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CLEARER OF THE TABLE: G. Chebet	



TWELFTH PARLIAMENT - (SIXTH SESSION)

THE NATIONAL ASSEMBLY



**THE SELECT COMMITTEE ON REGIONAL INTEGRATION**

**REPORT ON THE CONSIDERATION OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY'S REPORTS OF THE COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION**

- 1. ON THE PROGRESS MADE BY THE COMMUNITY TOWARDS ACHIEVING THE EAST AFRICAN COMMUNITY CONFEDERATION CONSTITUTION AND THE EAC ELECTIONS OBSERVER MISSION 29<sup>TH</sup> NOVEMBER TO 3<sup>RD</sup> DECEMBER, 2021**
- 2. ON THE CAPACITY BUILDING ACTIVITY 26<sup>TH</sup> TO 29<sup>TH</sup> OCTOBER, 2020**

**Directorate of Audit, Appropriations and  
Other Select Committees,  
National Assembly,  
Parliament Buildings,  
Nairobi**

**June 2022**

### **List of abbreviations/acronym**

AU	African Union
EAC	East African Community
EALA	East African Legislative Assembly
ECOWAS	Economic Community of West African States
CET	Common External Tariff
SCMEAP	Sectoral Council of Ministers Responsible for EAC Affairs and Planning
NTBs	Non-Tariff Barriers

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## FOREWORD

This report contains the Committee's consideration of the Reports of the EALA Committee on Regional Affairs and Conflict Resolution

- a) On the progress made by the community towards achieving the East African Community Confederation Constitution and the EAC Elections Observer Mission s
- b) On the Capacity Building activity 26<sup>th</sup> to 29<sup>th</sup> October, 2020

The Reports were introduced and adopted by EALA at the 4<sup>th</sup> meeting of the 4<sup>th</sup> Session of the 4<sup>th</sup> Assembly during the period 6<sup>th</sup> to 26<sup>th</sup> April, 2021 and was transmitted to the National Assembly for deliberation as provided for in Article 65 of the Treaty Establishing the East African Community and subsequently committed to the Select Committee on Regional Integration pursuant to Standing Order 212 for consideration and reporting.

In considering the reports the committee had briefings from the Parliamentary research and the legal council session in a retreat held in Machakos County from 5<sup>th</sup> to 8<sup>th</sup> August, 2021.

The committee further held a joint engagement with the Ministry of East African Community and Regional development in Mombasa County from 12<sup>th</sup> to 15<sup>th</sup> September, 2021 to consider the reports from EALA and deliberate on any concern raised by Members.

In considering the reports, the Committee received and incorporated views from the Ministry of East African Community and Regional Development.

The committee recommends that;

The Assembly to urge the Council of Ministers to expedite the finalization and adoption of the EAC protocol on good governance to enhance harmonization of the democratic governance policies, practices, laws and standards. Furthermore, there is need to finalize other instruments that operationalize its pillars.

The Council of Ministers to fast-track public consultations on political confederation and ensure diverse participation of key stakeholders including strong engagements with the National Parliaments, Civil Society Organizations, Local Governments, Private Sector, Non-Governmental Organizations, Media and other Critical Stakeholders for the process to be generally acceptable and inclusive.

The Assembly to urge the Council of Ministers to ensure that there is harmonization of the existing legal framework, guidelines and standards that govern the EAC election observation missions and harmonize them with the international practices to avoid any mismatches.

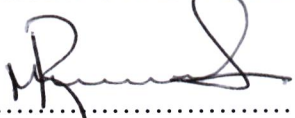
The Council of Ministers to ensure adequate funding for the EAC election observer missions rather than relegating this important function to external Partners. Development Partners should only compliment the EAC efforts.

Ensure that all Partner States remove restrictions towards free movement of persons, labour and right to establishment as well as harmonize their laws concerning movement of student and work permits for East Africans.

Strengthen the implementation of EAC Peace and Security architecture including early warning system for conflict prevention and resolution. EAC is encouraged to benchmark with ECOWAS and AU in the area of peace and security.

May I take this opportunity to thank all Members of the Committee for their input during the consideration of this report. The Committee expresses its gratitude to the Office of the Speaker and the Clerk of the National Assembly for the support accorded to the Members of the Committee in execution of its mandate.

On behalf of the Select Committee on Regional Integration and pursuant to the provisions of Standing Order 199(6), it is my pleasant duty to present to this House the Report of the Committee on its consideration of East African Legislative Assembly Resolutions.

Signed..........Date.....9/6/2022.....

**Hon. (Capt) Ruweida Mohamed, MP**  
**Chairperson**  
**Select Committee on Regional Integration**

## **1.0 PREFACE**

### **1.1 Establishment and mandate of the Committee**

1. The Select Committee on Regional Integration is established under the National Assembly Standing Order 212. It was constituted in December 2017 following adoption of a motion on membership of committees by the House.
2. As provided for in Standing Order 212 (2), the Committee is mandated to;
  - (a) enhance the involvement of the National Assembly in intensification and development of the integration process in the East African Community and the greater African region;
  - (b) examine the records of all the relevant debates and resolutions of the meetings of the East African Legislative Assembly;
  - (c) examine the Bills introduced in the East African legislative Assembly and Acts of the East African Community;
  - (d) examine records of relevant debates and resolutions of Pan African Parliament, the African Caribbean and Pacific- European Union Joint Parliamentary Assembly and other regional bodies;
  - (e) inquire into and examine any other matter relating to regional integration generally requiring action by the House.

### **1.2 Committee Membership**

3. The Committee comprises of the following Members:

#### **Chairperson**

Hon. Capt. Ruweida Mohamed, M.P  
Lamu County Women Representative  
**Jubilee Party**

#### **Vice- Chairperson**

Hon. Erastus Nzioka, M.P.  
Mbooni Constituency  
**ND Party**

Hon. Ezekiel Machogu Ombaki, M.P  
Nyaribari Masaba Constituency  
**NAPK Party**

Igembe Central Constituency  
**Jubilee Party**

Hon. Kubai Iringo, M.P

Hon. Benjamin Gathiru Mwangi  
Embakasi Central Constituency

**Jubilee Party**

Hon. Ayub Savula, MP  
Lugari C

**Jubilee Party**

Hon. Mathias Robi, M.P  
Kuria West Constituency

**Jubilee Party**

Hon. Abdi Mude Ibrahim, M.P,  
Lafey Constituency  
**Economic Freedom Party (EFP)**

Hon. Ndindi Nyoro, M.P.  
Kiharu Constituency  
**Jubilee Party**

Hon. Geoffrey Omuse, M.P  
Teso South Constituency  
**Orange Democratic Movement**

Hon. Janet Ongera, M.P  
Kisii County Women Representative  
**Orange Democratic Movement**

Hon. Dr. Gideon Ochanda, M.P.  
Bondo Constituency  
**Orange Democratic Movement**

Hon. Kassim Sawa Tandaza, M.P.  
Matuga Constituency  
**ANC**

Hon. Nasri Sahal Ibrahim, M.P.  
Nominated

**FORD-K**

Hon. Hilary Kiplang'at Kosgei, M.P.  
Kipkelion West Constituency

**Jubilee Party**

Hon. James Mwangi Gakuya, M.P.  
Embakasi North Constituency

**Jubilee Party**

Hon. Ali Wario Guyo, M.P.  
Garsen Constituency  
**Wiper Democratic Movement Party**

The Hon. Alfred Sambu, MP  
Webuye East  
**ANC**

Hon. Paul Kahindi Katana, MP  
Kaloleni Constituency  
**Orange Democratic Movement**

Hon. Jane Wanjiku Njiru, M.P  
Embu County Women Representative  
**Jubilee Party**

Hon. John Kiarie Waweru, M.P.  
Dagoretti South Constituency  
**Jubilee Party**

Hon. Elijah Memusi Kanchory, M.P  
Kajiado Central Constituency  
**Orange Democratic Movement**

Hon. Janet Teiyaa, MP  
Kajiado County Women Representative  
**Jubilee Party**

### **1.3 Committee Secretariat**

4. The Committee secretariat comprises of:

- |    |                      |                              |
|----|----------------------|------------------------------|
| 1. | Mr. Abdullah Aden    | Principal Clerk Assistant II |
| 2. | Dr. Kefa Omoti       | Principal Research Officer   |
| 3. | Mr. Johnston Kioko   | First Clerk Assistant        |
| 4. | Mr. Peter Mwaura     | Senior Legal Council         |
| 5. | Mr. John Nganga      | Audio Officer                |
| 6. | Mr. Boniface Mugambi | Sergeant At arms             |



## 2.0 INTRODUCTION

5. The East African Legislative Assembly is the legislative organ of the East African Community established under Article 9 of the Treaty Establishing the East African Community. Article 49 of the Treaty bestows upon the Assembly the functions of legislation, oversight and representation and provided for the establishment of committees by the Assembly for such purposes, as it deems necessary.
6. The following reports were forwarded to the National Assembly pursuant to the provisions of Article 65(b) of the Treaty for the establishment of the East African Community:-
  - a) Report of the EALA Committee on Regional Affairs and Conflict Resolution on the progress made by the community towards achieving the East African Community Confederation Constitution and the EAC Elections Observer Mission 29<sup>th</sup> November to 3<sup>rd</sup> December, 2021
  - b) Report of the EALA Committee on the capacity building activity 26<sup>th</sup> to 29<sup>th</sup> October, 2020
7. The committee on Regional Affairs and Conflict Resolution is one of the six (6) Standing Committees of the EALA mandated amongst others; matters related with free movements of persons, labour, services, right of establishment and residence, cooperation in political matters, cooperation in other fields, international organizations and development matters.
8. Article 65 of the Treaty provides for relations between the East Africa Legislative Assembly (EALA) and the National Assemblies of the partner States. It is in line with the Treaty provisions that the Report was tabled before the National Assembly on 22<sup>nd</sup> June, 2020 and subsequently, committed to the committee for consideration pursuant to the provisions of Standing Order 212.
9. In considering the reports, the committee had briefings from Dr. Kefa Omoti Principal Research Officer in a retreat held in Machakos County from 5<sup>th</sup> to 8<sup>th</sup> August, 2021.
10. The committee held a joint engagement with the Ministry of East African Community and Regional development in Mombasa County, from 12<sup>th</sup> to 15<sup>th</sup> September, 2021 to consider the reports and deliberate on any other concern raised by Members.

11. The Committee sought and received submissions from the Ministry of East African Community and Regional Development. The deliberations and findings of the Committee are discussed hereunder.

### **3.0 CONSIDERATION OF THE REPORTS OF THE EALA COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION ADOPTED BY THE EAST AFRICAN LEGISLATIVE ASSEMBLY**

**The Committee considered the following reports adopted by the East African Legislative Assembly:-**

#### **3.1 REPORT OF THE EALA COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION ON THE PROGRESS MADE BY THE COMMUNITY TOWARDS ACHIEVING THE EAST AFRICAN COMMUNITY CONFEDERATION CONSTITUTION AND THE EAC ELECTIONS OBSERVER MISSION S 29<sup>TH</sup> NOVEMBER TO 3<sup>RD</sup> DECEMBER, 2021**

The Committee considered the report and noted that:-

12. Between 29<sup>th</sup> November and 3<sup>rd</sup> December, 2020, the East African Community Legislative Assembly (EALA) Committee on Regional affairs and Conflict resolution held a virtual activity aimed at assessing the progress made by the community towards attainment of the EAC Confederation.
13. East African Community (EAC) was established in 1967, building upon common institutions left over from the British colonial administration. The Community collapsed in 1977 amid internal disputes that largely stemmed from political differences between the leaders and perceptions around unfair distribution of the benefits and costs of regional integration.
14. Article 5 (2) of the Treaty Establishing the East African Community commits the Partner States to undertake to establish among themselves, Customs Union; Common Market; Monetary Union; and Ultimately a Political Federation.
15. Further, Article 123 and Article 123(6) empower the Summit to initiate the process towards the establishment of a Political Federation of the Partner States by directing the Council to undertake the process. In a bid to actualize and implement the Treaty provisions, the Summit of EAC Heads of State, at their 18<sup>th</sup> Ordinary Summit Meeting in 2017, adopted Political Confederation as a transitional model of the East African Political Federation and directed the Council of Ministers to constitute a team of Constitutional Experts to draft the constitution for the Political Confederation.

16. In February 2018, the Council of Ministers reported on the progress of attaining Political Federation and presented a Concept Note, Road Map and Terms of Reference for Constitutional Experts. The Summit in turn directed the Council to prioritize the Constitution drafting process and provide the required funding.
17. The Summit, at its 20th Ordinary Meeting held on 1st February, 2019 in Arusha, Tanzania directed the Council to cause the Experts to provide a preliminary report on the proposed confederation model within seven months.

The findings of the report were as follows;

1. The Key tenets of Political confederation

- i) The entities participating in the Confederation (Partner States) retain their sovereignty;
- ii) The Confederal Government does not directly relate to the citizens of the participating entities; it only acts on their behalf through the political institutions of the constituent states;
- iii) The Constituent States are guaranteed the freedom to join and withdraw from the confederation;
- iv) The Confederation has the right to suspend and/or expel a constituent state that violates specified aspects of the Federal Constitution;
- v) The operations of the Confederal Government depend greatly on the good will of the constituent state governments;
- vi) The decision-making at the Confederation level is based on consensus and or unanimity.

18. The EAC Treaty provides for Political federation in Article 123 and Article 123(6), which stipulates that; **“The Summit shall initiate the process towards the establishment of a Political Federation of the Partner States by directing the Council to undertake the process.” Article 123(7) provides that, the Summit may order a study to be first be undertaken by the Council”**
19. The Summit of EAC Heads of States initiated the process towards the establishment of the EAC Political Federation by directing the Council of Ministers to undertake the process, in 2004 pursuant to Article 123 (6) of the Treaty.
20. The Summit established a Committee (The Wako Committee) to fast-track the East African Political Federation to examine ways and means of expediting the process of integration. This was followed by the national consultative process, which aimed at raising the level of awareness among the different stakeholders on key issues of the East African Political Federation.
21. In 2009, the Summit instituted a Team of Experts to make recommendations on how to address fears, concerns and challenges that had been raised by the different stakeholders towards fast tracking the Political Federation.

22. The Partner States derailed the process to constitute the Team of Experts by failing to submit the names of the experts in time. The Secretariat is heavily understaffed with literally no staff to facilitate the team on a full-time basis.
23. The fears expressed on Sovereignty, Divergent governance and democratic practices and differences in economic growth and strengths generated concerns on how the federation will bridge the gap among the Partner States.
24. Since their appointment, the Constitutional Experts have carried the following activities:
- i) Meeting with the President of the Republic of Uganda, H.E President Yoweri Kaguta Museveni for political guidance. The meeting took place on 23<sup>rd</sup> April, 2019;
  - ii) Held consultative meetings between April and November 2019;
  - iii) Conducted studies and analysis of the EAC Treaty, Protocols, laws and reports
  - iv) Undertook a situational analysis of the EAC integration, with particular emphasis on the previous reports relating to fast tracking the EAC Political Federation ie Munanka Report, Wako Report, and the report on addressing East Africans' Fears, Challenges and Concerns. The consultation process was officially launched by H.E President Yoweri Kaguta Museveni in Entebbe on 18<sup>th</sup> November, 2019.
25. The following issues were identified for public consultations
- i) Membership to the EAC Political Confederation.
  - ii) Areas of cooperation under the Political Confederation.
  - iii) Governing structure of the Political Confederation.
  - iv) Modes of decision-making by the Confederal Authority
  - v) The governance principles of the Confederation.
  - vi) The relationship between the Partner States and the Confederal Authority.
  - vii) The funding mechanisms for the operations of the Confederal Authority.
  - viii) Mode of adoption of the Constitution establishing the Political Confederation.
  - ix) Any other issues proposed by stakeholders to be addressed in the Constitution of the EAC Political Confederation.
26. The principle of good governance under article 6 and 7 of the Treaty is one of the fundamental and operational principles of the Community. The EAC Good Governance Protocol was initiated as a framework of promoting good governance, rule of law and human rights within the Community. The Protocol underpins the objectives of the Community that 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.

27. Article 3 (b) of the Treaty stipulates that, observance and adherence to universally acceptable principles of good governance are a pre-condition for any Country to become a Member of, be associated with, or participate in any activities of the Community.
28. There is 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;
29. The EAC Treaty envisages four (4) pillars of the EAC integration process namely the Customs Union, the Common Market, the Monetary Union, and the Political Federation. Suffice to note that considerable progress has been registered in the first three (3) pillars. however, the 4<sup>th</sup> pillar appears to be diverting from the ultimate phase of Political Federation to Political Confederation and even with this diversion, the process has been slow and riddled with enormous challenges and if not properly addressed will delay the achievement of this milestone.
30. The Treaty for the Establishment of the East African Community (2000) provides for the mandate for the deployment of Elections Observation Mission to Partner States.
31. The EAC Principles for Election Observation and Evaluation (2012) provides;
  - a) Guidelines for EAC Election Observation Mission (EOM).
  - b) Code of Conduct for Election Observers.
  - c) The Purpose of the Mission.
  - d) To enhance democracy, rule of law and good governance, which are essential, which are essential for sustainable political, social and economic development of the EAC region.
32. Conducting periodic and regular elections contributes to the promotion of a democratic culture. Elections, if transparently conducted, promote and inculcate democratic values in election processes and gives the democratic exercise the legitimacy, acceptability and consolidation of good governance in the respective Partner States

**4.0 SUBMISSIONS FROM THE MINISTRY OF EAST AFRICAN COMMUNITY AND REGIONAL DEVELOPMENT ON THE PROGRESS MADE BY THE COMMUNITY TOWARDS ACHIEVING THE EAST AFRICAN COMMUNITY CONFEDERATION CONSTITUTION AND THE EAC ELECTIONS OBSERVER MISSIONS - 29<sup>TH</sup> NOVEMBER TO 3<sup>RD</sup> DECEMBER, 2021**

33. The Chief Administrative Secretary (CAS), Ministry of East Africa Community and Regional Development appeared before the Committee to brief members on the following;
34. **On the progress made by the community towards achieving the EAC confederation constitution and the EAC elections observer missions the Chief Administrative Secretary**

**(CAS), Ministry of East Africa Community and Regional Development informed the committee that;**

35. Implementation of the Customs Union has registered significant progress in various aspects as indicated below:

**a) Customs Union attained the Fully-fledged Status in January 2010**

- i) Removal of internal tariffs;
- ii) Harmonization, development and implementation of EAC Standards;
- iii) Application of EAC Rules of Origin;
- iv) Concerted efforts to remove Non-Tariff Barriers to Trade (NTBs).
- v) Harmonization of policies, laws and regulatory frameworks.

**b) EAC Common External Tariff (CET) adopted by 5 Partner States**

- i) A 3-band structure adopted: 0% (Raw materials), 10% (intermediate goods), 25% (finished products)
- ii) A Comprehensive Review of the EAC Common External Tariff (CET) is ongoing.

**c) EAC Single Customs Territory since 2014 and has achieved**

- i) It has facilitated the removal of duties and other restrictive regulations and/or minimized internal customs border controls on goods moving among Partner States;
- ii) Reduction of costs in doing business;
- iii) Reduced Non-Tariff Barriers (NTBs) along the corridors;
- iv) Eliminated multiple documentation;
- v) Streamlined cargo clearance areas;
- vi) Realization of economies of scale;
- vii) Efficiency in clearance of goods;
- viii) Transit time and border crossings have reduced from 21 days in 2014 to 3-5 days for the land-locked countries;
- ix) Enhanced ICT systems interconnectivity and development of information systems solutions has significantly improved information sharing and coordination among Revenue, Port Authorities and other border agencies;
- x) The Simplified Trade Regime (STR) to minimize procedures for small-scale cross-border traders has been automated in the customs management systems;
- xi) Process of automation of E-certificate of Origin for exchange of electronic certificates to allow confirmation of the authenticity in the destination Partner States;
- xii) Trade Facilitation Measures instituted under Covid-19 - adoption of a multi-Sectoral; and
- xiii) coordinated approach for cargo clearance by border agencies

**d) EAC Customs Management Act, 2004 adopted by 5 Partner States**

Review of the Act is ongoing.

36. Implementation of the Common Market Protocol has achieved the following;

- i) Development of Policy, Regulatory and Implementation Monitoring Frameworks to enhance Free Movement of goods, Free Movement of Services, and Free Movement of Capital in the region,
- ii) Development and adoption of a Framework for Reporting Restrictions imposed on Capital Account in compliance with Article 25(2) of the Common Market Protocol which was adopted by the 40<sup>th</sup> Council in February, 2021 for implementation by the Partner States
- iii) Development of EAC Banking Certification Policy, the Banking Certification Policy Implementation Strategy and Roadmap adopted by the 40<sup>th</sup> Council held in February, 2021,
- iv) The EAC Microfinance Services Policy and its Implementation Strategy and Roadmap adopted by the 40<sup>th</sup> Council held in February, 2021,
- v) EAC Insurance Bill finalized and approved by the 11<sup>th</sup> Meeting of the Sectoral Council for Finance and Economic Affairs,
- vi) Paper and the Corresponding Principles on Extending Pension Coverage to the Informal Sector in the EAC Region adopted by the 40<sup>th</sup> Council in February, 2021,
- vii) Preparation of the 1<sup>st</sup> EAC Common Market Protocol Formative Evaluation Report 2010 – 2018 which was adopted by the Sectoral Council of Ministers Responsible for EAC and Planning during its meeting held in June, 2021,
- viii) Preparation of EAC Common Market Scorecard s, the latest being the EAC Common Market Scorecard 2020 on free movement of goods, services, and capital CMS 2020 which was adopted by the 32<sup>nd</sup> Meeting of the Sectoral Council for EAC Affairs and Planning in June, 2021.

**37. On the Steps taken by the Council to expedite the finalization and adoption of the EAC Protocol on Good Governance , the CAS informed the committee that;**

38. The EAC Good Governance Protocol was initiated as a good governance framework. All Partner States supported the framework and recommended that it be upgraded to a good governance protocol. As a result, a draft a good governance protocol was developed with the following key pillars:

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

39. The 21<sup>st</sup> Meeting of the Sectoral Council of Ministers Responsible for EAC Affairs and Planning (SCMEAP) considered the draft Protocol and noted that it had been under negotiation since 2008. The Protocol is anchored on the Treaty Provisions in Article 6, 7, and 151(1). The negotiations were unanimously carried out by all Partner States until November 2012 when a meeting of Experts came up with divergences and reservations that were considered by the 17<sup>th</sup> Meeting of SCMEAP.
40. The Sectoral Council on Legal and Judicial Affairs observed that the policy contained in the protocol seemed to subject the Partner States' constitutions. These include the provision for setting a regional standard on political term limits, funding of political parties, and the provision that the Draft Protocol would be superior to the national constitutions in contravention of Article 8(4) of the Treaty.
41. The Council at the 29<sup>th</sup> Extra-ordinary Meeting referred the Protocol to the SCMEAP to address the matters raised by the Sectoral Council on Legal and Judicial Affairs.
42. The SCMEAP highlighted the issues raised by the Sectoral Council on Legal and Judicial Affairs for consideration as follows:
- a) Provisions that contravene national constitutions in particular, Article 5(3) to conform to the interpretation of Article 8(4) of the Treaty.
  - b) Review the Articles of the Draft Protocol that relate to the fundamental principles of the Community in the EAC Treaty and ensure that they do not contravene national Constitutions.
  - c) Review the areas a, b, c, and e in the scope of cooperation which are also fundamental principles in the Constitutions of the Partner States. The Protocol in Article 5.3 provides that Partner States' Constitutions shall not be inconsistent with the Protocol. This means that the Protocol takes precedence over Partner States' Constitutions. However, the Council at its 18<sup>th</sup> Meeting decided that Article 8(4) of the Treaty does not apply to the Partner States' constitutions.
  - d) Review the relevant Articles on the political term limits and funding of political parties.
  - e) Consider the phasing out implementation of the Protocol once adopted to cater for Partner States political systems.
  - f) Make reference to the earlier version of the Draft Protocol that had properly catered for the issues raised by the Sectoral Council on Legal and Judicial Affairs.
43. In view of the observations of the Sectoral Council on Legal and Judicial Affairs, the Protocol should be reviewed in order to remove those provisions that are subject to the national constitutions and the Protocol.



44. The Sectoral Council directed the Secretariat to convene a meeting of experts to consider the issues raised by the Sectoral Council on Legal and Judicial Affairs on the Draft Protocol on Good Governance and report to the 22<sup>nd</sup> Meeting of the SCMEACP (EAC/SCMEAP 21/Directive 14)

**45. On the progress towards drafting of a Constitution for the EAC and the lack of funding for the EAC election observer missions the CAS informed the committee that;**

46. Having completed the preliminary work, the constitutional experts are now engaged in the national stakeholders' consultations with the purpose of creating awareness of this process and solicit participation of EAC citizens and Government Authorities in drafting the Constitution. So far, the following has been undertaken:

a) The National Consultations on EAC Political Confederation Constitution was launched on 29<sup>th</sup> October 2019 in Entebbe;

b) The constitutional experts held stakeholder consultations in the Republics of Burundi and Uganda from 14<sup>th</sup> -20<sup>th</sup> January 2020 and 23<sup>rd</sup> April 2021 to 4<sup>th</sup> May 2021 respectively.

47. The slow progress in the stakeholder consultations is attributed to inadequate funding and the COVID-19 pandemic related challenges.

48. The key issues around which the consultations are made among others include;

a) What should be the areas of cooperation under the political confederation?

b) How should the governing structure of the political confederation be?

c) What should be the modes of decision-making by the confederal authority?

d) What should be the governance principles of the confederation?

e) How should the National States relate to the confederal authority?

f) How should the operations of the confederal authority be funded?

g) How should the constitution establishing the political confederation be adopted?

h) Any other issues proposed by stakeholders to be addressed in the Constitution of the EAC Political Confederation.

49. Upon completion the stake holders' consultations, the constitutional experts are expected to propose an agreed model and develop a draft Constitution for EAC Political Confederation for onward submission to the Summit.

**50. On why the Constitutional experts held a meeting with H. E the President of Uganda only and not with other EAC players, the CAS informed the committee that;**

51. The Summit, at its 20th Ordinary Meeting held on 1<sup>st</sup> February, 2019 in Arusha, Tanzania "decided that H.E President Yoweri Kaguta Museveni the President of the Republic of Uganda would

provide political guidance to the Constitutional Experts”. The constitutional experts held stakeholder consultations in the Republic of Uganda from 23<sup>rd</sup> April 2021 to 4<sup>th</sup> May 2021 where they engaged with various key stakeholders. The meeting with the President on 4<sup>th</sup> May 2021 was therefore a culmination of the process. The meeting also provided an opportunity for the experts to brief the President and seek guidance on the next steps in line with the Summit directive.

**52. On the Measures taken by the EAC Council of Ministers to remove existing Non-Tariff Barriers to Trade (NTBs) the CAS informed the committee that;**

53. The following are the Legal and Institutional Frameworks

- a) Operationalized the NTBs Act 2017.
- b) Established Regional Monitoring Committee (RMC) and National Monitoring Committee (NMC) on NTBs.
- c) Established a Regional Taskforce to compile a comprehensive list of levies, fees and charges for harmonization and or/removal.
- d) Developed and operationalized a NTBs online real time reporting system.
- e) bilateral meetings being held to fast track NTB resolutions

54. Development of Policies and Strategies to support Customs and Trade Integration

- a) EAC Customs Strategy regularly prepared. The Strategy for 2021/22-205/26 has been prepared with the development objective attaining a fully functioning Customs Union during the period 2021/22-25/26;
- b) EAC Regional Trade Policy which is pending adoption by the SCTIFI;
- c) Comprehensive assessment of the e-commerce ecosystem in the region; and
- d) Draft E-Commerce Strategy.

55. Implementation of Regional Projects and programmes to support trade and customs integration

- i) For example, implementation of the Trade facilitation Project focusing on simplification of trade processes.
- ii) It involves the mapping of imports, exports and transit procedures, fees and time through Trade Information Portals for the purpose of ultimately removing unnecessary and redundant bottle necks for trade.
- iii) EAC-EU Market Access Upgrade Program (EAC-EU MARKUP) which has achieved various milestones.

56. Improvement of capacity of the private sector to advocate effectively for trade facilitation reforms in order to create a business-friendly environment;

- i) Improvement of sector standards and harmonisation of Sanitary and Phytosanitary (SPS) measures;
- ii) Enhanced export competitiveness for sector SMEs;
- iii) Review of the food safety regulatory frameworks in the region and at national levels;
- iv) Analysis and facilitation of market linkages in priority value chains in EU, Middle East and EAC Markets

#### 57. Investment Promotion and Private Sector Development

- i) Development of policies and strategies, e.g., EAC Private Sector Development Strategy;
- ii) EAC Investment Policy adopted by the EAC Council at its 40<sup>th</sup> Meeting held in February, 2021.
- iii) EAC Export Promotion Strategy (2013 –2016)
- iv) EAC Investment Guide, 2020.

#### 58. Establishment and operationalization of EAC One Stop Border Posts

- i) OSBPs have been established to, among others, facilitate the movement of people and goods, improved work environment, coordinate border management and increase transparency and improve infrastructure.
- ii) EAC OSBP Sustainability Strategy 2021/2022 - 2025/2026 developed to ensure the sustainability of OSBPs.

### **5.0 CONSIDERATION OF THE REPORT OF THE EALA COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION ON THE CAPACITY BUILDING ACTIVITY (26<sup>TH</sup> TO 29<sup>TH</sup> OCTOBER, 2020)**

59. The Committee considered the report and noted that:

60. The Committee on Regional Affairs and Conflict Resolution is among the six (6) Standing Committees of the East African Legislative Assembly (EALA). The Committee was reconstituted on 6<sup>th</sup> July 2020 and undertook an orientation programme to enable Members discharge its mandate. The Committee held meetings with officers from the Departments of Labour and immigration, International Relations, Peace and Security and Political Affairs.

61. The department of political affairs informed the committee;

- a) On the East African Community Political confederation, The Heads of State resolved to examine ways of expediting the process towards Political Federation as one of the pillars of political integration.
  - b) The EAC Program on good governance has created a platform for national institutions of governance to exchange information, share experiences and dialogue on policies, strategies, laws and programs with a view to developing regional standards.
  - c) On Preventing and combating corruption to enhance ethics and Integrity, the Council of Ministers established the Sectorial Committee on preventing and combating corruption.
  - d) Upholding constitutionalism, Rule of Law and Access to Justice contributes to harmonization of laws, policies and strategies to access justice and upholding the rule of law in the region.
62. The department of labour and Immigration informed the committee that, free movement of workers in the EAC is guided by the various provisions of the EAC Common Market Protocol in Articles 5, 7, 8, 9, 10, 11, 12, 13 and 14. The Protocol provides for free movement of goods, free movement of persons, free movements of workers, Right of establishment, Right of residence and free movement of capital.
63. The Protocol became operational on 1<sup>st</sup> July, 2010 following ratification by all the five Partner States at the time: Burundi, Kenya, Rwanda, United Republic of Tanzania and Uganda.
64. The committee noted the following:
- a) That free movement of labour and right of establishment remains on paper. National laws still have provisions that hinder the full implementation of the Common Market Protocol.
  - b) Restrictions for students to access education in higher institutions of learning within the region.
  - c) Shortage of Staff within the Directorate of Political Federation for example the departments of Political Affairs and International Relations have one expert respectively.
  - d) There is a slow pace in implementation of Protocols and enactment of related laws that are meant to create an enabling environment for the realization of the Common Market Protocol.

**5.1 SUBMISSIONS FROM THE MINISTRY OF EAST AFRICAN COMMUNITY AND REGIONAL DEVELOPMENT ON THE ON CAPACITY BUILDING REPORT 26<sup>TH</sup> TO 29<sup>TH</sup> OCTOBER, 2020**

65. The Chief Administrative Secretary (CAS), Ministry of East Africa Community and Regional Development appeared before the ?? for a brief on the following:

66. **On the measures taken towards full operationalization of the Isebania One Stop Border Post; the Chief Administrative Secretary (CAS) informed the committee that;** The civil and building works for Isebania/Sirari One Stop Border Post (OSBP) were concluded in 2017 with funding from the World Bank. However, the facility is yet to be operational due to lack of cross border connectivity through electronic platforms. Kenya has laid the fiber optic network into the Tanzanian facility. On the other hand, Tanzania has not completed the laying of its cable across the border. Once the laying and termination of the fiber optic connectivity is concluded on both sides, then the OSBP can commence operations.

67. **On the Programmes undertaken by the Ministry in raising public awareness of the EAC Anthem and Flag the Chief Administrative Secretary (CAS) informed the committee that;** The Ministry sought approval from the Cabinet on hoisting of the EAC Flag and the singing of the EAC Anthem in all Government offices and public institutions and during public functions. The approval was granted on 28<sup>th</sup> July, 2016 and the decision communicated to all MDAs;

- i) The Ministry partnered with the Ministry of Education to sensitise and popularise the EAC Anthem through the Kenya Music Festivals for Schools and Colleges in 2017;
- ii) The Ministry has also engaged in massive distribution ?? the flags to various Government institutions in the country.

## **6.0 COMMITTEE OBSERVATIONS**

### **ON THE REPORT OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION ON THE PROGRESS MADE BY THE COMMUNITY TOWARDS ACHIEVING THE EAST AFRICAN COMMUNITY CONFEDERATION CONSTITUTION AND THE EAC ELECTIONS OBSERVER MISSION S 29<sup>TH</sup> NOVEMBER TO 3<sup>RD</sup> DECEMBER, 2021**

68. The EALA Committee had made the following observations

69. The constitutional making process requires sufficient funding. The Committee noted that, with a required budget of 4.4 million USD only 450,000USD had been raised.

70. Lack of involvement of critical stakeholders. The EALA Committee of Regional Affairs was not involved in the processes of formulating the Constitution which undermines EALA's statutory mandate of oversight of the integration process.

71. There are concerns of **divergent** opinions on governance and democratic practices in the region on how the Federation ?? the will bridge the gap in governance and democratic deficits, rule of law, transparency, accountability, human rights and access to justice, constitutionalism, and prevention of conflicts, equitable distribution of resources, political reform and social justice between the Partner States.
72. The EAC Treaty envisages four (4) pillars of the EAC integration process. These include the Customs Union, the Common Market, the Monetary Union, and the Political Federation. While considerable progress had been registered in the first three (3) pillars, the 4<sup>th</sup> pillar appears to be diverting from the ultimate phase of Political Federation to Political Confederation.
73. The level of public awareness about the integration process remains low and this has constrained East Africans from accessing information about the opportunities and benefits accruing from integration or appreciating gains so far made.

**ON THE REPORT OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION ON THE CAPACITY BUILDING ACTIVITY (26<sup>TH</sup> TO 29<sup>TH</sup> OCTOBER, 2020)**

74. That free movement of labour and right of establishment remains on paper. National laws still have provisions that hinder the full implementation of the Common Market Protocol.
75. Restrictions for students to access education in higher institutions of learning within the region.
76. Shortage of Staff within the Directorate of Political Federation for example the departments of Political Affairs and International Relations have one expert respectively.
77. There is a slow pace in implementation of Protocols and enactment of related laws that are meant to create an **enabling** environment for the realization of the Common Market Protocol

**7.0 COMMITTEE RECOMMENDATIONS**

Having considered the Report of the EALA Committee on Regional Affairs and Conflict Resolution on the progress made by the Community towards achieving the EAC Confederation Constitution and the EAC Elections Observer Missions and the EALA Committee on Regional Affairs report on the capacity Building Activity held from 26<sup>th</sup> to 29<sup>th</sup> October, 2021, the Committee makes the following recommendations;

**ON THE REPORT OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION ON THE PROGRESS MADE BY THE COMMUNITY TOWARDS ACHIEVING THE EAST AFRICAN COMMUNITY CONFEDERATION CONSTITUTION AND THE EAC ELECTIONS OBSERVER MISSIONS HELD FROM 29<sup>TH</sup> NOVEMBER TO 3<sup>RD</sup> DECEMBER, 2021**

78. The Council of Ministers should expedite the seconding of staff from the respective Partner States to the EAC secretariat to reinforce the lean team currently working at the political affairs department.
79. The Assembly to urge the Council of Ministers to expedite the finalization and adoption of the EAC protocol on good governance to enhance harmonization of the democratic governance policies, practices, laws and standards. Furthermore, there is need to finalize other instruments that operationalize its pillars.
80. The Council of Ministers to fast-track public consultations on political confederation and ensure diverse participation of key stakeholders including strong engagements with the National Parliaments, Civil Society Organizations, Local Governments, Private Sector, Non-Governmental Organizations, Media and other Critical Stakeholders for the process to be generally acceptable and inclusive.
81. The Council of Ministers to ensure adequate funding for the EAC election observation missions rather than relegating this important function to external Partners. Development Partners should only compliment the EAC efforts.
82. The Council of Ministers to ensure adequate funding for the EAC election observation missions rather than relegating this important function to external Partners. Development Partners should only compliment the EAC efforts.

**ON THE REPORT OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION ON THE CAPACITY BUILDING ACTIVITY HELD FROM 26<sup>TH</sup> TO 29<sup>TH</sup> OCTOBER, 2020**

83. Ensure that all Partner States remove restrictions towards free movement of persons, labour and right to establishment as well as harmonize their laws concerning movement of student and work permits for East Africans.

- 84. Strengthen the implementation of EAC Peace and Security architecture including early warning system for conflict prevention and resolution. EAC is encouraged to benchmark with ECOWAS and AU in the area of peace and security.
- 85. Fast track standardization and harmonization of laws regarding investment, free movement of persons and doing business in EAC region.
- 86. Expedite the signing and ratification of protocols as well as enact laws that create an enabling institutional and legal environment for effective implementation of the Common Market Protocol.
- 87. Provide adequate funding to the critical sectors of Political Affairs and Peace and security to enhance political stability in the EAC region.

Signed.....Date.....

**Hon. (Capt) Ruweida Mohamed, MP**  
**Chairperson**  
**Select Committee on Regional Integration**