is celebrating twenty years of renewed existence. This research has highlighted some hurdles that realization of democratization within the EAC has had to contend with and that continues to slow the treaty process twenty years later, where the realization of the political federation is still a dream. The challenges are cross-cutting and might not necessarily have been occasioned by the Summit's shortcomings, however, in exercising the ultimate control of the operation of the EAC, the Summit is squarely to blame as being the stumbling to implementation of democratic parameters necessary for achieving political federation, includes principles of good governance and democratic governance provided under Article 6 of the EAC treaty

6.3 SHORT TERM FACTORS

6.3.1 Political Challenges

Political challenges remain key in achieving democratic thresholds to democracies. elections and electoral process within the member states remains a shadow of democracy where term limits of the presidents and influencing predecessors who must be loyalists meant to cover their political failures, abuse of two-term limits, exemplified in Uganda's Yoweri Museveni and Rwanda's Paul Kagame Burundi, and generally sham electoral process with other member states, Kenya and Tanzania not left out, should be well addressed within the political will of the summit as a short term and long term remedy.

6.3.2 Political representation

This matter has been the most thorny in the affairs of the EAC as it touches on the core factor of democracy, which is political representation, The treaty provides that members of the East African Legislative Assembly shall be drawn from the political parties representation from the member states only, whereas democratic representation has been widened to include representation by independently elected candidates in the respective legislative assemblies, this has left the treaty being too rigid to such class of persons. This may be a reason to stall or to limit checks and balances that may come from the representation of such an omitted class person other than the political parties that stand controlled by the appointing authority.

This matter has been challenged at national levels without much success on practicability, whereas in Kenya, Articles 2 (5),6) recognizes international Treaty to be part of our laws, Tanzania civil society early enough foresaw the clash in the encounters of the two laws with regards to representation. in the case of *Rev.Christopher R. Mtikila v The United Republic of Tanzania*,

*Application No.011/2011*²²⁰ which challenged the constitution amendment whose effect was to bar from election to the local government members who were not sponsored by any political parties, the later application was to safeguard the same interest concerning the treaty obligation and the rights of citizens thereof under universal suffrage. Sad enough with the success of the case above, the Summit has to date not provided a road map on independent candidate representation at EALA.

6.3.3 Human rights index

There has also been the proliferation of restrictive laws that target civil society organizations. The restrictive laws have led to the expulsion of NGOs and public order occasionally orchestrated by the Summit members on their respective states as the Heads. Counterterrorism laws have been used to harass groups agitating for democratic rights across EAC member states, to which the summit has never even made a priority of discussion or concern. This is to add to the dismal state of press freedom and passing of draconian Bills and policies to silence the same democratic freedom of the press. Authoritarian governments use legal pressure, imprisonment, and other forms of harassment to suppress independence. The famous case of the Tanzania journalist, Eric Kabendera who was detained for writing a news item that was perceived to be anti-government in 2020.

Weak regional human rights mechanisms is another challenge that states within EAC still grapple with. In practice, the East African Court of Justice (EACJ) jurisdiction to hear human rights matters is not explicit and is subject to the conclusion of a protocol to operationalize such jurisdiction to which the Summit has not managed an agenda in the twenty years, despite colleagues becoming culprits on abuse of human rights abuse and hiding behind sovereignty to bar obligation that may

²²⁰ Christopher R.mtikila v United Republic of Tanzania, Application No 009/2011

arise on personal accountability to such abuses, the example is alleged Burundi attempted coup in 2015 where it is reported that the government soldiers killed at least one thousand five hundred (1500) citizens, same is to Kenya's post-election violence of 2007 thus need for policy or treaty amendment to address the vices related to human rights.

6.3.4 Economic progress

East Africa's economic stagnation has led to poor infrastructure, high transportation costs, and political upheavals, even though there has been an effort to have a workable common market protocol which is one of the main founding agenda of the EAC Treaty, constant border trade wrangles continue to threaten the future political federation, hence a call for a cogent review policy that may provide a faster and progressive mechanism for the benefit of the community, like providing links to access global economy where every center of the world integrated organs are geared towards integration. The latest example is where the Summit has failed to have a common agenda concerning managing the world's Covid 19 pandemic. And the meeting called in Arusha in February 2020 had to be canceled, which some countries citing short notice, and procedural shortfalls like the manner of notice, in fact even the host president did not attend but sent a representative.

East African Community Headquarters, Arusha, Tanzania, The 21st Ordinary Meeting of the Summit of East African Community Heads of State that had been scheduled for Saturday, 29th February 2020 in Arusha, Tanzania has been postponed to a later date²²¹

6.3.5 Implementation

Regarding the dismal state of press freedom, the EAC should operationalize article 6 of the Treaty to ensure that member states adhere to democratic principles. The EAC should also compel the

²²¹<https://www.eac.int/press-releases/1682-21st-ordinary-meeting-of-the-summit-of-the-eac-heads-of-state-postponed-to-a-later-date>< accessed on 17 August 2020>

member states to operationalize Article 12 of the AU Charter on Democracy, Election, and governance, which calls on State Parties to promote principles and practices necessary for a democratic culture, which is essential to the political unity of nations.

6.3.6 The rule of law

Regarding abuse of term limits, the EAC should consider passing a declaration similar to that of ECOWAS that would set clear expectations for respecting term limits. EAC leaders should also publicly condemn any attempts to change, circumvent or violate established term limits, just as they do when military coups take place in the region.

EAC should sign the special provision to granting parties a standing to bring human rights jurisdiction before the EACJ which does not have the same and equally have an independent structure of appointment of judges to the EACJ, in Kenya President Uhuru Kenyatta and his deputy Dr. William Samoei Ruto was made to answer to human rights charges against them at the ICC where Kenya is a party to the Rome statutes, the Summit can at least bow to the same obligation under the EAC treaty to strengthen our democratic obligation for purpose of Unity and equality.

The communities should include efforts to strengthen democracy and governance in their economic development and integration strategies geared toward achieving political federation.

Just like the African Union that endorsed the Strategic Policy Framework and New Partnership for Africa's Development, the EAC Summit should adopt a declaration on democracy, political, economic, and corporate governance, to augment what Article 6 postulates on democracy within the community. Besides, the EAC should also adopt a replica of AU's Peer Review Mechanism and encourage its members to accede to it. The Peer Review Mechanism should work at the behest of the Implementation Committee.

The EAC should also put in place a Constitutive Act that gives it a right to intervene in any state within The Community. Intervention should be happening pursuant to the law granting powers to the federal Authority by the Summit. Intervention should take place on basis of grave circumstances like war crimes, genocide, and crimes against humanity, as well as a serious threat to legitimate order. Motivation should be to restore peace and stability upon recommendation by the Peace and Security Council.

Likewise, the Constitutive Act should accord member states the right to request intervention from the EAC to restore peace and security. The Act should without doubt allow the EAC to condemn and reject unconstitutional changes of governments.

The EAC should thus make a declaration on principles of governing democratic elections. The declaration should have provisions for conducting free and fair elections. Elections should be done under a democratic constitution and in compliance with supportive legal instruments.

6.3.7 Economic Barriers

In achieving sustainable political federation, the EAC should ensure coherence between the removal of trade barriers and exchange rate regime, monetary and fiscal policies, and capital movements to achieve economic and infrastructural integration, and should prioritize policies touching on fiscal; monetary; labour; immigration; rail; air; roads; communication; agriculture; and economic trade policies.

6.4 OTHER FINDINGS AND RECOMMENDATIONS

6.4.1 Legitimacy deficit

The colonial powers imposed a political system on the African states which is directly copied from the Western model of democracy but alien to African people. The lack of articulation between

modern democratic systems and the ancient cultural traditions helps to explain the failure to embrace democracy. Cultural traditions of ethnic tribes driven by patronage have been completely ignored. Pre-colonial Africa had a system where each leader ruled his 'nation' using well-established patron-client relationships, an informal system of conveyance of influence to and from the ruling elite. To some extent, this system of governance is still operational and consequently creates weak states with a lack of legitimacy for individual states.

The system of patronage is above all based on inequity and a patron's arbitrary control of the distribution of political resources. Its critics suggest that It is at odds with the democratic principles of universal rights and political competition in the public sphere.

The fact that political beliefs and values may be seen as democratic in Africa, democracy being a western concept of controlling interests of the masters, most nationalist leaders perceive democratic elections as a condition for continued western support or neo-colonialism. Such that after independence, the leadership of the colonial period reverted to one-party dominance. Democratic arrangements put in place by colonial powers dissipated. Democracy was destroyed in countries like Uganda, it was no longer a valuable concept for the majority of the African populace.

6.4.2 Democracy and Constitutionalism

Constitutionalism and democratic processes have not been a priority in Africa. There are many examples of liberal constitutions that are not simply adhered to, and this is the origin of the disobedience to the international agreements creating specific obligations just like the EAC treaty.

6.5 RECOMMENDATIONS & CONCLUSION

The interest of this project has been to diagnose the problems that create the gap between the treaty as provided in the books and the role of the summit in its reflection on the realization of the political

federation in the East Africa Community. We have demonstrated that the structural architecture of the EAC does not have the powers to hold the summit accountable for the lack of implementation of the treaty. In so giving the recommendations and conclusion of this study, based on the findings of this study, this section answers my research questions which are premised on the discussion of each chapter, hence;

6.5.1 The Significance of the historical perspective of this study?

As discussed in chapter two of this study, the significance of the historical perspective of the East Africa Community in this study traces the historical underpinnings that shaped the integration agenda and introduced the idea of political federation, more so, what is important is to learn from the challenges, mistakes, and successes of the preceding organization, so that the EAC would not repeat some of the mistakes that led to the fall of former Community. This study suggests a need for policymakers to strike a balance between accelerated coordination and best practices that are geared towards the realization of a political federation in EAC.

6.5.2 The legislative, institutional, and policy architecture of the EAC and its relevance to the realization of a political federation in EAC?

Discussed in chapter three of this research project. The objective to examine the extent to which the legislative, institutional, and policy Institutional architecture of the EAC supports the realization of a political federation in EAC. This study found that, despite the existence of legislative, institutional, and or policy framework, without clear-cut operational design in the implementation of the treaty, little can be achieved if one institution being the Summit only, still holds the overall answers to the realization of the common political authority of the EAC.

This study also suggests an opportunity for support strategies to back the efforts of achieving the political federation through a separation of powers with effective checks and balances geared towards achieving political federation. The involvement of all regional sub-groups for awareness, participation in the matter of the Community, and adapting policy to such informal groupings can create real progress towards regional integration and political federation as the EAC treaty articulates.

6.5.3 On the challenges facing the EAC Summit in the quest to the realization of political federation.

This study examines challenges that hamper the realization of the political federation and the extent to which the legislative, institutional, and policy Institutional architecture of the EAC supports the realization of a political federation in EAC. That despite the legislative, institutional, and or policy framework available as discussed in four, there exist gaps in the law and the structural design that makes it very hard to hold accountable those who the treaty assigns the duty of realization of the main objective of this study, the urgent need for the introduction of checks and balances in the affairs of the EAC.

That, in addressing the challenges faced by the Summit in implementing political federation in East Africa, this study suggests that there is a need to develop policies and programs aimed at widening and deepening co-operation among the Partner States in all democratization aspects if political federation in EAC has to be achieved. This analysis highlights the importance of setting appropriate checks and balances through the theory of separation of powers, which should apply across levels of processes of the EAC to achieve the federal status.

6.5.4 Lessons from other jurisdictions.

The objective is to identify and draw lessons best practices, with functions equivalent to those of the Summit, that various jurisdictions have dealt with the integration concept, it is common that democratic parameters are key to the achieving integration and further realization of the political federation, so that, initiatives should be enforced by the EAC in applying directions that can instill democratic principles which are basic requisites achieving political federation that other jurisdictions have successfully used.

And finally, from the challenges faced by the Summit and lessons drawn from the historical factors, and best practices from other jurisdictions. There is hope to adopt a faster mechanism that this study recommends the separation of powers theory where there is a clear-cut separation of roles with outlined checks and balances across the structural architecture of the EAC to fast-track the realization of a political federation in the East Africa Community.

Further, there is a need for proper distribution of power between all organs of EAC or a restructure for efficiency purposes. Where a fast and speedy resolution or decision making will not require that issues that need faster attention will have to wait for one year to get the Summit approval to be implemented.

BIBLIOGRAPHY

BOOKS

Agyeman Setbacks to Political Institutionalization by Praetorianism in African, In Africa's Persistent Vulnerable Link to Global Politics (University Press2001).

Allan Winters, M Schiff Regional integration and Development, World Bank Publication, 2003.

In Maria V, Filomena C & Wojciech O (eds) Solidarity Memory and Identity, Cambridge scholars' publishers chapter 13, 2015,

M.W Mangachi, Regional Integration in Africa, safari books Nigeria, 2011.

Masinde, Wanyama, and Christopher Otieno Omolo. "The Road to East African Integration." East African Community Law: Institutional, Substantive, and Comparative EU Aspects, edited by Emmanuel Ugirashebuja et al., Brill, LEIDEN; BOSTON, (2017,) pp. 1–21. JSTORwww.jstor.org/stable/10.1163/j.ctt1w76vj2.5. accessed on 29 January 2019

Maurer, The Legislative Powers and Impact of The European Parliament. JCMS: Journal of ommon Market Studies, 41(2), pp.227-247 2003.)<
<https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-5965.00420>> accessed on the 30 January 2019

Mehler A, Politics Economy and Society of the South of Sahara, (Leiden Boston 2012)

Naathan A, NeNe Earnest K, Temotope O, Isaack O (eds), Africa Yesterday Today, and Tomorrow, Exploring the Multi-Dimensional Discourse on Development, (Cambridge Scholars publishers 2013))

Odhiambo, Moris Chitiga and Rudy, The Civil Society Guide to Regional Economic Communities in Africa, (African Minds 2016)

Pollack M, The engines on European Integration, Delegation Agency and Agenda Setting in the EU, (Oxford University Press 2005)

Thomas Isaac T.M, Franke Richard, Local Democracy and Development: The Kerala People's Campaign for Decentralized Planning,(Rowman Little Field publishers)

Ugirashebuja, E. Ruhangisha, J Ottervanger, John Ruhangisha, and Armin Cuyvers, eds East African Community Law, Institutional, Substantive and comparative EU Aspect, LEIDEN BOSTON; Brill, 2007

United Nations, Assessing Regional Integration in Africa, (2004)

Welz M, Integrating Africa, Decolonizing Legacies, Sovereignty, And The African Union,(Routledge group 2013)

Welz U, Dynamics of Regional Integration, (1999)

JOURNALS

Balassa B, *The Theory of Economic Integration*, London: (George Allwin & Unwin 1973)

Bamakao Ministerial Consensus, *Democracy, Development, and Reduction*, (Nov 14-17 2007).

D. Adjovi N. Knust, "Rwanda", *Max Planck Encyclopedia of Public International Law*, 2012

Democracy and development, *The Role of The UN*, Discussion paper, (September 2013) <
<https://www.idea.int/.../democracy-and-development-role-united-nations>> accessed on the 29

January 2019

Fanta Emanuel, *Dynamics of Regional (non-) Integration in Eastern Africa*, (United Nations University Institute on Comparative Regional Integration Studies 2008) <
<http://cris.unu.edu/dynamics-regional-non-integration-eastern-africa>> accessed on 6 February

2019

FHI360, *Status, and Characteristics of Regional Democracy and Rights-Promoting Networks*, 2010.

K.C Kamanga, *An Inquiry into the achievements and challenges of the EAC*, 2017.

Kamanga, Khoti, and Possi, *Ally, Principles Governing EAC integration*, (April 2017).

Kamanga, K., 'Fast-Tracking' East African Integration and Treaty Law: *Pacta Sunt Servanda Betrayed?* *Journal of African and International Law*, Vol. 3, No. 3 (2010).

L. Bartels "Review of the role, responsibilities, and terms of the SADC Tribunal", in *International Human Rights Law in Africa*, 2013.

Leah Kimathi, *promoting Democracy as a Means of Post-Conflict reconstruction in Eastern Africa, What Role for Regional Organization?* (2010).

Makame A, The East African Integration; Achievement and Challenges, (Great Insights 2012)
Vol.1 issue 6 < <https://ecdpm.org/great-insights/trade-and-development-making-the-link/east-african-integration-achievements-challenges/> accessed on 29 January 2019

Maurer, A., 2003. The legislative powers and impact of the European Parliament. *JCMS: Journal of Common Market Studies*, 41(2), pp.227-247.

Maurer, A., 2003. The legislative powers and impact of the European Parliament. *JCMS: Journal of Common Market Studies*, 41(2), pp.227-247

P Protas, Reflections on People-Centered Principle in The East African Community; The Current Legal Controversy, 2018

Petersmann, Ernst Ulrich. "Time for a United Nations 'Global Compact' for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration." *European Journal of International Law* 13, no. 3 (2002)

Schiff Maurice and Winters L, Dynamic and politics of Regional Integration Arrangement, Vol 12 No 2 pp 177-195(Oxford University Press 1998)< https://www.jstor.org/stable/3990088?seq=1#metadata_info_tab_contents> accessed on 6 February 2019.

Yash Ghai, Human, Rights, and Social Development, Towards Democratization and social justice, Democracy, Governance, and Human Rights, October 2001.

Hon Harelimana A," *the east African political federation; addressing fears, concerns and challenges*", 10th EALA Anniversary Symposium, 2nd June 2011.

Korwa G Adar, [Africa Insight](#), Fast-tracking East African political federation: the role and limitations of the East African legislative assembly

[Volume 37, Issue 4, Mar 2008, p. 76 – 9](#)

Franck, T. M. 1968. *Why Federations Fail: An Inquiry into the Requisites for Successful Federalism*. London: University of London Press.

Ruth Allan (1951) Book Review: *New Zealand* by Harold Miller. London, Hutchison's University Library, 1950., *Political Science*, 3:1, 61-62

[R. H. Brookes](#) & [K. C. Wheare](#), *Political Theory: The Separation of Powers*, Pages 53-60

Lawson, 'The Rise and Rise of the Administrative State' (1994) 107 *Harvard Law Review* 1231; see further M. E. Magill, 'The Real Separation in the Separation of Powers' (2000) 86 *Virginia Law Review* 1127, at 1136-47.

NEWSPAPER ARTICLES

Obbo C, EAC, Just Let Burundi Go We Can Always Remarry, The East African (December 10, 2018)https://www.theeastafrican.co.ke/oped/comment/EAC-just-let-Burundi-go-we-can_always-remarry/434750-4889314-8dwp20z/index.html accessed on 29 January 2019

<https://www.thecitizen.co.tz/News/EAC-integration-in-doubt-as-summit-aborts-secondtime/1840340-4907836-f85niv/index.html>> accessed on 29 January 2019

WEBSITES

<https://www.ajol.info/index.php/ajia/article/view/57213>< accessed on 5 November 2020

<https://www.sahistory.org.za/dated-event/organisation-african-unity-formed-and-africa-day-declared>< accessed on 25 February 2019

www.eac.int < accessed on the 27th December 2018

<http://ecdpm.org/peria/eac>< accessed on 17 November 2020