

**EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY**



**REPORT OF THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE
ASSESSMENT OF ADHERENCE TO GOOD GOVERNANCE IN THE EAC AND THE
STATUS OF THE EAC POLITICAL FEDERATION**

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1.0 INTRODUCTION

The EALA is established as an organ of the EAC under Article 9 of the Treaty for the Establishment of the EAC (Treaty).

The functions of EALA are enumerated in Article 49 of the Treaty; these include:

- Legislative;
- Liaising with National Assemblies of the Partner States on matters relating to the Community;
- Debating and approving the budget of the Community, annual audit reports of the Audit Commission and any other reports referred to it by the Council;
- Discussing all matters pertaining to the Community and make recommendations to the Council deemed necessary for the implementation of the Treaty;
- Recommending to the Council the appointment of the Clerk and other officers of the Assembly; and
- Making its rules of procedure and those of its Committees.

In line with its functions, EALA supports the realization of the EAC objectives which are stipulated in Article 5(1) as “to develop policies and programmes aimed at widening and deepening cooperation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit”.

Pursuant to the EAC objectives, the Partner States undertook to establish among themselves a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the relations of the Partner States to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities, the benefit of which shall be equitably shared.

Under Article 49 of the Treaty, EALA is vested with powers to establish Committees for the purpose of carrying out its functions. As such, the Legal, Rules and Privileges Committee was established as a Standing Committee of EALA and a mandate to inter-alia, assess and evaluate activities of the Community and ensure adherence to the provisions of the Treaty.

Accordingly, the Committee undertook an assessment of adherence to good governance in the EAC and acquainted itself with the status of the Political Federation, which is EACs ultimate goal.

The specific objectives of this activity on assessment of good governance and the status of Political Federation in the EAC were to:-

1. Assess the status of the EAC Good Governance draft Protocol;
2. Assess the status of the EAC political federation;
3. Discuss and make recommendations on the EAC Model of the Structure of the East African Political Federation;
4. Make recommendations necessary for the implementation of the Treaty in respect to good governance of political federation.

In executing its work, the Committee utilized the following methodologies:

- a) Review of documents on good governance and political federation;
- b) Received briefs by resource persons who included the Chairperson Council of Ministers, the DSG PF, the Principal International Relations Officer of EAC, and Hon. Daniel Wandera Ogalo;
- c) Participation in a question and answer session; and
- d) Workshop discussions.

2.0 ASSESSMENT OF THE EAC GOOD GOVERNANCE PROTOCOL

Good Governance is a process whereby public and private institutions manage resources in a manner that promotes development, human rights, justice, peace, accountability, responsiveness, inclusiveness, democracy and adherence to the rule of law.

2.1 FINDINGS

The EAC Good Governance Protocol was initiated as a good governance framework. Partner States supported this good governance framework and recommended that it be upgraded to a good governance protocol.

The EAC went ahead to draft a good governance protocol that incorporated the following key pillars:

- Human rights and promotion of equal opportunities;
- Transparency, accountability through economic governance;
- Access to justice, equality and equal opportunities;
- Democracy and democratization; and
- Adherence to the Rule of law, constitutionalism and access to justice.

In 2012, some Partner States raised several issues on the draft protocol on good governance in relation to economic and corporate governance and whether good governance is an area of cooperation that warrants conclusion of a protocol.

The revised Good Governance Protocol marked as **Annex I** has been sent to the Sectoral Council on Legal and Judicial Affairs for an advisory opinion on the issues raised.

Discussions on the good governance protocol are still on going to date.

2.2 OBSERVATIONS

1. The Committee observed that adherence to universally acceptable principles of good governance is a condition precedent for any country to become a member of, be associated with, or participate in any activities of the Community under article 3 (b) of the Treaty.
2. The Committee further observed that the principle of good governance is one of the fundamental and operational principles of the Community as provided for under article 6 and 7 of the Treaty;
3. The Committee noted that the principle of good governance underpins the objectives of the Community and includes adherence to principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' rights;
4. The Committee noted the need to take into account Partner States constitutions while considering the good governance principle and the need for clarity on areas of cooperation under the Treaty;
5. The EAC good governance draft protocol provides clarity on the definition of good governance and sets benchmarks or pillars to which all EAC Partner States and those that aspire to join the EAC are expected to adhere to.

2.3 RECOMMENDATIONS

1. Noting the need for a clear definition and benchmarks for the good governance principle in respect to Article 3 (b) of the Treaty, the process of concluding on EAC good governance protocol which stalled should be expeditiously concluded.
2. The EAC should enhance institutional mechanisms to monitor and evaluate adherence to the good governance principles in the Community.
3. The EAC Council of Ministers should upraise the Assembly on the current status of the Good Governance Protocol.

3.0 ASSESSMENT OF THE STATUS OF POLITICAL FEDERATION

3.1 FINDINGS

Whereas other areas of the EAC integration are elaborated upon to some extent in the Treaty, the ultimate goal – political federation has scanty information on how political federation is to be attained.

Chapter 23 on Cooperation in political matters, and in particular Article 123 (1) of the Treaty provides for establishment of common foreign and security policies particularly with respect to the eventual establishment of a political federation.

The Treaty is not explicit on Political Federation time lines which prompted the Summit to direct the Wako Committee to make recommendations on Political Federation.

The Wako Committee report recommended for an overlapping achievement of integration stages and the fast tracking of political federation.

The Partner States did a referendum on whether the people supported EAC Political Federation. The findings in all Partner States supported the EAC integration however; fast tracking political federation was not fully embraced by all the Partner States.

During the referendum, Partner States raised loss of sovereignty, lack of clarity on the Model of Federation, disparities in governance, effect of political federation on existing National foreign and defence policies, unique challenges affecting some Partner States,

economic imbalances, labour and competitiveness, loss of land and disparities in land tenure system, increased costs / sharing of benefits of integration, loss of Social Cohesion and National Identity, erosion of cultural and traditional norms and values, lack of identification documents, erosion of National Affirmative action policies, disparities in Partner States' social protection systems and spread of epidemics as a result of free movement as some of the fears, concerns and challenges (FCC) that the EAC should address in the integration process. The detailed report of the team of experts on addressing the fears, concerns and challenges of the East African Federation is attached as **Annex II**.

The Summit directed that a Committee of experts makes recommendations on how to address the fears, concerns and challenges raised in the referendum on political federation.

Recommendations on fears, concerns and challenges were noted by the Summit, which thereafter directed the Secretariat to develop a model of the Political Federation structure and action plan.

In response to the Summit directive, the Secretariat presented an action plan attached to this report as **Annex III** and a draft model of the structure of the EAC political federation attached as **Annex IV** to the Summit in November 2012. The Summit referred the action plan and the EAC Model of political federation structure to the Partner States for comments.

The action plan for the attainment of political federation encompasses:-

- Milestones;
- Activities;
- Timeframe;
- Responsible center; and
- The output.

3.2 THE DRAFT MODEL OF THE STRUCTURE OF THE EAST AFRICAN POLITICAL FEDERATION ENCOMPASSES:-

1. The rationale for political federation;
2. The purpose of the political federation;
3. The establishment of the federation;

4. The principles, values and objectives of the federation;
5. The model of the federation;
6. The structure and composition of the federation organs;
7. The powers and functions of the federal government;
8. The powers and functions of the constituent states;
9. Concurrent roles and responsibilities;
10. Federation institutions and assets;
11. Federal budget, capital and anthem; and
12. Transitional arrangements.

Deliberations on the status of political federation highlighted the following aspects covered in the draft model structure of the EAC political federation.

(a) The rationale for Political Federation

i) The rationale for the East African Federation has a foundation in the shared common history of the people of East Africa and the need to safeguard it and pursue a common destiny in order to survive in the challenging global arena.

ii) The People of East Africa have enjoyed close historical, political, social, economic, cultural, lingual and other ties for generations and acknowledge the necessity to move beyond economic integration to deeper integration driven by a Political Federation. It is significant to note that prior to 1977, the defunct East African Community had succeeded in establishing the supranational institutions; the East Africa High Commission, the East African Common Services Organisation, and East African Community as successive joint organizations for the said countries to control and administer certain matters of common interest and to regulate the commercial and industrial relations and transactions between the said countries and by means of a central legislature to enact on behalf of the said countries laws relevant to the purposes of the said joint organisations.

iii) In 1999 the Partner States through the Treaty for the Establishment of East African Community committed themselves to attain their integration successively through establishment of a Customs Union, a Common Market, a Monetary Union and ultimately a Political Federation. Irrespective of their individual national identities, history and diversity, the people of East Africa realize that deeper integration would promote a common identity and deepen the spirit of ***eastafricanness*** and offer the best chance of pursuing a common destiny and survival for future generations.

iv) The draft further realized that the current pace of economic integration calls for a robust and dynamic political commitment. Such commitment would enhance the upholding of the universal values of democracy, freedom, equality and respect for the

rule of law within the region. The establishment of a Political Federation entails the pooling of sovereignty into a single stronger political entity that would enhance the capacity of the region to better manage its resources, safeguard the economic, social and political gains as well as participate effectively in regional and global affairs.

v) A Political Federation would facilitate regional peace, security, stability, good neighborliness and peaceful settlement of disputes. The establishment of a Political Federation will advance the dignity of the African people and attainment of the Pan-Africanist ideals, goals, objectives and principles contained in continental declarations and instruments including, the 1980 Lagos Plan of Action, the Final Act of Lagos, the 1991 Treaty Establishing the African Economic Community, (Abuja Treaty) and the Constitutive Act of the African Union all on Economic Development of Africa.

(b) The purpose of the Political Federation

The purpose of the Political Federation will be to unite the Partner States into a Federal State with a unified and coordinated political authority, capable of coordinating its policies in order to pursue common political, security, social and economic interests for sustainable growth and economic transformation in the socio-cultural, technological and political fields.

(c) The establishment of the Federation

In accordance with the Draft Model of the Structure of the East African Political Federation, the Partner States of the East African Community that come together first will be the founding members of the Federation.

The proposed Federation should have a name which could be from among the following proposed names:-

- i) Shirikisho la Afrika Mashariki;*
- ii) Federation of East African States;*
- iii) The Federal Republic of East Africa;*
- iv) The Federation of East Africa; and*
- v) The United States of East Africa*

It is proposed that the agreed form of the Federation will be governed by a Federal Constitution that will be negotiated and subjected to a referendum by the peoples of the Partner States.

It is proposed that, at an appropriate time, a Treaty for establishing the East Africa Political Federation will be developed and negotiated by the EAC Partner States.

There should be a mechanism and criteria for admission of new states into the Federation.

(d) Principles, Values and Objectives of the Federation

It is proposed that the Federation should be founded on and be guided by defined fundamental principles, operational principles and clear objectives. The fundamental principles on which the Federation should be anchored include the sovereignty of the people and the Federation. Among the key operational principles are the supremacy of the Federal organ, the principles of subsidiarity and equitability. The key objectives of the Federation include the establishment of a central authority over the Federal territory, and the consolidation of the gain and benefits so far realized from the current level of integration.

(e) The model of the Political Federation

It is proposed that the Federal State be constituted by a two-tier structure composed of the Federal and Constituent States. The Federal State will be responsible for defined Federal matters, while the Constituent States will remain autonomous on matters that do not fall within the Federal competence. The division of powers and functions should be informed by the overriding need to avoid conflict of powers. It is proposed that the Federal State be composed of a Federal Executive, Federal Legislature and a Federal Judiciary, with functions based on the principle of separation of powers between the three organs.

The Structure and composition of the Federal Organs

i) Legislature

The Federal Legislature is proposed to be bicameral. The proposed Senate will be composed of equal representation from the Constituent States. The key functions of the Senate will be to safeguard, promote and enhancing interests of the Federation, and to represent the interests of the Constituent States. The House of representatives will be composed of members elected on the basis of proportional representation of the population, and will be responsible for the representation of the citizens of the Federation.

ii) Executive

The Federal State is proposed to have a Presidential system of government with a President and a Vice President. There should be a cabinet that is inclusive and accountable

iii) Judiciary

It is proposed that there be an independent Federal Judiciary with a Chief Justice. The Federal Judges be appointed by the Federal Judicial Service. The jurisdiction of the Federal Judiciary will include constitutional matters and it will be the final appellate court. It will have primary jurisdiction on human rights.

f) The powers and functions of the federal government.

The powers and functions proposed for the Federal Government are informed by international practice. These include defense and security, foreign affairs and international trade, immigration, infrastructure development, and the Federal public service, among others.

g) The Powers and functions of the Constituent States

The Constituent States will be expected to implement Federal laws and policies and remain responsible for and autonomous in all non-federal matters. These will include land, local government, matters of personal law, domestic trade among others.

h) Concurrent roles and responsibilities

The draft model of the structure of the East African Political Federation appreciates that in some areas where there will be concurrent competencies between the Federal and Constituent States. This is anticipated in areas such as citizenship, statistics and census, justice and constitutional affairs, education, health and agriculture, among others. Provisions have been made on how the concurrent competences will be exercised.

i) Federal Institutions and Assets

A number of Federal institutions will need to be established including the Federal Central Bank, Federal Electoral Commission and a Federal Service Commission among others. The Federal assets will be sacrosanct.

j) Federal budget, capital and anthem

There will be a Federal Budget, Capital and Anthem.

k) Transitional arrangements

The Federal Constitution will need to made elaborate provisions on transitional arrangements that will be necessary to ensure smooth and effective transition.

A report on comments from the Partner States on the action plan and model structure of the EAC Political Federation was to be tabled before the Summit in November 2013.

3.3 OBSERVATIONS

- 1) Studies on political federations have been undertaken in the past such as the Munanka Report which responds to the slow pace of EAC's integration continues to inform the process.
- 2) The rationale and vision for EAC political integration needs to be articulated afresh bearing in mind that historical and sharing of cultures may no longer be very compelling.
- 3) Noted that political federation has in the past in different contexts taken different forms which include:-
 - i) Coming together like USA and Switzerland;
 - ii) Holding together like Belgium and Nigeria;
 - iii) Putting together – imposed from the center like the former Ethiopia;
 - iv) Confederation where the centre is subjected to the will of the constituent states;
 - v) The union of states like the European Union; and
 - vi) The Union sui generis which is uniquely modeled to suit a specific political union.
- 4) The Committee observed that the union sui generis model of political integration may best suit the EAC.

3.4 RECOMMENDATIONS ON THE PROPOSED EAC POLITICAL FEDERATION

1. There is need to amend the constitutions of the EAC Partner States to allow for Political Federation.
2. There is need to coordinate action on political federation and use of terminology that emphasizes the positive aspects, for example ceding of power may not be as palatable as pooling of resources.
3. There is need for establishment of a structure to continuously sensitise on the integration process in order to eventually achieve a political federation that is considered legitimate and people centered.

4. There is need to continuously address fears, concerns and challenges since new ones keep emerging.
5. A budget line needs to be in place for EALA to carry out sensitization programmes.
6. EAC should also involve EALA at the Partner State level in the sensitization programmes to bring citizens on board. An institutional framework to discuss the establishment of the EAC political federation should be established.
7. Given the fact that political federation is the ultimate goal of EAC integration, there is need for a coordinated approach to involve all stakeholders including EALA in the systematic steps towards this end.

4.0 PROPOSALS ON THE EAC MODEL STRUCTURE OF THE EAC POLITICAL FEDERATION

The Model of the Structure of the East African Federation seeks to set out a number of critical issues, which are essential for the functioning of a Political Federation. This summary is intended to sequentially highlight the salient features of the Model of the Structure.

4.1 FINDINGS AND OBSERVATIONS

The Committee noted that the draft model of the structure of the EAC Political Federation seeks to set out a number of critical policy issues, which are essential for the functioning of a political federation. The salient features of a constitution entail the rationale; structure of a federal state which include federal organs of executive federal state, federal judiciary and federal legislature; division of functions of the federal state and constituent states.

The Committee noted that spelling out the foundation on which the proposed federation is anchored is critical. The need to explain the rationale or underlying justification for the EAC federation has the potential to garner a buy in from the people and articulates the intentions of all partners. Connected to this, the Committee observed that EAC Partner States have strong historical ties and common borders.

It was further noted that Partner States face similar challenges notwithstanding the diversities in certain respects. As the EAC tagline goes, the EAC is made up of one people with one destiny. This common destiny should be safeguarded in order for EAC Partner States to effectively confront current and future challenges.

It was further observed that there is an increased realization that the current pace of economic and social integration requires a robust and dynamic political commitment. As noted, political commitment will entail the pooling of sovereignty into a single but stronger political entity with capacity to better manage the regional resources.

4.2 RECOMMENDATIONS

1. It could be better to begin with few areas of federal matters and to give a time frame for the remaining ones.
2. The East African Court of Justice should be given extended jurisdiction to handle matters of federal nature.
3. A comprehensive evaluation of achievements and challenges of the three pillars of integration should be done in order to build on what has already been achieved and address that which has not been addressed.
4. Implementation of protocols and decisions taken at the community level should be fast tracked to feed the integration processes towards a political federation.

5.0 CONCLUSION

The Good Governance principle is internationally recognized. It is a condition precedent to any country joining the EAC. Good Governance is a fundamental and operational principle which should be clearly articulated and binding on all EAC Partner States.

Political Federation is the ultimate goal of the EAC integration. As the EAC works towards this ultimate goal, there is need to continuously ensure that other stages of integration are realized because there are building blocks of integration. The EAC should learn from other integration models in order to adopt that which best suits its people and circumstances.

6.0 ACKNOWLEDGEMENTS

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for taking off their time to participate and provide the Committee with the required information to report to the Assembly.