



**EAST AFRICAN COMMUNITY**  
**EAST AFRICAN LEGISLATIVE ASSEMBLY**

**RESOLUTION OF THE ASSEMBLY SEEKING THE EAC COUNCIL OF MINISTERS  
TO IMPORE THE INTERNATIONAL CRIMINAL COURT TO TRANSFER THE CASE  
OF THE ACCUSED FOUR KENYANS FACING TRIAL IN RESPECT OF THE  
AFTERMATH OF THE 2007 KENYA GENERAL ELECTIONS TO THE EAST AFRICAN  
COURT OF JUSTICE AND TO REINFORCE THE TREATY PROVISIONS**

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**By Hon. Dan Wandera Ogalo and adopted by the Assembly on Thursday 26<sup>th</sup>  
April 2012.**

**WHEREAS** Article 49 (d) of the Treaty vests into the Assembly the authority to discuss all matters pertaining to the Community and make recommendations to the Council of Ministers as it may deem necessary for implementation of the Treaty;

**WHEREAS** Article 123 (4) of the Treaty provides for peaceful resolution of disputes within Partner States;

**AND WHEREAS** Article 123 (3)(a) of the Treaty sets one of the objectives as the pursuit of a foreign policy intended to safeguard the common values, fundamental interests and independence of the Community;

**AND WHEREAS** in pursuance of its mandate this Assembly observed and monitored the Kenya general elections and in its debate noted that a dispute had arisen touching on matters of compliance with Article 6 (d) 7 (2) of the Treaty by the competing political parties;

**AND WHEREAS** in furtherance of its mandate the Assembly appointed a goodwill mission which carried out an evaluation of the effects of the dispute and reported back to the House;

**RECALLING** the mediation efforts that were instituted by a number of international bodies such as the East African Legislative Assembly, the African Union, the United Nations, and the Heads of State of the East African Community Partner States;

**NOTING** that under Article 23 of the Treaty the East African Court of Justice is mandated to ensure adherence to the law and compliance with the Treaty;

**FURTHER NOTING** that under Article 38 (3) of the Treaty, a Partner State is under obligation to implement a judgment of the East African Court of Justice;

**AWARE** from the debate of the two reports on the Republic of Kenya general elections that the dispute between the parties and the ensuing action by various actors may have contravened the provisions of the Treaty as to good governance, rule of law, democracy, accountability, social justice and settlement of disputes and as such are triable by the East African Court of Justice;

**CONCERNED** that it is now almost five years since the unfortunate incidents and the International Criminal Court at the Hague is still in preliminary stages and that justice delayed is justice denied;

**CONVINCED** that the indictment of the four by the ICC may alone not and will not resolve the underlying issues that led to the said violence that grasped the entire nation of Kenya;

**FULLY NOTING** that a sizeable number of the people of Kenya (including the resolution of Kenya National Assembly to that effect) as well as the governments of the Partner

States of EAC and the African Union were not in favour that this matter should be referred to the ICC but rather be dealt with locally in order to promote reconciliation;

**AWARE** of the continued agitation by the government and the people of Kenya to have the matter resolved locally by the relevant Kenyan Institutions in order to move Kenya forward following a successful coalition government for the last five years including the enactment of a new Constitution which has established a new and favourable constitutional order;

**NOW THEREFORE** this House resolves as follows:-

1. The people and government of Kenya with support from their sister republics of the East African Community are congratulated for the maturity and fast pace of reconciliation they exhibited in such a short time that has enabled Kenya to move forward;
2. Recognises the efforts made by the Republic of Kenya in the last five years and in support of that, allow Kenya to locally resolve the matter once and for all, having demonstrated that, it has the capacity to do so by having a successful coalition government and a new constitutional order aimed at resolving the issues that manifested in the aftermath of the 2007 general elections;
3. Supports the call by the Kenya government in its pursuance of the need to have a local mechanism of handling the post 2007 election violence;
4. That the Council of Ministers immediately embarks on the process of requesting the transfer of the proceedings for the accused four suspects in respect of the 2007 general elections from the International Criminal Court and instituting them in the East African Court of Justice on the basis that the acts complained of are contraventions of the Treaty;

5. That the Council of Ministers requests for punitive measures from the Court for contravention of the Treaty provisions if so proved; and
6. That the Chairperson Council of Ministers submits this Resolution to the 10<sup>th</sup> Extra-Ordinary Summit of the EAC Heads of State sitting on 28<sup>th</sup> April 2012 for it to cause amendments to Article 27 to provide for such "other" jurisdiction as is necessary to bring similar actions within the ambit of the jurisdiction of the East African Court of Justice and give it retrospective effect.

**CERTIFIED BY**

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Alex Obatre  
**DEPUTY CLERK**

**Date:**-----