INTEGRATION OF THE EAST AFRICAN COMMUNITY

COMPONENT 1: A COMPARATIVE STUDY ON THE STRUCTURE AND FUNCTIONING OF FEDERATIONS.

BACKGROUND

The Treaty for the establishment of the East African Community provides for four stages of integration namely, the Customs Union as the entry point, the Common Market as the transitional stage, the Monetary Union and the Political Federation as the ultimate.

Article 123(6) and (7) of the Treaty for the Establishment of the East African Community mandates the Summit to initiate a process towards the establishment of a Political Federation by directing the Council to undertake a process and the Summit may order a study to be undertaken first by the Council.

At a Special Summit held in Nairobi on 27th - 29th August, 2004, the Heads of State of Kenya, Uganda and Tanzania expressed concern at the slow pace of integration and resolved to examine ways of expediting the process so that the ultimate goal of a Political Federation is achieved through a Fast-Track Mechanism.

The Summit set up a Committee to examine ways and means of fast tracking the EAC Political Federation which carried out consultations and presented its Report at the 6th Summit Meeting on 29th November, 2004. In its report, the Committee proposed a road map that would lead to the establishment of the EAC Political Federation in the year 2013. Subsequently the Extra-Ordinary Summit of Heads of State held in Dar es Salaam in May, 2005 directed the Council of Ministers to form National Consultative Mechanisms to collect the views of East Africans on the East African Political Federation and the need to fast track it.

The consultation process allowed East Africans to express their views in relation to awareness of and support for the EAC integration process and the Fast Tracking of the Political Federation. The year 2013 proposed by the Committee on Fast Tracking the EAC Political Federation was used as the basis for attaining the Political Federation if it were fast tracked.

From the findings of the consultations, a number of recommendations and issues were raised categorized under political, economic and social & cultural areas of integration. Among others, the citizens of East Africa wished to see the proposed model EAC Federal Constitution providing for how various political parties across the region will participate in the democratic/electoral processes, different stakeholders wanted to know their role in the federation and the processes leading to the federation and in the federation.

Further, the need for understanding of all issues pertaining to the EAC integration in general and the Political Federation in particular was emphasized.

In its efforts to fast track the implementation of the political federation for the East African Community, the East African Community Secretariat engaged the services of a consultant to develop research papers to be published as regular occasional papers with the objective of shedding light and elaborating on some of the legal and policy issues that

underline political federation among intergovernmental organizations in general and the EAC in particular.

The objectives of the consultancy included:

To define the term "Federation" and different types, patterns and history of federations in the world;

To examine the East African environment, the prevailing governing structures and possible areas of harmonization;

To examine constitutional arrangements within the five East African countries with specific reference to devolution of powers;

To examine convergences and divergences in different models; and

To make recommendations based on the above studies for East Africa proposing possible scenarios with pros and cons for the EA region.

Therefore, in accordance with the herein-above objectives of the consultancy, the consultant developed the research paper under schedule one herein.

SCHEDULE ONE

TABLE OF CONTENTS PAGE

Title Page 1
Forward 2
Background 3
SCHEDULE ONE
Table of Contents 6
Introduction: The History of EAC from Integration to beckoning Federation 9
Conceptualising Federalism 13
1.2.1 Principles of Federalism 15
1.2.2 Advantages of Federations 17
1.2.3 Federalism and individual State sovereignty 19
1.3 Appreciating the contemporary governance structure of the East African Community 21
1.4 Constitutional power arrangements in EAC States 24
1.4.1 Kenya 24
1.4.1.1 *The Executive* 25
1.4.1.2 *The Legislature* 26
1.4.1.3 *The Judiciary* 27
1.4.1.4 *Correlation between various arms of Government in Kenya* 28
1.4.2 Uganda 29

1.4.2.1 *The Legislature* 29
1.4.2.2 *The Executive* 31
1.4.2.3 *The Judiciary* 33
1.4.2.4 *Correlation between various arms of Government in Uganda*36
1.4.3 Tanzania 37
1.4.3.1 *The Executive* 37
1.4.3.2 *The Judiciary* 39
1.4.3.3 *The Legislature* 41
1.4.3.4 *Correlation between the various arms of Government in Tanzania* 43
1.4.4 Rwanda 44
1.4.4.1 *The Legislature* 44
1.4.4.2 *The Executive* 47
1.4.4.3 *The Judiciary* 48
1.4.5 Burundi 50
1.4.5.1 *The Executive* 51
1.4.5.2 *The Judiciary* 52
1.4.5.3 *The Legislature* 53
1.4.5.4 *Correlation between various arms of Government in Burundi* 53
1.5 Convergences and Divergences of the EAC States' Constitutional arrangements 54
1.5.1 Convergences 55
1.5.1.1 *On Executive* 55
1.5.1.2 *On Legislature* 55
1.5.1.3 *On Judiciary* 56
1.5.2 Divergences 56
1.5.2.1 *On Executive* 56
1.5.2.2 *On Legislature* 57
1.5.2.3 *On Judiciary* 58
1.5.3 Strategic areas for harmonisation 58
1.6 Learning from other Jurisdictions 60
1.6.1 United States of America 60
1.6.1.1 *On Legislature* 61
1.6.1.2 *On Executive* 62
1.6.1.3 *On Judicial power* 64
1.6.2 Germany 66
1.6.2.1 *Constitutional status of various orders of Government* 68
1.6.2.1.1 The Federal and Land Legislatures 68
1.6.2.1.2 The Courts 70
1.6.2.1.3 Constitutional status of Federal and Land Governments 71
1.6.2.1.4 Local Governments 73
1.6.3 Brazil 73
1.6.3.1 *Contemporary power arrangements in Brazil* 74
1.6.4 Nigeria 76

1.6.4.1 *The Legislature* 77
1.6.4.2 *The Executive* 79
1.6.4.3 *The Judiciary* 80
1.7 Conclusions and Recommendations 82
1.7.1 Conclusion 82
1.7.2 Recommendations 83
1.7.2.1 *On the Legislature* 83
1.7.2.2 *On the Executive* 87
1.7.2.3 *On the Federal Courts* 91
1.7.2.4 *Administration of elections* 93
Bibliography 95

INTRODUCTION: THE HISTORY OF EAC FROM INTEGRATION TO BECKONING FEDERATION

Integration of the East African Community has been protracted in terms of the process and actors. The early stages of the integration began with the 1894 construction of the Uganda railway from Mombasa in 1894 by the British. [1] This was followed by the British advancement of a more unified administrative control over their East African territories by establishing the Court of Appeal for East Africa in 1902, a Postal Union in 1911, a Customs Union in 1917, and the East African Currency Board in 1920.[2]

The next stage, which began in 1948, saw the establishment of a common market and a number of common services[3] including an East African Railway and Harbours Administration, the East African Posts and Telecommunications Administration, and the Agricultural and Medical Research Services.[4] The common services were co-ordinated by a High Commission, comprising the three territorial governors[5] and a Secretariat manned by technocrats with a region-wide outlook and expertise. There also existed a central legislature called the East Africa Central Legislative Assembly, although only with limited powers. As Mukandala Rwekaza notes, this was a political cooperation whose scope was limited only to providing the critical support and a context for

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[1] See Ademola, Y., 1999, *Harmonization of Laws in Africa*, Lagos: Malthouse Press, p. 90-1. The author states:
"Skewed as it may have been in favour of the settler community in Kenya, economic cooperation was an early fact of life in the sub-region. In 1917, the Kenya and Uganda protectorates merged their custom authorities. Common tariff rates between Kenya and Uganda were also extended to Tanganyika in 1922. By the following year, the three countries engaged in free trade for local produce. This was followed by an agreement which removed almost all custom duties between the three territories."
[2] Ojo et al. (1985), *African International Relations*, London: Longman, p. 157
[3] Ibid
[4] Ibid
[5] The governor of Kenya was the permanent Chairman of the Commission, and he had certain powers to act on behalf of the Commission when it was not in session.

economic cooperation and was not expected to evolve into something qualitatively different like a political federation or union. [6]

Further, the integration saw the establishment of the East African Community in December 1967. This was preceded by the 1964 agreement signed in Kampala on the distribution of industries in the three partner states;[7] the coming to end of the East African Currency Union in 1965-6 and the eventual establishment of the three separate central banks issuing national currencies; and the setting up of a Commission made up of three Ministers and headed by a UN expert Kjeld Phillip in 1966 to negotiate a permanent solution to the problems that were afflicting East Africa's integration.[8]

On 1 December 1967, the Treaty for East African Cooperation came into force, though the co-operation collapsed in 1977. The treaty, however, was significant in many ways. First, it placed the common market and the common services within one framework, and also gave the former a solid legal foundation. Secondly, it made provisions aimed at achieving equitable distribution of cost and benefits. Thirdly, it created a number of community organs to coordinate activities and also give executive direction. In this regard, it provided for a Community Minister who was appointed by each state to promote the Community's interests and project its viewpoints in his or her own cabinet.[9] This experiment at integration failed in 1977 for various reasons, one of them being the discontent that Kenya was benefiting from the co-operation more than other Community states.[10]

The latest attempt to reconstruct the sub-region into a viable integration group began in 1984 when the three countries signed the East African Community Mediation Agreement for the Division of Assets and Liabilities[11] of the defunct EAC.[12] In this agreement, the

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[6] Rwekaza, M., 2000, "Political Cooperation", Paper presented at the proceedings of the 1st Ministerial Seminar on East African Cooperation on *Perspectives on Regional Integration and Cooperation in East Africa*, at Arusha, Tanzania, 25-26 March 1999, p. 95. The author states as follows in this regard:
"The political cooperation was limited only to providing the critical support and context for economic cooperation. It was not expected to develop and evolve into something qualitatively different like a political federation or union. There was never the possibility that the three governments could go to war against each other, or could undermine each other… the three governments were unified in philosophy, purpose and strategy. Thus their value was mutually compatible."

[7] This agreement called the Kampala-Mbale agreement provided that certain industries such as tyres, bicycle parts and fertilizers, be exclusively located in Uganda and Tanzania. Kenya failed to ratify this agreement.

[8] Ojo et al. (1985), *African International Relations*, London: Longman, p. 158

[9] Ibid

[10] For a comprehensive study of the reasons accounting for the failure of the cooperation, see Ojo et al. (1985), *African International Relations*, London: Longman, p. 158-71. See also Rwekaza, M., 2000, "Political Cooperation", Paper presented at the proceedings of the 1st Ministerial Seminar on East African Cooperation on *Perspectives on Regional Integration and Cooperation in East Africa*, at Arusha, Tanzania, 25-26 March 1999, p. 87-106

[11] In 1978, one year after the break-up of the EAC, the three countries appointed Victor Umbricht to start mediating between themselves on the division of the assets and

partner states committed themselves to exploring areas of future cooperation. However, concrete moves towards the revival of the Community did not begin until November 1991, when the three heads of state held a summit in Nairobi, after which they issued a formal communiqué committing themselves to revive the East African Cooperation.[13] A committee of Foreign Ministers was set up to work out the details. Two years later, in November 1993, the heads of state set up the Permanent Tripartite Commission after a meeting in Arusha, Tanzania. A year later, in November 1994, the first protocol to establish an EAC Secretariat in Arusha was signed in Kampala. The Secretariat was finally established in March 1996, and Ambassador Francis Muthaura was appointed its first Executive Secretary. Currently, most of the institutions that are provided for under the Treaty are up and running, including the Secretariat, the East African Legislative Assembly (EALA), and the East African Court of Justice (EACJ).

On 30 November 1999, the partner states of the East African Community signed the Treaty for the Establishment of the East African Community, which Treaty entered into force on 7 July 2000 following its ratification by the East African partner states, Kenya, Uganda and Tanzania, and later, Rwanda and Burundi. The signing of the Treaty was a culmination of nearly three years of thoroughgoing negotiations and consultative process among the East African people in their quest for reconstructing the system of co-operation that had prevailed in the region in the 1960's and 1970's before the collapse of the former community in 1977.

The Treaty outlines a comprehensive system of co-operation among the partner states in trade, investment and industrial development; monetary and fiscal policy; infrastructure and services; human resources, science and technology; free movement of factors of production; agriculture and food security; environment and natural resource management; as well as tourism and wildlife management. More particularly, article 5(2) of the Treaty for the Establishment of the East African Community, 1999, sets out the objectives of the Community, the ultimate being the realisation a Political Federation for the Community. The article states:

In pursuance of the provisions of paragraph 1 of this Article, the Partner States undertake to establish among themselves and in accordance with the provisions of this Treaty, a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial and infrastructural, cultural, social, political and other 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.[14]

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liabilities of the defunct EAC. He produced two reports in March 1980 and October 1981. The 1984 agreement was based on these two reports.

[12] Rwekaza, M., 2000, "Political Cooperation", Paper presented at the proceedings of the 1st Ministerial Seminar on East African Cooperation on *Perspectives on Regional Integration and Cooperation in East Africa*, at Arusha, Tanzania, 25-26 March 1999, p. 97

[13] Ibid

[14] The Treaty for the Establishment of the East African Community, 30 November, 1999 (entered into force, 7 July 2000), article 5(2).

In pursuance of the ultimate goal of the East African Community (EAC), this consultancy examines the best form of federation for the Community. The consultancy is informed by the fact that there exist a great deal of similarities in value systems amongst the membership of the EAC, and that the divergent value systems amongst the members of the Community can be reconciled. Further, the consultancy is conscious of the fact that federalism is not a new concept in the world and therefore the EAC has a number of federal systems to learn from. To this end, the consultancy begins by appreciating the administrative structure currently in place at the EAC and the justification for upgrading the administrative structure to a federation. The consultancy then examines the constitutional power arrangements obtaining among the different members of the EAC, pinpointing the convergences and divergences in the power arrangement. Finally, the consultancy proposes the best approaches for reconciling the divergences in the constitutional power arrangement within the EAC to realise a political federation for the Community.

CONCEPTUALISING FEDERALISM

Federalism is the political philosophy that underlies a system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units such as states creating what is called a federation.[15] It is a political organization in which two or more states agree to form a union government with central authority, while retaining local autonomy.[16] It is the concrete expression of a written commitment made by a group of sovereign states that come together to transfer a degree of sovereignty to a common body. That common body represents, internally and externally, the totality of those states. The common body is charged with the implementation and enforcement of the written commitment.[17] It is the mode of political organisation that unites separate polities within an overarching political system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both.[18] The degree of sovereignty transfer is such that the federation establishes a political relationship with the citizens of the states, which sits alongside the citizen's political relationship with their state.

Federation entails the surrender of some powers by federating units to the centre and vice versa. Where a federation is constructed of states that are already sovereign (as is the case for Kenya, Uganda, Burundi Tanzania and Rwanda) it requires them to surrender some of their sovereignty. In a federation, every citizen is subordinated to at least two state organisations (institutions) and is in immediate connection with each of them. The larger organisation is the federation and the small organisation is the member state of the federation. A federation has a constitution, which provides for representation in a two

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[15] Wikipedia, *On Federalism*, Available at http://n.wikipedia.org/wiki/Federalism. Accessed last on 10 November 2008.
[16] Ojo et al. (1985), *African International Relations*, London: Longman, p. 85
[17] Iona Annette (2007), *Theorising Democracy in the European Union: The Choice between Madison and Althusius*. Melbourne University Press, p. 1
[18] Elazar Daniel (1984), *American Federalism: A View from the States,* vii. New York: Harper and Row

chamber system.[19] Traditionally, a federal government takes over defence, foreign policy, fiscal and monetary policy, some legislative authority and final appellate court jurisdiction.[20]

Theorists of federalism such as Albert Dicey identity two conditions for the formation of a federal state: the first is the existence of a group of states closely connected by location, by race or by history so that the inhabitants of these states have the potential to take on a common or shared nationality; the second is the desire for national unity and the determination to maintain the independence of each state.[21] According to John Stuart Mill, for a federation to succeed, there must be mutual sympathy to ensure that the mutual obligations will be fulfilled. Second, none of the members ought to be so strong that it could, if necessary, stand on its own without the federation. Third, there should not be any one state that is so powerful than the rest as to be capable of vying in strength with the rest combined.[22]

Principles of Federalism

Federal governments are guided by the following principles:

Hierarchical Jurisdictional Autonomy: Autonomy refers to the judicial capability of federal and confederate state governments to take decisions regarding the matters allocated to them[23]. In all federal systems, there exist a hierarchy of governments with a delineated scope of authority so that each level of government has its own policy domain[24];

Sub-national autonomy: a federal system delegates considerable authority to regulate markets to the sub-national governments (confederate states). This principle ensures that sub-national governments have the authority to adjust their policies to their local environment.[25]

Institutionalised authority: this principle requires that, beyond simple decentralisation, the federal structure must not be under discretionary control of the federal government. That whereas the national government has the power to prevent violations of the federal bargain by the sub-national governments, the national government will not use such power to encroach on the sub-national governments arbitrarily.

Co-operation/Shared rule: This implies a partnership and common commitment to coordinate activities, to jointly address problems and to facilitate consensus rather than

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[19] Rudolf Schlesinger (1945) "Theoretical Conceptions of Federalism" in Karl Mannheim (Ed), *Federalism in Central and Eastern Europe.* Oxford University Press, p. 36

[20] Benson Tusasirrwe (2002) "Constitutional Development in the East African Community" in Fredrick Jjuko (Ed.), *Constitutionalism in East Africa: Progress, Challenges and Prospects.* Fountain Publishers Ltd, p. 148.

[21] Rudolf Schlesinger (1945) "Theoretical Conceptions of Federalism" in Karl Mannheim (Ed), *Federalism in Central and Eastern Europe.* Oxford University Press, p. 36

[22]Wikipedia, *On Federalism*, Available at http://n.wikipedia.org/wiki/Federalism. Accessed last on 10 November 2008.

[23] Palley C. (1979), *Constitutional Law and Minorities*, 13

[24] Riker W. (1964), *Federalism: Origin, Operation, Significance,* p. 3. Boston: Little Brown Publishers.

[25] Rui J. & Barry R. (2002), *Pathologies of Federalism, Russian Style: Political Institutions and Economic Transition,* p. 9

fragmentation.[26] Cooperative federalism and concurrent jurisdictions rather than compartmentalisation should characterise intergovernmental relations[27];
Subsidiarity: This is to the effect that decision making policies are reserved to the level of government which is closest to the electorate and which is best suited to deal with a specific function of government[28];
Participation: this ensures that confederate states are involved in decision making at the federal level. This can be done by means of various constitutional and political techniques such as a second house of parliament, state representation in the federal executive, and cooperative structures to ensure consultation between confederate states and the federal government[29].
The principles are mutually inclusive and none is independent of the other(s).

Advantages of Federations
Federal system brings with it a number of advantages which can be summed up as follows:
Increased happiness and freedom in the society: Federalism increases the geographical landscape for governance and this, in effect, affords the governed some freedom from the 'hands' of government. For instance, where tyranny becomes established in a small nation, it extends to everything in that nation. The tyrant preoccupies himself with the few governed. As Alexis De Tocqueville notes, the tyrant shows himself as violent and troublesome and his domain penetrates private life.[30] This predicament can safely be solved through a federal system of government as federation enhances democratic participation in the compound Republic.[31] Federalism creates a robust constitutional system that anchors pluralistic democracy.

Increased Civilisation: A federation is like a vast intellectual centre where all the rays of human mind come to shine and combine. This in effect results into rapid progress in enlightenment and in the general cause of civilisation than in individual states.

Increased rate of development: The greatness of Defence Forces in a federation as compared to individual States reinforces the confidence of the investor community to invest or increase their investment in the federation. This in effect increases the rate of development. In the words of Alexis De Tocqueville:
"…Small nations are often miserable not because they are small, but because they are weak; great ones prosper not because they are great but because they are strong. Force is often one of the first conditions of happiness and even of existence for nations…"[32]
Further, in federations, the government has more general ideas, is more completely disengaged from the routine of predecessors and the selfishness of localities. This increases more genius in government conceptions and more boldness in its style.

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[26] Ibid
[27] Levi L. (1987), *Recent Developments in Federalist Theory*, p.99
[28] Ibid, p. 112
[29] Elazar D. (1987), *Exploring Federalism*, p.5
[30] Alexis De Tocqueville (2000), *Democracy in America*. London: University of Chicago Press Ltd, p. 150
[31] Rudolf Schlesinger, Supra note 18
[32] Ibid.

Increased State of Peace and Security: In individual states, internal well-being is only complete and widespread as long as the State keeps itself at peace. In federations, the remoteness of the frontiers sometimes permits the mass of the subjects to remain remote from danger for centuries. This is coupled with the psychological effect that a federation has more defence forces at its disposal which goes a long way in keeping at bay the incessant urge of enemy forces to attack the federation.

Individual State improvement: Considering that the federal government takes over issues of social existence such as security, all individual public power and energy will turn in the direction of internal improvements.

Federalism and Individual State Sovereignty

State sovereignty is the ability of a national state to determine alone and independently from the other subjects of international law, its domestic and foreign policy.[33] It is the right of political leadership and its identification with the polity.[34] The international legal order established after World War II is based on respect of the sovereignty of national states, which is most solemnly proclaimed in the UN Charter,[35] but the principle is not an absolute category. The relative nature of state sovereignty in the modern epoch is based on the need to have it balanced with other principles and values legitimising the realization of power. For instance, protection of basic human rights has been the most frequent argument in favour of limiting state sovereignty with a view to guarantee freedom.

The question that arises is the extent to which the East African Federation can affect the sovereignty of the confederate states. The basic objective of the doctrines of sovereignty in a federal environment is to differentiate the holder of sovereignty and to spread more than one state sovereignty on one people and one territory.

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[33] Some authors analyze the content of state sovereignty in several different aspects. Krasner maintains that
in international relations state sovereignty is exercised in the first place as Westphalian sovereignty, which excludes the intervention of external legal and political subjects in defining the internal organization of the national state; legal sovereignty manifested in the requirement for international recognition of states; and interdependent sovereignty covering the methods employed by states to control trans-border migration. See S. Krasner (1999), *Sovereignty*, Princeton Press, p. 9

[34] Iona Annette (2007), *Theorising Democracy in the European Union: The Choice between Madison and Althusius*. Melbourne University Press, p. 1

[35] See generally the *Charter of the United Nations*. According to Para 1, the Organization is based on the principle of the sovereign equality of all its Members; Para 4 says that Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, and Para 7 proclaims a ban on the intervention in matters, which are essentially within the domestic jurisdiction of any state.

Whenever constitutionalists maintain that sovereignty belongs to the states, which have formed the federation, they practically identify the federation with a confederation. Thus in the USA immediately before the civil war, Southern States' representatives justified their sovereignty with the fact that it preceded the formation of the federation.[36] Federal bodies are only agents of the subjects of the federation who restrict their activity within strictly limited powers. M. Seydel also maintains that sovereignty is indivisible and belongs to the states forming the federation.[37]

Other constitutionalists maintain that sovereignty is indivisible but it belongs to the union only.[38] The states forming the federation are not sovereign.[39] At the same time, the subjects of the federation preserve such a level of autonomy from the central government, including their own constitution and citizenship, which makes them significantly different from the territorially differentiated administrative subdivisions of the decentralized unitary state. For instance, today, German Landers, though not having their own sovereignty, are declared constitutional formations.[40] The cooperative federalism doctrine developed as early as the 1930's in the USA and in the second half of the 20th C in Germany, gives flexibility to the federal state. According to the representatives of this dominating school, constitutional regulation is directed on one part towards cooperation and overcoming the conflicts between the central government and the Landers, and on the other part towards coordination of the relations between Landers.

Quite evident from the above analysis is that irrespective of the school of thought, a federation does not virtually take away the sovereignty of state parties. In the words of H. Macmillan, it does not imply a unilateral waiver of sovereignty of the individual states, but a pooling of sovereignties of all parties concerned, mainly in the political, economic and social areas.[41] By delegating some of the individual state sovereignty, the delegating state, say Rwanda, gets in turn part of the sovereignty delegated by other member states, say Uganda, Burundi, Tanzania and Kenya. In consequence, federation of East African Community essentially shall be a pooling of sovereignty. Pooling of sovereignty means, in practice, that the member states of the East African Community delegate some of their decision making powers to shared institutions they have created, so that decisions on specific matters of joint interest can be made democratically at the East African Community level.

APPRECIATING THE CONTEMPORARY GOVERNANCE STRUCTURE OF THE EAST AFRICAN COMMUNITY

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[36] According to J. Calhoun, sovereignty is a single whole and to divide it means to destruct it. See J. Calhoun (Vol. 1: 1881), *A Disquisition on Government*. Boston University Press, p. 118.
[37] M. von Seydel (1893), *Sovereignty and State Constitutions*. Freiberg, p. 15
[38] Ibid, p. 37
[39] Kiminih O. (Vol. VII: 1994), *Fundamental Law of Federal Government*, p. 77
[40] J. Calhoun (Vol. 1: 1881), *A Disquisition on Government*. Boston University Press, p. 280
[41] H. Macmillan (1962), Britain, the Commonwealth and Europe, available at http://www.toryeuropenetwork.org.uk, accessed last on 11 November 2008.

The East African Community (EAC) is a product of the Treaty for the Establishment of the East African Community (EAC Treaty).[42] The EAC Treaty sets out the governance structure of the Community and confer defined powers to distinct organs of the Community. Among the organs include the Summit, the Council, The East African Court, the East African Legislative Assembly and the Secretariat.

The Summit comprises the Heads of State or Government of the Partner States of the EAC, thus membership to the Summit is automatic upon election of a person as the President of the Partner State.[43] The Summit plays the lead role in ensuring the sustenance of the Community. It gives directions and impetus to the development and achievement of the objectives of the Community; it reviews the state of peace, security and good governance within the Community with an ultimate aim of realising a Political Federation for the Partner States; and it considers annual Council progress reports and such other progress reports under the EAC Treaty.[44] The Summit has its Chairperson, which position annually rotates among the Partner States.[45] The Summit reaches a decision by consensus and it has the discretion to determine its own rules of procedure.

The Council is a policy organ of the EAC comprising the Ministers for regional co-operation of each Partner States. However, each partner State has the discretion to determine which other Ministers constitute the Council.[46] The Council is mandated to promote, monitor and keep under constant review the implementation of the programmes for the Community and ensure the proper functioning and development of the EAC.[47] Working in concert with the Council of Ministers is the Co-ordination Committee which essentially comprises Permanent Secretaries responsible for regional co-operation in each Partner States.[48] The Co-ordination Committee recommends to the Council the Sectoral Committees necessary for the achievement of the objectives of the Treaty.[49] The Sectoral Committees prepare and monitor the implementation of the programmes of the Community with respect to its sector.[50]

The East African Court of Justice is the judicial organ of the EAC with the mandate to ensure the adherence to law in the interpretation and application of the EAC Treaty.[51] The Judges of the Court are appointed by the Summit from among the names nominated by the Partner States and in consideration equal Partner States representation.[52] The

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[42] The Treaty for the Establishment of the East African Community, Art. 2(1) states: "By this Treaty, the Contracting Parties establish among themselves an East African Community hereinafter referred to as "the Community".
[43] Ibid, Art. 10
[44] Ibid, Art. 11
[45] Ibid, Art. 12
[46] Ibid, Art. 13
[47] Ibid, Art. 14
[48] Ibid, Art. 17
[49] Ibid, Art. 20
[50] Ibid, Art. 21
[51] Ibid, Art. 23
[52] Ibid, Art. 24

Judges hold office for a maximum seven year period[53] and can be removed from office by the Summit upon recommendation by a tribunal appointed unilaterally by the Summit.[54] The Summit has also the unilateral power to appoint the President and the Vice-President of the East African Court of Justice. Principally, the East African Court of Justice has a jurisdiction limited to the interpretation and application of the EAC Treaty. Though, the Partner States have the option of extending the jurisdiction of the Court.[55] *Ratione personae* jurisdiction of the Court is not limited to the Partner States, but also extends to the Secretary General of the EAC as well as juristic and natural persons.[56]

The East African Legislative Assembly comprises such members elected by the National Assembly of the Partner States,[57] and it has the mandate to liaise with National Assemblies on matters relating to the Community; debate and approve the EAC budget; and consider annual reports on the activities of the Community referred to it by the Council.[58] The elected members of the Assembly office for a five year term and are eligible for re-election for a further five year term. The assembly is presided over by the Speaker elected members of the Assembly on a rational basis.[59] In practice, disputes as to the election of members to the Legislative Assembly have been determined by the East African Court of Justice.

The Secretariat is the executive organ of the EAC with the duty to do all the correspondence for the community as well as to study and implement programmes for the development of the Community.[60] Secretariat has a Secretary General appointed by the Summit who is the principal executive officer of the Community and the head of the Secretariat.[61] The Secretary General is assisted in his/her mandate by Deputy Secretary, Counsel to the Community and such officers as decided by the Council of Ministers.

CONSTITUTIONAL POWER ARRANGEMENTS IN EAST AFRICA COMMUNITY STATES

The member states of the East African Community are independent and sovereign states thus have distinct constitutional arrangements. The Constitutions, as the arch legislations, define structure of governance within the states and distribute political power within the various arms of government. This therefore necessitates an examination of the constitutional structures of the various members of the East African Community.

Kenya

The Constitution of Kenya creates three independent but complementary arms of government, viz, the Executive, the Legislature and the Judiciary. The arms of

[53] Ibid, Art. 25
[54] Ibid, Art. 26
[55] Ibid, Art. 27
[56] Ibid, Arts 28-30
[57] Ibid, Art. 50
[58] Ibid, Art. 49
[59] Ibid, Art. 53
[60] Ibid, Art. 71
[61] Ibid, Art. 67

Government are complimentary in the sense that in the performance of their functions, they relate with either or all other arms of government.

The Executive

The Executive arm of the Government is led by the Cabinet consisting of the President, Vice-President, Prime Minister and other Ministers.[62] The President is the head of State and Government and Commander-in-Chief of the Armed Forces,[63] and is elected by way of universal suffrage[64] for a maximum two terms of five years each.[65] The salary and allowances of the President are determined by the National Assembly, and is entitled to pension on retirement.[66] The Vice-President is a unilateral appointee of and the principal assistant of the President.[67] The Prime Minister is responsible for coordination of Government policies and is assisted in exercise of his functions by the two deputy prime ministers. Government ministries are run by ministers appointed by the President from among Members of Parliament.[68] Collectively, Cabinet is responsible for advising the President on the Government policies, and are accountable to the National Assembly for all things done by a Cabinet member.[69]

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[62] Constitution of Kenya, s. 17(1) states:
"There shall be a Cabinet consisting of the President, Vice-President, Prime Minister, two Deputy Prime Ministers and other Ministers.
[63] Ibid, s. 4
[64] Ibid, s. 5
[65] Ibid, s. 9 states:
"9(1) The President shall hold office for a term of five years beginning from the date on which he is sworn in as President.
(2) No person shall hold office as President for more than two terms…"
[66] Ibid s. 13(1)
"The President shall receive such salary, allowance and benefits as may be determined by a resolution of the National Assembly.
(2) Where the President ceases to hold office, he shall be entitled to receive a pension, gratuity and other allowances together with such other benefits and facilities, including adequate security, office, staff and travel allowances, as may be prescribed by or under an Act of Parliament…
(4) The salary, allowances and privileges of the President shall not be varied to his disadvantage while he holds office…"
[67] Ibid, s. 15
[68] Constitution of Kenya, s. 16 states:
"(1) There shall be such offices of Minister of the Government of Kenya as may be established by Parliament or, subject to any provisions made by Parliament, by the President.
(2) the President shall, subject to the provisions of any written law, appoint the Ministers from among the members of the National Assembly;
Provided that, if occasion arises for making an appointment to the office of any Minister while Parliament stands dissolved, a person who was a member of the National Assembly immediately before the dissolution may be appointed to that office…"
[69] Ibid, s. 17 (2)-(3) states:
"(2) The function of the Cabinet shall be to aid and advice the President in the government of Kenya;
(3) The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President, Vice President, Prime Minister, two Deputy Prime Ministers or any other Minister in the execution of his office…"

Other members of the Cabinet include the Attorney General[70] and the Head of Civil Service, who is the Secretary to the Cabinet.

The Legislature

The exercise of Legislative power vests with the Parliament consisting of the President, elected and nominated Members of Parliament and two *ex-officio* members,[71] viz, the Attorney General[72] and the Speaker of the National Assembly.[73] Section 30 of the Constitution of Kenya states:

"The Legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly"[74]

Each elected Member of Parliament represents a Constituency,[75] while nominated members represent special interest groups.[76]

The Speaker and the Deputy Speaker of the National Assembly are elected in accordance with the Standing Orders, though it the Speaker who is *ex officio* member.[77] The other ex officio member is the Attorney General. Parliament exercises its legislative authority by way of Bills passed in Parliament in accordance with its standing orders.[78]

The Judiciary

Kenya has an independent but complimentary judicial system headed by the Chief Justice and made up of the Superior Courts of record as well as subordinate courts. The superior courts, inclusive of the High Court[79] and the Court of Appeal,[80] are created by the constitution and have unlimited jurisdiction in criminal and civil matters. The High Court has both original and appellate jurisdiction, but the Court of Appeal exercises only appellate jurisdiction from the High Court,[81] except in contempt proceedings. Further,

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[70] The Attorney General is the principal legal advisor to the Government of Kenya.

[71] Constitution of Kenya, s. 31 states:

"Subject to this Constitution, the National Assembly shall consist of elected members in accordance with section 32, nominated members appointed in accordance with section 33 and the ex-officio members"

[72] Ibid, s. 36

[73] Ibid, s. 37

[74] Ibid, s. 30

[75] Ibid, s. 32

[76] Ibid s. 33 states:

"(1) Subject to this section, there shall be twelve nominated members of the National Assembly appointed by the President following a general election, to represent special interests..."

[77] Ibid, Ss 37 & 38.

[78] Ibid, s. 46

[79] Ibid, s. 60 states:

"(1) There shall be a High Court, which shall be a superior court of record, and which shall have unlimited original jurisdiction in civil and criminal matters and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law..."

[80] Ibid, s. 64

[81] Ibid states:

the High Court is the guardian of the Constitution of Kenya, particularly the rights and freedoms stipulated under Chapter five of the Constitution, and has also supervisory role over subordinate courts.[82] The supervisory jurisdiction by the High Court of Subordinate Courts is exercised in accordance with the rules stipulated by the Chief Justice.[83] Courts subordinate to the Superior Courts, including Courts Martial, are creatures of Statutes. Section 65 of the Constitution states:
"(1) Parliament may establish courts subordinate to the High Court and courts-martial, and a court so established shall, subject to this Constitution, have such jurisdiction and powers as may be conferred on it by any law…"
Owing to the Special Interests of the Muslim Community, the Constitution of Kenya creates a subordinate court known as the Kadhis' Courts with jurisdiction in civil matters in which both the disputants profess Islamic faith.[84]

Correlation between the various arms of Government in Kenya
Whereas the various arms of governments in Kenya are independent, in practice, they operate in concert with one another. This manifests in a number of ways:
Power to summon Parliament: The President has powers under section 58 of the Constitution to summon Parliament at such places and time at his/her discretion.
The president has powers under section 59 of the Constitution to prorogue and dissolve Parliament at his discretion;
The President has powers under section 61(1) of the Constitution to unilaterally appoint the Chief Justice, and in consultation with the Judicial Service Commission, to appoint superior court judges under section 61(2) of the Constitution;
Parliament has power under section 65 of the Constitution to establish subordinate courts;
Parliament has powers to determine the salaries and allowances payable to the Members of the Executive from the consolidated fund; and
By two thirds majority, Parliament has powers to impeach a sitting President.
Under section 15A of the Constitution, Parliament has the powers to appoint and terminate the tenure of office of the Prime Minister, Deputy Prime Ministers and other Ministers, as well determining the functions and powers of the Prime Minister and Deputy Prime Ministers.

Uganda

"There shall be a Court of Appeal which shall be a superior court of record, and which shall have such jurisdiction and powers in relation to appeals from the High Court as may be conferred on it by law…"
[82] Ibid, s. 65(2) states:
(2) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before a subordinate court or court-martial, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by those courts.
[83] Ibid, s. 65(3)
[84] Ibid, s. 66(5) states:
"The jurisdiction of Kadhis' court shall extend to the determination of questions of Muslim law relating to personal status, divorce or inheritance in proceedings in which all the parties profess the Muslim religion."

Governance structure in Uganda is divided into three arms of Government, viz, the Legislature, Executive and the Judiciary. Each of the arms of Government is independent, though complimentary to each other.

The Legislature

The Constitution creates the Legislature in Uganda as the law making organ of Government,[85] and composed of elected constituency representatives, one woman representative in every district, representatives of the army, youth, workers, persons with disabilities and other groups as determined by Parliament, as well as the Vice President and Ministers.[86] Vice President and Ministers who are not elected members of Parliament are ex officio members of Parliament.[87] Parliament has a five year tenure. Parliamentary proceedings are chaired by the speaker or deputy speaker elected from among the members of Parliament, provided that the Vice President or a Minister shall not be elected a Speaker or deputy speaker.[88] Parliamentary authority is exercised by way of Bills passed by Parliament and assented to by the President.[89] The Parliamentary procedure is guided by guidelines made by itself.[90] As an exit from the Kenyan scenario, the Ugandan Constitution places a minimum education requirement for one to qualify to be elected a Member of Parliament. Article 80(1) of the Constitution states:
"A person is qualified to be a Member of Parliament if that person…has completed a minimum formal education of Advanced Level or its equivalent."[91]

In an attempt to preserve the power of the electorate, the Constitution of Uganda grants the electorate the power of recall of their elected Member of Parliament where the member is mentally or physically incapacitated, is of unbecoming conduct, or persistently deserts the electorate without a reasonable cause.[92] The power of recall is exercised by

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[85] *Constitution of the Republic of Uganda*, 1995, art. 79 states:
"(1) Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda.
(2) Except as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.
(3) Parliament shall protect this Constitution and promote the democratic governance of Uganda."
[86] *Constitution of the Republic of Uganda*, 1995, art. 78
[87] Ibid, art. 78(1) (d) states:
"The Vice President and Ministers, who, if not already elected members of Parliament, shall be ex officio members of Parliament without the right to vote on any issue requiring a vote in Parliament.
[88] Ibid, art. 82
[89] Ibid, art. 91 states:
"(1) Subject to the provisions of this Constitution, the power of Parliament to make laws shall be exercised through bills passed by Parliament and assented to by the President…"
[90] Ibid, art. 94.
[91] Ibid, art. 80(1) (d).
[92] Ibid, art. 84 states:
"(1) Subject to the provisions of this article, the electorate of any constituency and of any interest group referred to in article 78 of this Constitution have the right to recall their member of Parliament before the expiry of the term of Parliament.

way of delivering a petition filed by at least two thirds of the registered voters or of any constitutionally recognised interest group to the Speaker. Within seven days of the receipt of the petition, the Speaker is required to inform the Electoral Commission to conduct a public inquiry on the allegations of the petition, and where the Commission affirms the petition, the Speaker declares the seat of the Member of Parliament vacant.[93] Voting in Parliament occurs where at least a third of all the members of Parliament are present.[94]

The Executive

The Executive authority vests in the President,[95] who is the Head of State and Government, Commander-in-Chief of the Defence Forces and the Fountain of honour.[96] The President is elected by way of universal adult suffrage through secret ballot,[97] for maximum terms of five years each,[98] though the validity of the presidential election can be petitioned by a candidate before Supreme Court for an order that the candidate declared by the Electoral Commission elected as President was not validly elected.[99] Once elected, the President can be removed from office before the end of his/her tenure by way of impeachment by Parliament upon proof that the president has abused his/her office, has wilfully violated his/her oath of allegiance, has unbecomingly misbehaved or is mentally or physically incapacitated.[100]

In the exercise of his/her functions, the President is assisted by the Vice President and the Cabinet. The Vice President deputises the President and performs such functions as assigned to him/her by the President.[101] The Cabinet, comprising the President, Vice President and Ministers appointed by the President and is responsible for determination, formulation and implementation of government policies.[102] Importantly, cabinet ministers are appointed by the President with the approval of Parliament.[103] Other

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(2) A member of Parliament may be recalled from that office on any of the following grounds—
(a) physical or mental incapacity rendering that member incapable of performing the functions of the office;
(b) misconduct or misbehaviour likely to bring hatred, ridicule, contempt or disrepute to the office; or
(c) Persistent deserting of the electorate without reasonable cause.

[93]

[94] Ibid, art. 88 states:
"(1) the quorum of Parliament shall be one-third of all members of Parliament entitled to vote.
(2) the quorum prescribed by clause (1) of this article shall only be required at a time when Parliament is voting on any question."

[95] Ibid, art. 99

[96] Ibid, art.98(1)

[97] Ibid, art. 103

[98] Ibid, art. 105

[99] Ibid, art. 104

[100] Ibid, art. 107

[101] Ibid, art. 108

[102] Ibid, art. 111

[103] Ibid, art. 113(1) states:

members of the Cabinet include the Secretary to the Cabinet and the Attorney General. The Secretary to the Cabinet is responsible for arranging the business for and keeping minutes of the Cabinet.[104]The Attorney General is the principal legal advisor of the Government.[105]

The Judiciary

The Judiciary is an independent organ of the government entrusted to administer justice through court of judicature including the Supreme Court, the Court of Appeal, the High Court and other courts or tribunals established by Parliament. The Supreme Court, the Court of Appeal and the High Court are superior courts of record.

The Supreme Court is the final appellate court in Uganda.[106] With one exception, it only decides cases on appeal from lower courts. The exception is in presidential elections, where the Supreme Court has original jurisdiction, in the sense that an aggrieved candidate in a presidential election may petition the Supreme Court directly.[107] The Supreme Court is constituted by the Chief Justice and not less than six Justices. Five Justices are sufficient to hear most cases, but when hearing appeals from decisions of the Court of Appeal, a full bench of seven Justices has to be present. The decisions of the Supreme Court form precedents that all lower courts are required to follow.

The Court of Appeal is a child of the 1995 Constitution. It is an interposition between the Supreme Court and the High Court and has appellate jurisdiction over the High Court. It is not a court of first instance and has no original jurisdiction, except when it hears constitutional cases. Thus, it sits as a Constitutional Court in accordance with the Constitution, which requires that:

"(1) Cabinet Ministers shall be appointed by the President with the approval of Parliament from among members of Parliament or persons qualified to be elected members of Parliament…"

[104] Ibid, art. 111(4) states:

"(4) The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible in accordance with such instructions as may be given to him or her by the President, for arranging the business for and keeping the minutes of the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall perform such other functions as the President may direct…"

[105] Ibid, art. 119 states:

"… (3) The Attorney General shall be the principal legal adviser of the Government.

(4) The functions of the Attorney General shall include the following—

(a) to give legal advice and legal services to the Government on any subject;

(b) to draw and peruse agreements, contracts, treaties, conventions and documents by whatever name called, to which the Government is a party or in respect of which the Government has an interest;

(c) to represent the Government in courts or any other legal proceedings to which the Government is a party; and

(d) to perform such other functions as may be assigned to him or her by the President or by law…"

[106] Established by Art. 130 of the Constitution of Uganda, 1995

[107] See Constitution of Uganda, 1995, Art. 104; Presidential Elections Act (Cap 142), s. 57.

"Any question as to the interpretation of the Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court."[108]

The Court of Appeal consists of the Deputy Chief Justice and such number of Justices of Appeal not being less than seven as Parliament may by law prescribe.[109] Cases coming before the Court of Appeal may be decided by a single Justice.[110] Any person dissatisfied with the decision of a single Justice of Appeal is, however, entitled to have the matter determined by a bench of three Justices of Appeal, which may confirm, vary or reverse the decision.[111] Most of the cases decided by the Court of Appeal can also be appealed to the Supreme Court, but the Court of Appeal is the final court in election petitions provided for by the Local Government Act. When deciding cases as a Constitutional Court, the Court of Appeal sits with a bench of five Justices.

The High Court of Uganda is the third Court of record in order of hierarchy and has unlimited original jurisdiction, which means that it can try any case of any value or crime of any magnitude.[112] Appeals from all Magistrates Courts go to the High Court. The High Court is headed by the honourable Principal Judge who is responsible for the administration of the court and has supervisory powers over Magistrate's courts.

Subordinate courts include Magistrate Courts,[113] Local Council Courts,[114] Qadhis' courts for marriage, divorce, inheritance of property and guardianship, and tribunals such as those established under the Land Act (Cap 227), Communications Act (Cap 106) and Electricity Act (Cap 145). In addition, Uganda also makes use of the military courts, which is also in some cases used to charge civilians.[115] The functions of the Judiciary are:
To adjudicate civil and criminal cases;
To interpret the Constitution and the laws; and
To promote human rights, social justice and morality.
The judiciary is established under Chapter eight of the Constitution and states that judicial power is derived from the people and shall be exercised by the courts in the name in the name of the people and inconformity with law and with values, norms and aspirations of the people. It also sets out the principles that the courts must follow when deciding cases, viz:

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[108] Constitution of Uganda, 1995, Art 137
[109] Ibid, Art. 134
[110] Judicature Act, s. 12(1)
[111] Ibid, s. 12(2)
[112] Constitution of Uganda, 1995, Art 138
[113] Established under the Magistrate's Courts Act
[114] Established under the Resistance Council (Judicial Powers) Statute No. 1 of 1988
[115] Established under the Uganda Peoples' Defence Forces Act (UPDF Act. See http://www.defenceuganda.mil.ug/law, accessed last on 20 November 2008. The military court lacks in independence, has a limited appeal procedure and weak protection of the right to a fair trial. During the first eight months of 2004, at least 1100 suspects were arrested and detained, including civilians tried by court martial for possession of military property. See http://www.state.gov/g/drl/rls/hrrpt/2004/41632.htm, accessed last on 20 November 2008.

Justice must be done to all irrespective of their social or economic status;
Justice must not be delayed;
Adequate compensation must be awarded to victims of wrongs;
Reconciliation between parties should be promoted; and
Substantive justice must be administered without undue regard to technicalities

The Chief Justice, the Deputy Chief Justice, the Principal Judge, a justice of the Supreme Court, a justice of Appeal and a judge of the High Court are appointed by the President of the Judicial Service Commission and with the approval of Parliament.[116]

Correlation between the various arms of Government in Uganda
Just like Kenya, the various arms of Government in Uganda do not operate in discreet of any or all the other arms of Government. For instance:
Questions about the validity of election of a member are determined by the High Court under article 86 of the Constitution;
The Clerk to Parliament is appointed by the President under article 87 of the Constitution;
The President has to assent to a Bill for it to become Law under article 91 of the Constitution, unless the requirements of article 91(5) of the Constitution are met;
Section 98(2) of the Constitution of Uganda puts the principals of the Legislature and Judiciary, i.e. the Speaker and the Chief Justice, to be subordinate to the President;
Parliament determines the salaries and allowances payable to the principal members of the Executive and the Judiciary;
Parliament has Constitutional powers of impeaching a seating President or passing a censure motion on a Cabinet Minister;
Major government appointments such as the heads of the Judiciary, Ministers, Attorney General are done by the President, but with the approval of Parliament; and
Parliament has the Constitutional power of establishing Subordinate Courts.

Quite apparent from the Ugandan governance system is that it is more consultative as compared to the Kenyan system.

Tanzania
The Constitution of the United Republic of Tanzania, 1997 structures governance into three arms of government, viz, the Executive, Legislature and the Judiciary.

The Executive
The Executive authority of the Government of the United Republic and the Mainland Tanzania vests in the President of the United Republic of Tanzania,[117] as the Head of State, the Head of Government and the Commander-in-Chief of the Armed Forces.[118] In

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[116] Constitution of Uganda, 1995, Art 142
[117] See Constitution of the United Republic of Tanzania, 1997, art. 34(3) states:
"(3) All the authority of the Government of the United Republic over all Union Matters in the United Republic and also over all other matters concerning Mainland Tanzania shall vest in the President of the United Republic."
[118] Ibid, art. 33(2) states:
"(2) The President shall be the Head of State, the Head of Government and the Commander-in-Chief of the Armed Forces."

effect, anyone who discharges Executive functions so discharges on behalf of the President.[119] The President is elected by universal adult suffrage for a maximum two term period of five years each,[120] and holding the Presidency in Zanzibar does not prevent the holder of that office from being elected the President of the United Republic of Tanzania.[121]

Assisting the President in the discharge of his mandate is the Vice-President who is the principal assistant to the President. The Vice President assists the President in following up the implementation of government policies and performing such duties as assigned by the President.[122] Where there is a vacancy in the Presidency before the expiry of the President's tenure, the Vice President takes over the Presidency for the remaining term of the deceased President's mandate.[123]

The Executive also comprises the Prime Minister of the United Republic of Tanzania, who is an elected Member of Parliament appointed by the President from the Political Party with the majority of Members of Parliament or the party with the greatest support of members of Parliament[124]. The Prime Minister is responsible for the control, supervision and execution of government policies and is the leader of Government Business in Parliament.[125] In the performance of his functions, the Prime Minister is accountable to the President.[126]

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[119] Ibid, art. 35(1) states:
"(1*)* All Executive functions of the Government of the United Republic shall be discharged by officers of the Government on behalf of the President."
[120] Ibid, art. 40(2) states:
"(2) No person shall be elected more than twice to hold the office of President." See also s. 42 (2) of the Constitution of the United Republic of Tanzania.
[121] Ibid, art. 40(3)
"(3) A person who has been President of Zanzibar shall not be disqualified from being elected President of the United Republic for the reason only that be has once held office as President of Zanzibar."
[122] Ibid, art. 47.
[123] Ibid, Art. 37(5) states:
"(5) Where the office of President becomes vacant by reason of the death of the President, his resignation, loss of the electoral qualifications or inability to perform his functions due to physical infirmity, or failure to discharge the duties and functions of the office of President, then the Vice- President shall be sworn in and become the President for the unexpired period of the term of five years and in accordance with the conditions set out in Article 40…"
[124] Ibid, art. 51(2) states:
"…the President shall appoint a Member of Parliament elected from a constituency from a political party having a majority of Members of Parliament in the National Assembly or, if no political party has a majority, who appears to have the support of the majority of the Members of Parliament, to be Prime Minister of the United Republic, and he shall not assume office until his appointment is first confirmed by a resolution of the National Assembly Supported by a majority vote of Members of Parliament."
[125] Ibid, art. 52
[126] Ibid, art. 53

Collectively, the Cabinet, comprising the President, the Vice-President, the Prime Minister, the President of Zanzibar and all the Ministers is responsible for advising the President regarding all matters concerning the exercise of his powers.[127]

Matters other than union matters are executed by the Revolutionary Government of Zanzibar. The Revolutionary Government is headed by the President of Zanzibar, who is also the Chairman of the Zanzibar Revolutionary Council.[128] The President is elected by the People of Tanzania Zanzibar pursuant to the Constitution of Zanzibar, 1984 and in accordance with the procedures laid down by the House of Representatives. The Revolutionary Council collectively advises the President of the Revolutionary Government of Zanzibar in the discharge of his/her mandate in all matters which are not union matters.[129]

The Judiciary

The Constitution of the United Republic of Tanzania establishes the Superior Courts of record and empowers Parliament to establish the subordinate courts. The Superior Courts include the High Court, the Court of Appeal and the Special Constitutional Court of the United Republic.

The High Court is made up of the Principal Judge and at least fifteen other judges all appointed by the President in consultation with the Judicial Service Commission. The Judicial Service Commission comprises the Chief Justice as the Chairman of the Commission, the Attorney General, Justice of the Court of Appeal of Tanzania, the Principal of the High Court and two members appointed by the President. The principal Judge is the special assistant to the Chief Justice in the administration of the High Court, and acts on direction and supervision of the Chief Justice.[130] Where the office of the Principal Judge falls vacant, the President appoints an acting Principal Judge from among the Judges of the High Court until a new Principal Judge is appointed.[131] The removal of the High court Judges is done by the President on recommendation by the Tribunal.[132]

The Court of Appeal of the United Republic, otherwise known as 'the Judiciary', comprises the Chief Justice and the Justices of Appeal.[133] The Chief Justice is unilaterally appointed by the President, while the other Justices of Appeal are appointed by the president in consultation with the Chief Justice.[134] The Appeal Court serves to hear and determine every appeal brought before it arising from the judgement or other

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[127] Ibid, art. 54

[128] Ibid, Art. 103(1) states:

"(1) There shall be a Head of the Executive for Zanzibar who shall be the President of Zanzibar and Head of the Revolutionary Government of Zanzibar and also the Chairman of the Zanzibar Revolutionary Council."

[129] Ibid, Art. 105(2)

[130] Ibid, Art 109 (3)

[131] Ibid, Art. 109 (10)

[132] Ibid, Art 110 (6)

[133] Ibid, Art. 116

[134] Ibid, Art. 118

decision of the High Court.[135] The quorum for the proceedings of the Court of Appeal is at least three Justices of Appeal, though where the Court of Appeal is exercising its powers in matters other than determination of an appeal, a single Justice may exercise such power.[136]

The interpretation and application of the Constitution of the United Republic in instances of dispute between the Government of the United Republic and the Revolutionary Government of Zanzibar is the sole preserve of the Special Constitutional Court. The Court solves such disputes by way of conciliation,[137] and the conciliatory decision given by the Special Constitutional Court is final. The Special Constitutional Court is composed of members, one half of whom is appointed by the Government of the United Republic, and the other half of whom is appointed by the Revolutionary Government of Zanzibar,[138] and all the members must have been superior court judges, or qualify to be such judges. The Special constitutional Court only sits when there is a dispute to be decided and the quorum for the sitting is all its membership. Where a member of the Special Court is absent or the position of a member is vacant, the Government which had appointed that member appoints a temporary member to replace the absent member until he/she resumes or until a person is appointed to fill the vacancy.[139] A decision shall be deemed to be reached by the Special Constitutional Court when it is supported by at least two thirds of members appointed from Mainland Tanzania and two thirds of members appointed from Tanzania Zanzibar.[140]

The Legislature

Parliament of the United Republic of Tanzania comprises the President and the National Assembly.[141] The National Assembly is made up of elected constituency representatives, women representatives, five members elected from the House of Representatives and *ex officio* members.[142] For a person to qualify for election as a Member of Parliament, the person must be a citizen of the united Republic of Tanzania aged at least twenty one years, and proposed by a political party.[143] Persons of dual citizenship, unsound mind, criminal records, and unethical standards do not qualify to be elected as Members of Parliament.[144] Parliament has a life span of five years and to help curb corruption, the Constitution requires Members of Parliament to regularly submit to the Speaker their

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[135] Ibid, Art 117
[136] Ibid, Art. 123
[137] Ibid, Art 126 (1)
[138] Ibid, Art. 127
[139] Ibid, Art. 128(2)
[140] Ibid, Art. 128(3) states:
" (3) Every matter requiring a decision of the Special Constitutional Court shall be determined on the basis of the opinion of two-thirds of the members appointed from Mainland Tanzania and two-thirds of the members appointed from Tanzania Zanzibar."
[141] Ibid, Art. 62(1) states:
"(1) There shall be a Parliament of the United Republic which shall consist of two parts, that is to say, the President and the National Assembly."
[142] Ibid, Art. 66
[143] Ibid, Art. 67(1)
[144] Ibid, Art. 67 (2)

wealth declaration forms.[145] The Speaker is elected from among Members of Parliament or persons so qualified, though members of the Cabinet may not be elected Speaker. The Speaker has an equal obligation to submit to the President a regular statement of his/her wealth. The Speaker is assisted in the discharge of his/her mandate by Deputy Speaker, who should also not be a member of the Cabinet.

Other than making laws,[146] Parliament acts as a watchdog on behalf of the public on the exercise of power by the Executive.[147] Legislative powers relating to Union matters vest with Parliament,[148] while Legislative powers relating to only Tanzania Zanzibar vest with the House of Representatives.[149] The laws enacted by the House of Representatives are valid to the extent that they do not touch on Union matters, as Union matters are the preserve of Parliament. Likewise, Laws made by Parliament are valid to the extent that do not only touch on Tanzania Zanzibar as exclusive matters of Tanzania Zanzibar are the preserve of the House of Representatives.[150] However, the House of representative is subordinate to Parliament, and Parliament can enact laws to replace, amend or repeal any law which is in operation in Tanzania Zanzibar, including those enacted by the House of Representatives.[151]

Correlation between the various arms of Government in Tanzania

The various arms of government in Tanzania are independent but complimentary to each other. For instance:

The power of the Chief Justice of the court of Appeal of the United Republic under article 37(2) of the constitution to certify that the President is incapacitated and to constitute a medical board to inquire into and advice the Chief Justice on the incapacity of the President to discharge his/her functions;

The power of the Speaker of the National Assembly under article 37(3)(b) of the Constitution to exercise Executive Authority in the absence of the President and the Vice President;

The power of the Chief Justice under article 37(3)(c) of the Constitution to exercise Executive Authority in the absence of the President, the Vice President and the Speaker of the National Assembly;

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[145] Ibid, Art 70 (1) states:
"(1) Every Member of Parliament shall be required to submit to the Speaker two copies of a formal statement regarding his property and the property of his spouse. The statement shall be made on a special form prescribed by law enacted by Parliament and shall be submitted from time to time as shall be directed by such law."

[146] Ibid, Art. 64

[147] Ibid, Art. 63(2)

[148] Ibid, Art. 64(1)

[149] Ibid, Art 64(2)

[150] Ibid, Art. 64(3) states:
"(3) Where any law enacted by the House of Representatives concerns any matter in Tanzania Zanzibar which is within the legislative jurisdiction of Parliament, that law shall be null and void, and likewise if any law enacted by Parliament concerns any matter which is within the legislative jurisdiction of the House of Representatives that law shall be null and void."

[151] Ibid, Art. 64 (4) (a)

The power of Parliament under article 37(5) of the Constitution to confirm the Vice President appointed upon the death of the regularly elected President;
The power of Parliament, for instance under article 43 of the Constitution, to determine the salaries payable to the President as well as other Constitutional Office holders;
The Power of the National Assembly under article 46A of the Constitution to impeach a sitting President;
The Power of the High Court under Article 83(1) to determine election petitions against elected Member of Parliament;
The power of President under article 91 of the constitution to address the Parliament at its first sitting; and
The power of the President under article 97 of the Constitution to assent to Bills before they become laws.

Rwanda

Like the other East Africa Community States, The Constitution of the Republic of Rwanda vests governance in the three arms of Government, viz, the Executive, the Legislature and the Judiciary. The three arms of government are independent but complementary to each other.[152] The overall guiding principle to the governance system in Rwanda is that it is a government of the people, by the people and for the people.[153] This principle is an affirmation of the fact that power to govern a State derives from the People, and can only therefore be exercised on their behalf and in their best interest. Infact, Article 2 of the Constitution states:
"No group of people or individual can vest in themselves the exercise of power. National sovereignty belongs to the people who shall exercise it directly by way of referendum or through their representatives."[154]

The Legislature

The Legislative authority in Rwanda vests with the two-chamber Parliament made up of the Chamber of Deputies and the Senate,[155] though no one person can simultaneously be a deputy and a Senator.[156] Collectively, Parliament deliberates and passes laws and acts as a public watch dog against misuse of power by the Executive. The two chambers of Parliament meet separately but simultaneously, except in instances where the constitution provides for joint sessions. Where the two chambers meet jointly, the session is chaired by the Speaker of the Chamber of Deputies, in the absence of whom the President of the Senate chairs the session. In the exercise of their legal mandate, the Members of Parliament are immuned from any legal proceedings.[157] As an improvement from other East Africa Community States, Rwandan Parliament drafts its own budget and enjoy both financial and administrative autonomy.[158]

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[152] Constitution of the Republic of Rwanda, Art. 1 states:
"The three branches are separate and independent from one another but are all complementary."
[153] Constitution of the Republic of Rwanda, Art. 1.
[154] Ibid, Art 2
[155] Ibid, Art. 62
[156] Ibid, Art. 68
[157] Ibid, Art. 69
[158] Ibid, Art. 74

The Chamber of deputies comprises 53 elected Constituency representatives, 24 elected women representatives, two youth representatives and one representative for the disabled.[159] Candidates for election may be presented by political organisations or may contest independently. However, a political organisation or a list of independent candidates which fails to attain at least five percent of the votes cast at the national level during legislative elections can not be represented in the Chamber of Deputies or benefit from grants given to political organizations by the State.[160]

The Senate comprises 26 members of irreproachable conduct and moral worth,[161] serving for a non-renewable eight year term, and at least 30% of whom are women. The 26 members include 12 elected Provincial representatives and the City of Kigali, eight Presidential appointees, four representatives of the Forum of Political Organisations, one representative of public universities, and one representative of private universities.[162]
The mandate of the Senate includes voting on:
Laws relating to the amendment of the Constitution;
Organic laws;
Laws relating to the establishment, modification, functioning and dissolution of public enterprises and Parastatal organizations and territorial organisations;
Laws relating to fundamental freedoms, rights and duties of the person;
Criminal law and laws relating to the organization, jurisdiction of courts and procedure in criminal cases;
Laws relating to defence and security;
Laws relating to elections and referenda; and
Laws relating to international agreements and treaties.

The Senate also has the authority to:
Elect the President, the Vice-President and Judges of the Supreme Court, the Prosecutor General of the Republic and his or her deputy;
Approve the appointment of the Chairpersons and members of National Commissions, the Ombudsman and his or her deputies, the Auditor General of State Finances and his or her Deputy, Ambassadors and Representatives to international organisations, Provincial Prefets and heads of public enterprises and Parastatal organisations which have legal personality; and
Approve the appointment of such other public officials as required and determined by an organic law.[163]
To facilitate the exercise of this mandate, the Speaker of the Chamber of Deputies has a Constitutional obligation to submit to the President of the Senate bills adopted by the Chambers of Deputies, relating to matters to be voted in by the senate. Similarly, the

[159] Ibid, Art. 76
[160] Ibid, Art. 77
[161] Ibid, Art. 83
[162] Ibid, Art. 82
[163] Ibid, Art. 88

Government has the duty to submit to the Senate draft orders relating to the appointment of the public officers to be approved by the Senate.[164]

The Executive

The executive power vests in the President and the Cabinet.[165] The cabinet comprises the Prime Minister, Ministers, Ministers of State and other members as determined by the President of the Republic. The President is elected by adult universal suffrage through a direct and secret ballot for a maximum two term period, each of seven years. The candidate who acquires a simple majority of the votes cast is declared by the Supreme Court to be validly elected.[166] The President cannot hold any other public office, perform any other public function or any other civilian or military employment or professional activities.[167]

Where the President cannot perform his/her functions because of death, resignation or incapacity, the President is replaced in an acting capacity by the President of the Senate; in the absence of the President of the Senate, by the Speaker of the Chamber of Deputies and in the absence of both, the duties of the President are assumed in an acting capacity by the Prime Minister.[168] The so acting President has no power to make appointments to public office, call a referendum, initiate an amendment to the Constitution, exercise the prerogative of mercy or make a declaration of war.[169] In case of vacancy in the office of the President, elections are held within a period not exceeding ninety days. In case of temporary absence of the President from the country, the duties of the President are discharged by the Prime Minister.

The Prime Minister is nominated, appointed and removed from office by the President of the Republic,[170] while the other members of the Cabinet are appointed and removed from Office by the President upon proposal by the Prime Minister. The members of Cabinet are selected from political organizations on the basis of their seats in the Chamber of Deputies without excluding the possibility of appointing to Cabinet other competent people who do not belong to any political organizations.[171] Collectively, the cabinet implements Government policies. The Prime Minister coordinates the functioning of the Cabinet in accordance with broad guidelines set by the President of the Republic and ensures implementation of laws. Ministers, Ministers of State and other members of Cabinet implement laws relating to matters for which they are responsible by way of orders.[172]

The Judiciary

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[164] Ibid, Art. 89
[165] Ibid, Art. 97
[166] Ibid, Art. 100
[167] Ibid, Art. 106
[168] Ibid, Art. 107
[169] Ibid.
[170] Ibid, Art. 116
[171] Ibid
[172] Ibid, Art. 120

The Judicial power is exercised by the Supreme Courts and other courts as by law established. The Judiciary is independent and separate from the executive branches of government, and enjoys both financial and administrative autonomy.[173] Superior court judges hold office for life unless the law states otherwise. They may not be suspended, transferred or prematurely retired or removed from office.

In order of hierarchy, the courts making up the judiciary include the Supreme Court, the High Court of the Republic, the Provincial Courts and the Court of the City of Kigali, the District Courts and the Municipality and Town courts. There are also Specialised Courts, inclusive of Gacaca courts and Military courts.

The Supreme Court is the highest court in Rwanda, with its decisions binding on all parties concerned whether such are organs of the State, public officials, civilians, military, judicial officers or private individuals. More particularly, the Supreme Court:
hears appeals against decisions of the High Court of the Republic and the Military High Court rendered in their first or appellate degrees as provided for by the law ;
Supervises the other courts in exercise of their mandate;
Rules on Constitutionality of organic laws and laws establishing the internal regulations of each Chamber of Parliament;
Hears petitions on constitutionality of laws and decree laws;
resolves upon request, disputes relating to powers arising between different state organs; and
Hears election petitions relating to referendum, presidential and legislative elections.
The Supreme Court is headed by a President, assisted by a Vice-President and twelve other judges, all of whom must be career judges. The President and Vice-President of the Supreme Court are elected by the Senate for a single term of eight years by simple majority vote of members from two candidates in respect of each post proposed by the President of the Republic after consultation with the Cabinet and the Supreme Council of the Judiciary.[174]

The High Court:
hears offences by political organisations;
tries in the first instance serious offences committed in Rwanda or other offences specified by law; and
Is the court of last instance, or appeals against decisions of lower courts.
The High Court has special chambers which sit in different parts of the Country as determined by law.[175]

The Military High Court is an appellate court in respect of decisions rendered by the Military Tribunal. It has the jurisdiction to try in the first instance, all offences which constitute a threat to national security and murder committed by soldiers irrespective of rank. The Supreme Court hears appeals against decisions of the Military High Court.[176]

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[173] Ibid, Art. 140
[174] Ibid, Art. 147
[175] Ibid, Art. 149
[176] Ibid, Art. 155

The organisation, jurisdiction and functioning of other courts are determined by organic law. Before a case is instituted at the Court of the first instance, a specialised body referred to as "Mediation Committee" mediates between parties to the disputes involving matters determined by law. The Members of the Committee are persons of integrity and who are acknowledged for their mediation skills.

The Judiciary has an oversight body referred to as the Supreme Council of the Judiciary which is responsible for giving advice on matters relating to the functioning of the Justice System. The body is also responsible for the supervision of the discipline of judges of the Military Courts, President and Vice-President of the Supreme Court, as well as proposals relating to the establishment of new court or status of judges.[177]

Burundi

The Constitution of Burundi structures governance into three arms of government, viz, the Executive, Judiciary and the Legislature. The arms of government are independent but complimentary to each other.

The Executive

The Executive authority vests with the President, who is both the Head of State and Government. The President is an embodiment of the Charter of National Unity and the Constitutional Act, is the Head of the armed forces, and has powers to hire and fire members of the Executive and to chair the Council of Ministers.[178] Further, the President has the power to grant prerogatives of mercy, to credit and recall ambassadors and envoys, to appoint senior civil and military servants and to declare a state of emergency in instances of threat to public peace.[179] Unlike other East Africa community States, the President in Burundi does not enjoy criminal immunity for violations of the Charter of National Unity, Constitutional law and commission of acts which undermine human rights, territorial integrity, independence and sovereignty of the state- this is referred to as 'high treason'.[180] In fact, a President who engages in such criminal acts is not entitled to pension upon retirement.[181]

In the exercise of his/her functions, the President is assisted by two Vice-Presidents. The first Vice-President coordinates government political policy decisions. The second Vice-President coordinates economic and social government policies.[182] The Vice-Presidents are appointed and removed from office by the President after a consultation between the President of the Republic, the President of the National Assembly and members of the Office of the National Assembly.[183] Government departments are headed by Ministers who ensure implementation of Presidential decrees and draft orders of the Vice-

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[177] Ibid, Art. 158
[178] Constitution of Burundi, Arts. 65- 71
[179] Ibid, Arts 72-76
[180] Ibid, Art. 78
[181] Ibid, Art. 80
[182] Ibid, Art. 82
[183] Ibid, Art. 83

Presidents. The secretaries of State Ministers participate in deliberations of the Law Council of Ministers.

Collectively, the Cabinet deliberates on the mandatory policy of the State, draft treaties and international agreements, draft presidential decrees, draft orders of Vice Presidents and projects orders on continuing general regulations.[184] All Government officials are criminally liable for criminal acts they commit in the exercise of their legal functions.[185]

The Judiciary

Judicial power vests with the Courts and Tribunals established in Burundi,[186] all of which are independent entities from the Legislature and the Executive.[187] The Court hearings are public except in instances of threat to public peace and morality, when the hearings can be heard in camera.[188] In terms of hierarchy, the Judiciary is composed of the Supreme Court, the Constitutional Court and the Subordinate Courts.

The Supreme Court is the highest court in Burundi and the guarantor of law enforcement by the courts.[189] It consists of the Chamber of Cassation which hears appeals made by courts other than Administrative and Judicial Chamber of the Supreme Court; Administrative Chamber which rules on appeals against decisions made by Administrative Courts and other remedies provided by the texts of laws; and Judicial Chamber which rules on offences committed by politicians or judges.[190] Decisions of the Administrative and Judicial Chambers of the Supreme Court are appealable to the Re-united Chambers of the Supreme Court.[191]

The Constitutional Court has the jurisdiction to rule on constitutionality of laws; interpret the Constitutional Act; rule on the legality of procedure of appointing members of the Transitional National Assembly; receive the oath of the President and the Vice-President; and declare the vacancy of President of the Republic.[192] The Court is made of an odd number of at least five members all appointed by the President of the Republic for a four year term.[193]

The Legislature

The Legislative power vests with the National Assembly.[194] The National Assembly enacts laws and controls Government actions.[195] It elects its Bureau composed of the

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[184] Ibid, Art. 89
[185] Ibid, Art. 93
[186] Ibid, Art. 130
[187] Ibid, Art. 133
[188] Ibid, Art. 131
[189] Ibid, Art. 135
[190] Ibid
[191] Ibid, Art. 136
[192] Ibid, Arts142 & 144
[193] Ibid, Art. 143
[194] Ibid, Art. 95
[195] Ibid, Art. 106

President, the Vice-President, the Secretary General and Assistant Secretary General on the strength of the Rules of Procedure of the Assembly[196]

Parliamentarians enjoy criminal immunity for opinions expressed or vote cast during Parliamentary proceedings,[197] and the holder of a Parliamentary Office cannot properly hold another public office.[198] Parliamentary mandate expires at the death, resignation, permanent disability, unwarranted failure to attend at more than a quarter of Assembly sessions, and in such instances as provided by law.[199]

Correlation between various arms of Government in Burundi
The various arms of Government in Burundi are correlated as follows:
Under article 120, Legislative initiatives belong jointly to the National Assembly, the President of the Republic and the Government;
Under article 121, the Executive has the right to propose amendments to draft laws submitted by members of the National Assembly;
Under article 123, the President promulgates laws passed by the National Assembly within 30 days of transmission;
Under articles 127 and 129, the National Assembly has the right to discuss Executive policies and to form committees responsible for investigating Executive actions;
Under article 137, Supreme Court judges are Presidential appointees;
Under article 139, the Supreme Court Judges sitting together are competent to judge the President of the Republic for high treason; and
Under article 141, the Supreme Court is competent to receive written statements of assets and Heritage of the President, Vice-Presidents and Members of Government;
Under article 144, the Supreme Court rules on the procedure for appointing members of the Transitional National Assembly.

CONVERGENCES AND DIVERGENCES OF THE EAST AFRICA COMMUNITY STATES' CONSTITUTIONAL ARRANGEMENTS
The power arrangement among the East African Community States indicates that there are areas of convergence and divergence. Worth pointing out is that the divergences are not fundamentally different to be reconcilable. Further, the governments in the East Africa Community States are Constitutional governments only validly operating within the framework of the Constitution.

CONVERGENCES
On Executive
President as head: All the East Africa Community States are headed by a President who is the Head of State and Government and Commander-In-Chief of the Armed Forces;
Election of President: All the East Africa Community States elect their respective Presidents by way of universal adult suffrage using a secret ballot;

[196] Ibid, Art. 112
[197] Ibid, Art. 103
[198] Ibid, Art. 104
[199] Ibid, Art. 113

Presence of a Cabinet: All the East Africa Community States have a Cabinet as the top advisory organ of the President;
The Vice-President: The Vice-President is the principal assistant of the President in all the East Africa Community States;
Ministers: Government departments are run by Ministers in all the East Africa Community States.

On Legislature
Role of the Legislature: The Legislature in all the East Africa Community States have the power to make laws and to act as public watchdogs on the excesses of the Executive.
Rules of Procedure: In all the East Africa Community States, the Legislature has internal self regulation.
Exercise of mandate: In all East Africa Community States, the law making power of the Legislature is done by way of Bills enacted by Parliament. The meetings of the Legislature are presided over by such persons duly elected by the members of the Legislature for that purpose.
Presidential Assent: The President assents to enact Bills of Parliament in all the East Africa Community States before they become law.

On Judiciary
Superiority of Courts: All the East Africa Community States have superior courts of record whose decisions are binding on lower courts.
Security of Tenure of Judicial Officers: Judicial officers have a security of tenure in all the East Africa Community States and can only be removed from office on recommendation of a tribunal.
Appointment of Judicial Officers: Judges of the Superior Court are appointed by the President in all the East Africa Community States.
DIVERGENCES
On the Executive
Number of terms of Office: In Kenya, Tanzania, Burundi and Rwanda, the Constitution allows the President to run for the presidency for two terms of fixed periods. In Uganda, the number of terms for the President is unlimited.
Period of Presidential Tenure: The period that an elected President can constitutionally hold office varies in the different countries in the East Africa Community. In Kenya, Uganda, Tanzania and Burundi, the President is elected for a five year term renewable only once. In Rwanda, the President is elected for a seven year term renewable only once.
Appointments to the Cabinet: The manner of appointing Cabinet Ministers, including the Prime Minister where it applies varies in the different East Africa Community States. In Kenya, Cabinet Ministers are appointed by the President and need not be approved by Parliament. In Uganda, Rwanda and Burundi Parliament approves the appointment of Cabinet Ministers.
On the Position of the Prime Minister: Kenya, Tanzania, Uganda and Rwanda have a Prime Minister who co-ordinates government policies, while Burundi lacks the same position.
On appointment of the Prime Minister: In Kenya, the mandate of the Prime Minister is determined by Parliament. In Tanzania, the Prime Minister is the leader of the Party with

the majority of Members of Parliament and is appointed by the President. In Rwanda, the Prime Minister is unilaterally hired and fired by the President.
On the position of the Vice-President: All East Africa Community States have one Vice-President each except for Burundi which has two Vice-Presidents. In Kenya, the Vice-President is a unilateral Presidential appointee and serves at the pleasure of the President. In Burundi and Uganda, the Vice Presidents are appointed by the President with the approval of Parliament. In Rwanda, the Vice-President is appointed by the President upon proposals by the Prime Minister.

On the Legislature
Nature of Parliament: Kenya, Uganda, Tanzania and Burundi have a one Chamber Legislature presided over by the Speaker, while Rwanda has a bicameral Legislature comprising the Senate and the House of Representatives.
State appointments: In jurisdictions such as Uganda, Burundi and partly in Kenya, Parliament vets principal state appointments. For instance, the Prime Ministers mandate is the preserve of Parliament in Kenya, unlike in Rwanda where the President unilaterally appoints and dismisses the Prime Minister. Ministers are unilaterally appointed by the President in Kenya, but in Uganda, Parliament approves the appointment of the Ministers.
On the Judiciary
Justice Systems: Kenya, Uganda and Tanzania have a common law justice system, while Burundi and Rwanda are civil law jurisdictions.
Nature of the Independence of the Judiciary: whereas the Constitution provides for the independence of the Judiciary from the other arms of government, the extent of such independence differs. All the East Africa Community states withhold financial independence of the Judiciary to the State, except Rwanda where the Judiciary enjoy both administrative and financial independence.
From the foregoing analysis, a federal government for the East African Community should seek to take advantage of the commonalities in the power arrangement among the Community States, and to reconcile the divergences in attempt to form a perfect federation. For practical reasons, an effort should be made to learn from other jurisdictions that have gone a mile further to form a federation and to analyse how such federation have been formed and sustained.

Strategic areas for harmonisation
Efforts towards the formation of a federal government for the East African Community should be geared towards the harmonisation of various areas of common interests to the member states of the Community. This is in appreciation of the fact that the Treaty for the East African Community does not design power arrangements that can successfully be relied upon to effect a federal government for the East African Community. For instance, the Summit, as it stands currently, is a conglomeration of individual Heads of States; no single member of the Summit has a direct mandate from the partner State other than his State of origin. Allegiance to the provisions of the Treaty for the East African Community is dependent on the goodwill of the of the partner States. In fact, other partner States, like Kenya, require the domestication of the Treaty for it to have any

relevance in the domestic arena.[200] Further, each partner State has a Constitution as the supreme law within the particular State, but whose provisions are not necessarily similar to those of other partner States. This necessitates the need to identify certain strategic areas worth harmonising within the East African Community in order to actualise a federal government for the region.

Defence: Security of the partner States of the East African Community is a core requirement for the continued survival of the East African Federation. There is therefore need for the establishment of a common defence force comprising a common Armed Forces and a common Police Force. The common defence force should be larger in strength than the defence forces of more than half of the partner States combined. The common defence forces should be under a chain of command as prescribed by the Constitution for the East African Federation.

Foreign Policy: As it stands currently, each partner State of the East African Community has its own foreign policies not necessarily in tandem with those of the other partner States. In order to realise and sustain a federation for the East African community, there is need to have a common foreign policy designed in accordance with the laid down procedures as constitutionally provided.

Fiscal and Monetary Policy: Each partner State of the East African Community has its own fiscal and monetary policies including monetary currencies of varied values. There is need to harmonise the fiscal and monetary policies in the region with a view to developing a common monetary currency in the region.

Means of sustenance of the federation: the formation of a federation for the East African Community should be conscious of the fact that at one point in the life of the federation, disputes may arise touching on the very existence of the federation. There is therefore need to proactively design mechanisms for abating such disputes, and if the disputes occur, for resolving them amicably. This can be by way of a distinct judicial organ that has the confidence of all the partners of the East African Community, and/or by way of other dispute settlement mechanisms such a mediation, conciliation, or arbitration.

Institutionalised authority: The federal government for the East African Community should not act discretionarily, but on the strength of a Constitution. The constitution should structure governance into the Executive, the Legislature and the Judiciary, and confer distinct powers to the various arms of the federal government. The constitution should also design the manner of election or appointment, removal and tenure of office of the holders of the various arms of government.

An effort towards harmonisation of the above issues can effectively culminate into realisation of a federal government for the East African Community.

LEARNING FROM OTHER JURISDICTIONS

UNITED STATES OF AMERICA (USA)

The federal government of the United States is the central government body established by the United States Constitution. The Constitution defines the structure and powers of

[200] See Okunda v. The Attorney General

the federal government and the manner of exercise of that power. Article IV of the Constitution states:
"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."[201]

The federal government has three branches, inclusive of the Legislature, the Executive and the Judiciary. Through a system of separation of powers and the system of checks and balances, each of these branches has some authority to act on its own, some authority to regulate the other two branches, and has some of its own authority, in turn, regulated by the other branches[202]. The policies of the federal government have a broad impact on both the domestic and foreign affairs of the United States. In addition, the powers of the Federal Government as a whole are limited by the constitution, which, per the Tenth Amendment, gives all power not directed to the National government, to the State government.

On Legislature
The United States Congress is the Legislative branch of the federal government. It is bicameral, comprising the House of Representatives and the Senate.

The House of Representatives consists of 435 voting members, each of whom represents a congressional district and serves for a two year term. In addition to the 435 voting members, there are five non-voting members, consisting of four delegates and one resident commissioner. There is one commissioner each from the District of Columbia, Guam, Virgin Islands, and American Samoa, and the resident commissioner is from Puerto Rico.[203] House seats are apportioned among the states by population.

In the Senate, each State sends two representatives irrespective of the population. Senators serve for a six-year term and to avoid the expiry of the tenure of the Senators falling at the same time, they are elected at overlapping durations.

Each Congressional Chamber has particular exclusive powers. The senate must give advice and consent to many important Presidential appointments and the House must introduce any bills for the purpose of raising revenue However, the consent of both chambers is required to make any law. The powers of Congress are limited to those enumerated in the Constitution; all other powers are reserved to the states and the people. Jointly, The Constitution grants numerous powers to Congress. These include the powers to levy and collect taxes, provide for common defence and promote the pursuit of liberty; to coin money and regulate its value; provide for punishment for counterfeiting; establish

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[201] Constitution of the United States of America, Amendment X, art. IV
[202] Thomson J. (2008), *Presidential Vetoes, 1989-2000*, p.10
[203] See US official website: http://www.house.gov/house/Member/WWW_by_State.shtml, accessed last on 13 December 2008.

post offices and roads, promote progress of science, create courts inferior to the Supreme Court, define and punish piracies and felonies, declare war, raise and support armies, provide and maintain a navy, make rules for the regulation of land and naval forces, provide for, arm, and discipline the militia, exercise exclusive legislation in the District of Columbia and make laws necessary and proper to execute the powers of Congress.

On Executive

All executive power in the federal government is vested in the President of the United States, although power is often delegated to the Cabinet members and other officials. The President and Vice President are elected as 'running mates' for a maximum of two four-year terms by the Electoral College, for which each state, as well as the District of Columbia, is allocated a number of seats based on its representation in both Houses of Congress.

The Executive branch consists of the President and delegates. The President is the head of state and government, as well as the military commander in chief (only when called into actual military services), chief diplomat and chief of party. The President, according to the Constitution, must take care that the laws be faithfully executed. The President presides over the Executive branch of the federal government, a vast organization numbering about 4 million people, including 1 million active-duty military personnel. The President may sign legislation passed by Congress into law, or may veto it, preventing it from becoming law unless two-thirds of both Houses of Congress vote to override the veto. The President may, with the consent of two-thirds of the Senate, make treaties with foreign nations. The President may be impeached by a majority in the House and removed from office by a two thirds majority in the Senate for treason, bribery, or other high crimes and misdemeanours. The President may not dissolve Congress or call special elections, but does have the power to pardon, or release, criminals convicted of offenses against the federal government (except in cases of impeachment), enact executive orders, and with the consent of the Senate, appoint Supreme Court justices and federal judges.

The Vice President is the second-highest executive official of the government. As first in the United States presidential line of succession, the Vice President becomes President upon the death, resignation, or removal of the President. The day-to-day enforcement and administration of federal laws is in the hands of the various federal executive departments, created by Congress to deal with specific areas of national and international affairs. The heads of the 15 departments, chosen by the President and approved with the "advice and consent" of the U.S. Senate, form a council of advisers generally known as the President's "Cabinet".

On Judicial Power

The highest court in the federal court system is the Supreme Court, with the jurisdiction in matters pertaining to the federal government, disputes between states, and interpretation of the United States Constitution. The federal Supreme Court can declare legislation or executive action made at any level of government as unconstitutional, nullifying the law and creating precedent for future law and decisions. Below the Supreme Court are the Courts of Appeals, and below them are the District Courts, which are the general trial courts for federal law. Separate from, but not entirely independent of

the federal court system are the individual court systems of each state, each dealing with its own laws and having its own judicial rules and procedures.
The Supreme Court of each state is the final authority on the interpretation of that state's laws and constitution. A case may be appealed from a state court to the US Supreme court only if there is a federal question.
The federal judiciary consists of the U.S. Supreme Court, whose justices are appointed for life by the President and confirmed by the Senate, and various "lower" or "inferior courts," among which are the courts of appeals and district courts. Congress retains the power to create and abolish federal courts, as well as to determine the number of judges in the federal judiciary system. It cannot, however, abolish the Supreme Court.
To-date, the U.S. courts have developed distinct jurisprudence that has helped expound on the manner of exercise of federal power in the United States of America. On the issue of State sovereignty, the U.S. Supreme Court has confronted the question as to whether a citizen of one state can sue another state. In *Chisholm v. Georgia*,[204] the Supreme Court held that it is possible for a citizen to sue a State within the federal government.
In order to confirm the Supremacy of the federal government over State governments, the U.S. courts have commented on the supremacy of the federal courts, laws and fiscal policies over States'. In *Marbury v. Madison,*[205] the court firmly established that the U.S. Supreme Court is supreme within the federation and reserves the power of judicial review. In *McColloch v. Maryland,*[206] the Supreme Court held that federal constitution and laws are supreme, when appropriately enacted, over states Constitutions and laws. In *Gibbons v. Ogden*,[207] the U.S. Supreme court held that the federal government has a far reaching power to control economic transactions among the states and with foreign nations. The three cases, without doubt, lay a firm foundation for a strong central government within a federation. The courts were however quick to point out that federal power must be appropriately exercised to avoid arbitrary intervention into matters that are exclusively within the jurisdiction of one State.
GERMANY
The Federal Republic of Germany established in 1949 has firm historical roots in the earlier experience of the German Empire (1871-1918), the Weimar Republic (1919-34), the failure of the totalitarian centralization of the Third Reich (1934-45), and the immediate post-war influence of the allied occupying powers. In 1949, the eleven Lander of West Germany became the Federal Republic of Germany.[208] Thirty-one years later, the reunification of Germany in 1990 provided for the accession of five new Länder from what had previously been the Democratic Republic of Germany. The federation, therefore, now consists of sixteen Länder with a total population of over 80 million. The population of the German federation is linguistically homogeneous, although there remains considerable economic disparity and difference in political cultures between the former West and East Germanies.[209]

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[204] Chisholm v. Georgia, (1793)2 Dall. 419
[205] *Marbury v. Madison*, (1803) 1 Cr. 137
[206] *McColloch v. Maryland* (1819) 4 Wheat 316
[207] *Gibbons v. Ogden* (1824)9 Wheat 1
[208] Elazar Daniel (1991), *Federal Systems of the World: A Handbook of Fedearl, Confederal and Autonomy Arrangements.* Harlow, Essex, UK: Longman, p. 105
[209] David P.Conradt (1993), *The German Policy* (5th ed). New York: Longman, , p. 183

A notable characteristic of the German federation, by comparison with the United States federation, is the extensive constitutional and political interlocking of the federal and state governments. The federal government has a very broad range of exclusive, concurrent (with federal law prevailing) and framework legislative jurisdiction. But the Länder in turn have a mandatory constitutional responsibility for applying and administering most of these federal laws.[210] While the legislative powers of the federal government are much more extensive than in the United States, another significant feature of the German federation is that the Lander are more directly involved in decision-making at the federal level than the states or provinces in virtually any other federation. This is achieved through the constitutional requirement that the second chamber, the Bundesrat, is composed of Land first ministers and senior ministers serving as *ex officio* delegates of their Land governments. The Bundesrat possesses an absolute veto on all federal legislation affecting the Länder. In practice about 60 percent of federal legislation falls in this category and therefore the voice of the Lander, through the Bundesrat, is highly influential in federal policy-making. Thus, the Bundesrat is a key institution in the interlocking federal-state relationship and the extensive joint decision making that occurs within the German federation including those on financial interrelationships.

Both the Federal and Land institutions are organized on the principle of parliamentary responsible cabinets, with the Chancellor at the federal level and a Minister President in each Land as the heads of government accountable to their legislatures.[211] In addition there is a formal Head of State with largely ceremonial powers, the President of the Federal Republic, who is elected by an electoral college consisting of the Bundestag and an equal number of members elected by the legislatures of the Lander.

Fiscal federalism in the German federation is of particular interest because of the way they relate to the closely interlocked legislative and administrative powers of the two orders of government, and because of the unique way in which the Lander participate in federal decision-making through their representation in the Bundesrat.[212] This makes the Bundesrat a key institution in the highly integrated legislature, administrative and financial interdependence of the two orders of government.

Constitutional status of various orders of Government

The Federal Republic of Germany consists of a federal (Bund) government, 16 Land (state) governments, and numerous municipal (or local) governments. All of the federal and Land governments are organised on the basis of the parliamentary system. There is a formal, indirectly elected head of state, the President of the Federal Republic.

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[210] Ronald L. Watts (1999), *Comparing Federal Systems* (2nd ed). Montreal and Kingston: McGill-Queen's University Press, pp. 37-39.

[211] Ronald L. Watts (1999), "German Federalism in Comparative Perspective," in Charlie Jeffery, *Recasting German Federalism: The Legacies of Unification Recasting German Federalism: The Legacies of Unification*, London: Pinter, p.272

[212] Uwe Leonardy (1999), "The Institutional Structires of German Federalism", in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification*, London: Pinter, p. 12

The Federal and Land Legislatures

The fusion of legislative and executive branches of government within the federal and Land legislatures effectively transfers legislative power to the Executive branch of government.[213] However, unlike in the majoritarian Westminster model of parliamentarism, German governments are at both levels frequently composed of a coalition of two or more political parties. Therefore, government positions represent a compromise arrived at through a process of inter-party bargaining within the governing coalition.

One of the most distinctive features of the German system of government is the Bundesrat, the Upper House of the federal legislature. The membership consists of *ex officio* delegates of the Land governments each Land delegation voting as a block under direction from its government. Thus, the governments of the Länder are directly involved in the federal decision-making process. The Bundesrat holds an absolute veto on all legislation affecting the Länder; in practice about sixty percent of all federal legislation falls into this category because the Länder are responsible for administering all federal legislation in areas of concurrent jurisdiction.[214] The Bundesrat has a suspensive veto on all other federal legislation. The institutional position of the Bundesrat produces what is commonly referred to as an 'interlocking' relationship between the Federal and Land orders of government.

The Bundestag, the Lower House of the federal parliament, is elected via a mixed electoral system. The voter casts two ballots, one for a constituency member, and one for a political party. Constituency members are elected on a first past the post basis, while the party list members are elected on a proportional basis.[215] The result is that the party membership of the Bundestag very closely matches the party vote distribution. A party must, however, receive at least five percent of the vote or win at least three constituency seats in order to be represented in the Bundestag; this rule discourages a splintering of the vote.

Following an election where, as is often the case, no party emerges with a majority, there is a period of inter-party bargaining as parties negotiate the terms of agreements to form a governing coalition.[216] The leader of the party with the most seats becomes the Chancellor, or in the Länder Minister President; cabinet posts are allocated among the parties to the coalition as negotiated in the coalition agreements. While there is frequently

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[213] Paul Bernd Spahn and Wolfgang Fottinger (1997), "Germany," in Teresa Ter-Minassian, ed., *Fiscal Federalism in Theory and Practice,* Washington: International Monetary Fund, p. 239

[214] Ronald L. Watts (1999), *The Spending Power in Federal Systems: A Comparative Study,* Kingston: Institute of Intergovernmental Relations, p. 27.

[215] Hans-Peter Schneider (1999), "German Unification and the Federal System: The Challenge of Reform," in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification*, London: Pinter, pp. 69-70.

[216] Uwe Leonardy (1999), "German Federalism Towards 2000: To be Reformed or Deformed?," in Charlie Jeffery,ed., *Recasting German Federalism: The Legacies of Unification*, London: Pinter, p. 297

ongoing inter-party tensions within the governing coalition, parties have honoured their coalition agreements and thus stable governments have been the norm.

Land legislatures are unicameral, with the exception of bicameral Bavaria. The relationship between the executive and the legislature (Landtag) is the same as it is in the federal Bundestag. In the three historic free cities (Berlin, Bremen, and Hamburg) the Landtag is also the city council, and the mayor is head of the government.[217]

The Courts

The Federal Constitutional Court is established under the constitution, and has comprehensive jurisdiction over all questions of federal constitutional law. It is not, however, a court of general appeals as are the Supreme Court of the United States, but rather only determines constitutional questions.[218] It is assigned the following functions: the judicial review of legislation, the adjudication of disputes between Land and Bund political institutions, the protection of individual civil rights as constitutionally guaranteed, and the protection of the constitutional and democratic order against groups and individuals seeking to usurp it.[219] Half the members of the Constitutional Court are appointed by the Bundesrat on behalf of the Länder and half by the Bundestag. In both cases two-thirds majorities are required.

With the exception of seven national courts of appeal, all regular tribunals are Land courts, established and administered by Land statutes.[220] However, they apply a unified national legal code.

Constitutional status of the Federal and Land Governments

The Basic Law explicitly states that all state authority emanates from the people, and that the organs of government are simply the means via which the people exercise their authority.[221] As well, the federal nature of the German state is guaranteed by the Basic Law: the so-called 'eternity clause' of the Basic Law prohibits amendments which would abolish the Lander.[222]

Two fundamental features of the distribution of powers are worthy of note. First, the Basic Law allocates legislative jurisdiction on the basis of an exclusive list of federal powers and a list of concurrent powers, with the residual power remaining with the

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[217] Elazar Daniel (1991), *Federal Systems of the World: A Handbook of Federal, Confederation and Autonomy Arrangements.* Harlow, Essex, UK: Longman, p. 105

[218] Hartmut Klatt (1999), "Centralizing Trends in West German Federalism, 1949-89," in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification,* London: Pinter, p. 42

[219] Roland Sturm (1999), "Party Competition and the Federal System: The Lembruch Hypothesis Revisited," in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification*, London: Pinter, p. 201

[220] Uwe Leonardy (1999), "German Federalism Towards 2000: To be Reformed or Deformed?" in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification*, London: Pinter, p. 295

[221] Basic Law of Germany, art. 20(2)

[222] Ibid, art. 79(3)

Lander.[223] Exclusive federal legislative power is granted in areas which include foreign affairs and defence, citizenship and immigration, rail and air transport, criminal policing, and foreign trade.[224] An extensive list of areas of concurrent legislative jurisdiction includes such areas as civil and criminal law, the regulation of nuclear energy, labour relations, environmental protection, and road transport.[225]

There are also two additional special categories of concurrent powers in the Basic Law. First, the federal government may under its 'framework' powers restrict the exercise of Lander legislative authority, to a limited extent, in certain fields.[226] In these fields, the federal government has the right to enact framework legislation aimed at providing a degree of uniformity of action across the federation; within these parameters, the Länder have the right to enact customized, detailed laws. Framework legislative fields include areas such as higher education, nature conservation, and regional planning.

Second, there is a constitutional provision for the federal and Land governments to carry out 'joint tasks' together. These areas include university construction, regional policy, agricultural structural policy and coastal preservation, education planning, and research policy.

A second notable feature of the German division of powers relates to the distribution of administrative authority. In the Anglo-American federations, the general principle is constitutionally mandated legislative-administrative coincidence.[227] That is, the order of government that has legislative jurisdiction over a policy area also has administrative responsibility for that area. In the German federation, by contrast, the Land governments are largely responsible for the administration of legislation, whether that legislation originates at the federal or Land level. Thus it is possible to have a relatively high degree of legislative centralization, while retaining a high degree of administrative decentralization. Constitutional protection of the administrative role of the Länder serves as a bulwark against thorough-going centralization of the federation.

Local Governments

Local government autonomy is constitutionally guaranteed.[228] The local government bodies which carry out many of the administrative tasks attributed to the Länder thus have their status protected, even to the degree of raising legal questions concerning that status before the Federal Constitutional Court. However, the organization and supervision of local governments falls within the legislative sphere of the Länder.

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[223] Mackenstein, Hans, and Charlie Jeffery (1999), "Financial Equalization in the 1990s: On the Road Back to Karlsruhe?," in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification,* London: Pinter, p.169

[224] Basic Law of Germany, art. 73

[225] Ibid, art.74

[226] Ibid, art. 75

[227] Leonardy M. (1999*), German Federalism Towards 2000*, p. 296

[228] Spahn, Paul Bernd (1997), "Intergovernmental Transfers in Switzerland and Germany" in Ehtisham Ahmad ed*., Financing Decentralized Expenditures: An International Comparison of Grants,* Brookfield: Edward Elgar, p. 103

BRAZIL

Unlike in Canada and the United States of America, where federalism was a technique for uniting states and provinces that had once been autonomous political entities, in Brazil, federalism was a technique for dividing what had always been a unitary system of government.[229] Unlike her neighbouring colonies of Latin America, Brazil followed a unique path that led to independence without war, and to the establishment of a constitutional monarchy that lasted for 67 years.[230] Under the empire, Brazil had a unitary system of government, divided into twenty provinces. The provinces served as election districts for a National Congress with a Senate and a Chamber of Deputies. The provinces elected deputies for four-year terms. The Emperor, however, selected Senators, who would serve life terms, from a list of three names submitted by each province. Unfortunately, the election process was so manipulated by the central government that the Congress did little to represent the interests of the very limited electorate. The Brazilian provinces were further subdivided into municipalities,[231] with each province and municipality electing its own council. However, the councils had no legislative, taxing or administrative powers. Any resolution they proposed had to be submitted to the National congress for enactment into law. Real authority to govern each province rested in a president, who was appointed and removed by the Emperor.[232]

Contemporary power arrangements in Brazil

The 1988 Constitution of Brazil divides power between the federal government and the sub-national units of government. Partly, the constitution follows the allocative formula of the U.S. Constitution, but it delineates the distribution of government powers in far greater detail.[233] The Brazil Constitution contains an unusual innovation by making the Federal District and the Municipalities integral member of the federation. Brazil also borrows from the German Basic Law in permitting delegation of exclusive powers and in providing for joint and concurrent powers.[234] Article 21 of the Brazil Constitution specifically delegates to the federal government a broad array of powers that are meant to be exclusive even though not dominated as such. These include the powers to maintain international relations; to declare war and states of siege and to make peace; to provide for defence; to regulate currency, exchange rates, and mineral prospecting, and to operate

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[229] In practice, however, the enormity of Brazil's land mass and the weakness of the Portuguese colonial regime meant that large parts of Brazil, especially in the interior, were ruled *de facto* by large land owners. Moreover, the Portuguese crown began its reign in Brazil by creating a series of hereditary captaincies in which the King ceded vast powers to a small group of land owners.

[230] In the beginning of the 19th century, in response to Napoleon's invasion of the Iberian peninsula, the Portuguese monarchy relocated to Rio de Janeiro. In 1815, the Crown proclaimed the joint Kingdom of Brazil and Portugal. Not until 1820 did the Portuguese finally persuade the reluctant King Joao to return to Portugal, but he left behind his son Pedro, as regent. In 1822, Pedro declared Brazilian independence and Portugal peacefully acquiesced.

[231] The Portuguese term *municipio* is usually translated as municipality, but its administrative characteristics are actually closer to a county. This is because *municipio* is not simply a city, but also includes the rural territory surrounding an urban area.

[232] Herman James (1923), *The Constitutional System of Brazil*, p. 5

[233] Fernando Dias Menezes De Almeida (1991), *Competencias na Constituicao*, p. 24

[234] German Basic Law, Arts 70-74

or regulate radio and television broadcasting, the post office, and the federal police.[235] Article 22 grants the federal government another broad array of powers specifically labelled "exclusive", although some of these powers overlap or repeat powers delegated in Article 21.[236] In twelve areas, the federal government, states, federal district, and municipalities have joint powers,[237] and in sixteen areas, the federal government, states, and the federal district have concurrent legislative authority[238]. In the area of concurrent authority, the federal government's power is limited to establishing general rules[239]. In the absence of federal legislation, the states may freely regulate an area, though the supervenience of a federal law on general rules suspends the effectiveness of state legislation to the extent that it contravenes federal law. Whenever the federal government has adopted general rules, the states may only adopt supplementary legislation. Nevertheless, the Brazil Constitution assures the political, legislative and financial autonomy to the municipalities,[240] and grants them the power to legislate about subjects of local interest and to supplement federal and state legislation.[241]

Even though Brazil's highest court, the Supreme Federal Tribunal (*Supremo Tribunal Federal*) decides a large volume of cases,[242] the tribunal is not the final arbiter of the balance of power between the states and the national governments. That balance is determined by complex political negotiations among the executive, the state governors, and the state's representatives in the national Congress.[243] However, the federal tribunal frequently strikes down state and municipal constitutional or statutory provisions because of conflicts with the federal constitution, federal law, or invading powers delegated to the federal government.[244] It also resolves conflicts involving state governors and their legislatures.[245]

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[235] Constitution of Brazil, 1988, Art. 21

[236] These include the powers to legislate with respect to civil, commercial, penal, procedural, electoral, agrarian, maritime, aeronautical, space and labour law; to regulate foreign and interstate commerce, ports and navigation, postal service, foreign exchange, expropriation, mining, informatics, national transportation policy, naturalization, social security, nuclear activities and commercial advertising. With respect to article 22 powers, Congress may adopt complimentary laws (approved by an absolute majority) authorizing the states to legislate on specific matters in these areas of exclusive federal competence

[237] Ibid, Art. 23

[238] Ibid, Art. 24

[239] Ibid, Art 24 (XVI), s. 11

[240] Ibid, Arts 18, 29, 30, 31 and 34.

[241] Ibid, Art 30(I) & (II)

[242] Keith S. Rosenn (2000), *Judicial Review in Brazil: Recent Developments under the 1988 Constitution*, p. 291

[243] David J. & Scott M.(2004), "Strong Federalism, constraints on the Federal Government, and Economic Reforms in Brazil" in Federalism and Democracy in Latin America, p. 85-125

[244] In *Representacao* No. 1.153-RS, Decision of May 16, 1985 (striking down a state law regulating toxic chemicals for agricultural use for federal preemption) the tribunal stated:

"The States are prohibited from taking any measure that prevents, makes difficult or harm interstate commerce, whatever the means used and regardless of the motives.

NIGERIA

The Federal Republic of Nigeria is a government put in place by the Constitution of the Federal Republic of Nigeria. Section 1(1) of the 1999 Constitution of the Federal Republic of Nigeria states:

"The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution"

The Federal Republic of Nigeria comprises 36 confederate states,[246] each headed by a Governor. The power of the Federal Government is divided into Legislative, Executive and Judicial power.

The Legislature

The Federal Republic of Nigeria has a bicameral legislature comprising the Senate and the House of Representatives.[247]

The Senate is made up three Senators each State and one Senator from the Federal Capital Territory, Abuja.[248] Senators are elected to represent Senatorial Districts as designated by the Independent National Electoral Commission[249] for a four year period[250] and the Senate has to sit for a period of not less than one hundred and eighty one days in a year.[251] It is presided over by a President and a Deputy President elected by the members of the Senate from among themselves.[252]

The House of Representatives consists of three hundred and sixty members representing constituencies of nearly equal population and no constituency falls within more than one State.[253] Representatives are elected to represent constituencies as designated by the Independent Electoral Commission[254] for a four year period[255] and the house must sit for

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According to the Constitution, Brazil is one single market, governed exclusively by federal legislation."

[245] Miyuki Sato (2003), "Judicial Review in Brazil: Nominal and Real" in Global Jurist Advances, p. 15

[246] Constitution of the Federal Republic of Nigeria, 1999, s. 3(1) states:
"There shall be 36 states in Nigeria, that is to say, Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara."

[247] Ibid, s. 47

[248] Ibid, s. 48

[249] Ibid, s. 71(a)

[250] Ibid, s. 64

[251] Ibid s. 63

[252] Ibid, s. 50(1)

[253] Ibid, s. 49

[254] Ibid, s. 71(b)

[255] Ibid, s. 64

at least one hundred and eighty one days in a year.[256] The House of Representatives is presided over by a Speaker and Deputy Speaker elected by members of that House from among their members.[257]

Collectively, the National Assembly makes Laws for the peace, order and good government of the federation.[258] A bill to be enacted into law may originate from either house and shall not have been effectively enacted unless the consent of both houses has been obtained.[259] However, there are exemptions in regard to an appropriation bill, supplementary appropriation bill and a bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof. Where both houses fail to agree in regard to either of the bills, the bill is presented to a joint finance committee for examination with a view to resolving the differences between the two houses. Where the joint finance committee fails to resolve the differences, the bill is presented to a joint session of both the houses and the bill is thereafter presented to the President of the Federal Republic for assent.[260] Both the houses regulate their own procedure including the procedure for summoning and recess.[261] Senators and Representatives receive such salary and other allowances as determined by the Revenue Mobilisation Allocation and Fiscal Commission.[262] Where a petition for loss of confidence is signed by more than one half of the registered voters in a senatorial district or constituency against the senator or representative respectively, such a senator or representative shall be recalled.[263]

Each State has a House of Assembly consisting of three to four times the number of seats that the State has in the House of Representatives[264]. The House of Assembly makes laws applicable in the respective State. A Bill to be enacted into law emanates from the House of Assembly and is assented into by the Governor.[265]

The Executive

The Executive power of the federal Republic of Nigeria vests in the President who is the Head of State, the Chief Executive of the Federation and commander-in-Chief of the Armed Forces of the Federation.[266] A presidential candidate is deemed to have been duly elected where the candidate both scores majority votes at the election and at least a quarter of votes cast in each of the two-thirds or more of the confederate states and the Federal Capital Territory, Abuja.[267] In default of a duly elected president a first run-off election is held between the first two presidential candidates. If after the first run off

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[256] Ibid, s. 63
[257] Ibid, s. 50(1)
[258] Ibid, s.4
[259] Ibid, s. 58
[260] Ibid, s. 59
[261] Ibid, s. 60
[262] Ibid, s. 70
[263] Ibid, s. 69
[264] Ibid, s. 90
[265] Ibid, s. 100
[266] Ibid, s. 130
[267] Ibid, s. 134

election, none of the candidates both scores majority votes at the election and at least a quarter of votes cast in each of the two-thirds or more of the confederate states and the Federal Capital Territory, Abuja, a second run-off election is held and the candidate that scores the highest number of the votes cast is deemed elected President.[268]

A candidate running for Presidential Office nominates a person from his/her political party as the Vice-President, and the person so nominated is deemed elected as Vice-President upon successful election of the Presidential Candidate.[269] Both the President and the Vice President may be removed from office for gross misconduct in the performance of the functions of his/her office vide a successful petition signed by more than one third of the Members of the National Assembly,[270] and a successful resolution supported by at least two thirds majority of the members of the executive council of the Federation that the President and the Vice-President are incapable of holding their respective offices.[271]

Other than the Vice-President, the President is assisted in the exercise of his/her mandate by the Ministers of the Government of the Federation. The Ministers are appointed by the President upon confirmation by the Senate.[272] Each confederate State is headed by a Governor who is the Chief Executive of the respective state. The executive Powers of the State Government are exercised as not to impede or prejudice the exercise of executive powers of the Federation; endanger any asset or investment of the Government of the Federation; or endanger the continuance of a Federal Government in Nigeria.[273] The Governor is assisted in his/her mandate by a Deputy Government who essentially is a running mate during the election of the Governor, and Commissioners of State.[274]

The Judiciary

The judicial power of the Federal republic of Nigeria vests with the courts established by the Federal Constitution.[275] The highest court of Jurisdiction in the federal government is the Supreme Court of Nigeria consisting of the Chief Justice and such number of Justices of the Supreme Court not exceeding twenty-one as prescribed by the National Assembly.[276] The members of the Supreme Court are appointed by the President on approval of the Senate. The Supreme Court has original jurisdiction in respect of disputes between the Federation and a confederate State or between confederate States,[277] but has no original jurisdiction in respect of criminal cases. The Supreme Court has appellate

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[268] Ibid, s. 134(5)
[269] Ibid, s. 142
[270] Ibid, s. 143
[271] Ibid, s. 144
[272] Ibid, s. 147
[273] Ibid, s. 5(3)
[274] Ibid, s. 192
[275] Ibid, s. 6
[276] Ibid, s. 230
[277] Ibid, s.232

jurisdiction in respect of appeals from the Court of Appeal.[278] The Chief Justice has the power to make rules regulating the practice and procedure of the Supreme Court.[279]

The President of the Court of Appeal comprises the president of the court of Appeal and such justices as prescribed by the National Assembly. The appointment of the members of the Court of Appeal is done by the President of the Federal Government on approval by the Senate.[280] The Court of Appeal has original jurisdiction in respect of disputes concerning election of the President and the Vice-President and vacancy in the office of the President or the Vice President.[281] The Court of Appeal has appellate jurisdiction in respect of appeals emanating from the Federal High Court, the High Court of the Federation Capital Territory, Abuja, High Court of a state, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a state, Customary Court of Appeal of a state and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly.[282]

The Federal High Court comprises a Chief Judge of the Federal High Court and such number of judges of the Federal High Court as prescribed by the National Assembly. The members of the Federal High Court are appointed by the President on recommendation of the National Judicial Council and with the approval of the Senate.[283] The Federal High Court has jurisdiction in respect of the fiscal matters (revenue) of the federation and inter-financial institutions disputes,[284] as well as issues relating to immigration, diplomatic relations and citizenship. Other Courts include the High court of the Federal Capital Territory Abuja; Sharia Court of Appeal of the Capital Territory, Abuja; Customary Court of Appeal of the Federal Capital Territory, Abuja, all of whose members are appointed by the President on approval of the Senate. The Courts have supervisory and appellate jurisdiction in their respective sectors.[285] Each State has State Judicature with jurisdiction as conferred by the State Assembly.

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

A federation for the East African Community is tenable. A study of the Treaty for the Establishment of the East African community reveals that it is not a sufficient document to serve a template for designing governance structure for the East African Federation. This for instance reveals on the all-overarching Summit which is essentially an assembly of different Heads of States obliged to insubordinate Community interests to their respective national interests. The East African Court of Justice is limited to litigating on matters of the interpretation of the Treaty for the East African Community and is not necessarily in touch with the actual disputes occurring within the partner States of the

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[278] Ibid, s.233
[279] Ibid, s. 236
[280] Ibid, s. 237
[281] Ibid, s. 239
[282] Ibid, s. 240
[283] Ibid, s. 250
[284] Ibid, s. 251
[285] See generally the Constitution of the Federal Republic of Nigeria, Chapter on Judicature.

East African Community. The requirement to domesticate the Treaty for the East African community only confirms the insubordination of the Treaty to national legal regime. The need for a Constitution for the East African Federation in place of the Treaty for the East African Community is without ado.

A study of the constitutional power arrangements within the East African Community States reveals the similarities in the constitutional provisions and a number of reconcilable divergences. This advantage can reliably hasten the realisation of the federal government for the East African Community. Because federation is not a new concept in the world, a comparative study of a number of federal jurisdictions such as the USA, Germany, Brazil and Nigeria provide a good insight and alternatives as to the working of federal governments, and from which the East African Community can choose.

RECOMMENDATIONS

The federal government for East African Community should be founded on a Constitution that designs the structure of the federal government. The federal government has to be responsive to the interests of the governed by giving laws that comport with the diversity of places and of mores of the individual sovereign states. Further, the federal government has an obligation to regulate only the principal actions of social existence; every detail of the actions should be abandoned to individual state legislations. More generally, the federal constitutional arrangement should be in harmony with the particular Constitutions of each of the East Africa Community states. The following sample federal structure best suits the East Africa Community.

On the Legislature

The formation of the Federal Legislature should take into account the fact that EAC states have dissimilar population sizes, cultures and economic prowess. The resultant legislature should therefore reflect potential disparities without compromising the interests of any one state; no state should abdicate its existence in whatever concerned federal sovereignty.

Nature of the Legislature: The EAC should have a bicameral legislature comprising the Senate and the House of Commons. Both Houses should have equal law making powers and a law should only be deemed enacted by Parliament where both Houses concur. The Senate should have EQUAL state representation while the House of Commons should have PROPORTIONAL representation. The disparities in representation at the House of Commons should be in regard only to the population sizes of the constituent states. In effect, the House of Commons should act as the guardian of the uniqueness of the constituent states thus preserving national identities and independence.

Composition:

The House of Commons should comprise such directly elected Commoners in the constituent states in proportion to the population of the States. Each commoner should represent a geographical boundary known as a 'Ward' made up of one million permanent residents. For purposes of effecting the foregoing requirement, regular national consensus should be carried out after every five years to review the geographical boundaries of Wards. Voting for a Commoner in a Ward should be by way of universal adult suffrage.

Each constituent national state Legislature should elect five Senators, not necessarily from among the members of the national legislature to be sent to the Senate. Where an elected Senator was originally a member of the national legislature, such a Senator should forfeit his/her seat in the national legislature.

The Senate should be presided over by the President of the Senate assisted by the Deputy President of the Senate elected by majority Senators. The House of Commons should be presided over by the Speaker assisted by Deputy Speaker of the House of Commons both elected by majority Commoners. Where the President of the Senate or the Speaker of the House of Commons is elected from among the members of the Senate or the House of Commons respectively, such a President or Speaker should lose his/her erstwhile seat in the respective house and a by-election should be held to replace him/her. Membership to the Senate should be incompatible with the membership to the House of Commons and vice-versa.

Tenure of Office: The mandate of Senators should last for five years while the mandate of Commoners shall last for three years. Members of both Houses should be eligible for re-election.

Origin of Bills: Bills to be enacted by Parliament should originate from either Houses of Parliament.

Procedure of exercising mandate: Either House should have an internal self regulation by way of standing orders. In a joint Parliamentary session presided over by the President or Deputy President of the Senate, the Senate standing orders should be used. In a joint Parliamentary session presided over by the Speaker or Deputy Speaker of the House of Commons, the House of Commons standing orders should be used.

Powers of the Legislature:
The House of Commons should have law making powers in matters of defence, foreign policy, fiscal and monetary policy and matters touching on the perpetuation of the federation, and the power to concur with the laws in respect of such matters where the enacted Bills originate from the Senate. The House of Commons should also have the power to determine what constitutes political offences.
The Senate should also have the power to concur with the laws proposed by the House of Representatives in matters of defence, foreign policy, fiscal and monetary policy and matters touching on the perpetuation of the federation before they can be effected. The Senate should also have the power to consent to proposed political offences referred to it by the Senate. Further, the Senate should have powers to concur to the treaties concluded by the President of the Federal Government before they can be effected. Moreover, the Senate should have powers to approve of Federal Government policies before they can be effected.

Laws touching exclusively on any one constituent State of the federation shall be the utmost preserve of the National Assembly of the Confederate State.

Joint Parliamentary Assembly
Where the House of Commons and the Senate fail to concur on a particular bill of Parliament, a joint Parliamentary Session should be held between the two Houses to elect a sub-committee only for the purposes of ironing out the different opinions between the Houses. If no concurrence is still not arrived at, the Bill should deemed defeated However, in regard to Appropriation Bill, Supplementary Appropriation Bill, and a Bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof, an effort should be made to avoid acts that would paralyse the effective operations of the Federal Government.
A joint Parliamentary Assembly should be presided over by the President of the Senate, in the absence of whom the Speaker of the House of Commons presides, in the absence of whom the Deputy President of the Senate presides, in the absence of whom the Deputy Speaker of the House of Commons presides.

National Assemblies:
Each confederate State should have a National Assembly that enacts such laws as to apply within the boundaries of the Confederate State, and to check on the Excesses of the Governor.
The National Assembly should approve major government appointments by the respective President.
Where a conflict arises between State Laws and Federation laws, Federation laws should take precedence.

On the Executive
The Executive should be headed by the Federal President whose honour, goods, freedom and life answer directly to the population of the EAC. The Federal President of the EAC should not be completely independent as the Legislature, more particularly the Senate, should oversee his/her relations with foreign powers as well as the manner of Federal Government appointments so that the President of the Federal Government can neither be corrupted nor corrupt. More particularly:
Election of the Federal President: The mode of electing the Federal President should be informed by the fact that using direct adult suffrage voting in a federation has irreconcilable weaknesses. Such a system is riddled with inordinate delays and manipulations and only ensures that local influences are more developed. For this reason, the Federal President should be elected by entities referred to as "Electoral Colleges" made up of 'Electors'. Each Electoral College should represent a geographical region made up of 100,000 registered voters. Each Electoral College should elect one Elector, who eventually votes to elect the Federal President. To avoid turning Electors into objects of manoeuvres and playthings of intrigue, the Electors should remain unknown in the crowd until the day they elect the Federal President and appear only for an instant to pronounce their decree. All Electors should vote on one fixed day but without being gathered together. The votes of the Electors should then be counted by the Chair of the *Federal Electoral Commission* in the presence of both the Federal Senate and the House of Commons. If none of the Federal Presidential Candidates garners more than half the votes of the total number of the Electors in the Federation, the House of Commons should

proceed immediately by itself to the election of the Federal President. The Commoners should only elect one of the first two Federal Presidential candidates who obtained the most votes of the Errands.

Tenure of Office: The Federal President should be elected for a term of five years renewable only once.

Suspensory Veto: The Federal President should have the power to withhold signing a law passed by both Houses of Parliament until the Houses reconsider it, taking into account the veto message by the Federal President, and if the Houses, each by simple majority, re-pass the law after considering the veto message, the law should take effect.

Control of the Exercise of Power by the Executive: The Senate should exercise controls in the exercise of power by the Federal President and the Executive. The limitation should be in such a way that the Senate does not force the Federal President to act in a particular way, nor share the Executive power with the Federal President. The limitations should be as follows:
The Senate should prescribe the salary payable to the Federal President, other members of the Executive and top Federal Government officials.
The Senate should have the powers to approve the Treaties entered into by the Federal President.
The Senate should have the power to approve the names designated by the Federal President for high profile Government appointments.
The limitations are informed by the need to ensure that having come to be the Head of Government, the Federal President can distribute to his/her friends neither much power nor wealth nor much glory; his/her influence in the Federation should remain too feeble for opposing factions to see their success or their ruin in the Federal President's elevation to power.

Powers of the Federal President: The Federal President should be the head of the entire Federation and the Federal Government. He/she should be the Commander-in-Chief of the Armed Forces and should have the powers to declare state of emergency, grant prerogatives of mercy, designates names for high profile Government appointments, enter into treaties with other foreign Governments, prepare Federal Government policies on matters of defence, foreign policy, fiscal and monetary policy and sustenance of the Federation.

Federal Vice-President: A Federal Presidential candidate should nominate from his/her political party or from a list of independents where the Federal Presidential candidate is an independent, a running mate who should be deemed elected as Federal Vice-President upon the successful election of the Presidential candidate as Federal President.

Ministers: The Federal President should have the power to appoint Minsters, who should members of the Cabinet in addition to the Federal Vice-President and the Federal President. The Federal President should chair the Cabinet. The appointment of the Ministers should be approved by the Senate.

Membership to the Executive shall be incompatible with the Membership to either or both Houses of the Legislature.

State Government:
Each confederate State should have an Executive arm of Government for that State headed by a President, assisted by Vice-President.
A person running for the position of President should appoint a running mate from the President's political party or from a list of independents where the candidate for President's position is an independent and the running mate should be deemed validly elected upon the successful election of the President.
Other members of the state Cabinet should include the Ministers of State appointed by the President with the approval of the National Assembly.
For avoidance of doubt, the President should be the equivalent of the current EAC states Presidents, the Vice-Presidents are equivalents of the current EAC states Vice-Presidents, and the Ministers of State are the equivalents of the current EAC Government Ministers.
The mandate of the State government should be determined by the respective State Constitution and laws enacted by the respective House Assembly.
The executive power of the of the State Government should be exercised in a manner that does not impede or prejudice the exercise of Executive power by the Federal Executive, endanger any assets or investment of the Government of the federation, or endanger the continuance of the federal government.

On the Federal Courts
The Federal Judicial Power should apply the laws proposed by the House of Commons and Approved by the Senate or vice versa as well as the Federal Constitution and should decide prior carefully defined questions of general interest. More particularly:
Reservoir of Judicial Powers: All the judicial power of the Federation should vest with the Courts established by the Federal Constitution.
Hierarchy and Jurisdiction of the Courts:
The Highest Court of Jurisdiction of the federation should be the Supreme Court of East Africa made up of the President of the Supreme Court and such number of Justices as determined by the Senate. The Supreme Court should have original and final jurisdiction in disputes related to the continuance of the federation or confederate inter-state disputes. It should have appellate jurisdiction from the Court of Appeal of East Africa. Other courts should include
The Court of Appeal of East Africa comprising the Chief Justice and such justices as determined by the Senate, and with an original jurisdiction in all election petitions of the Federal Government. The Court of Appeal of East Africa should have appellate jurisdiction in respect of decision cases decided by the High Court for East Africa.
The High Court for East Africa comprising the Federal Judge and such number of Justices as determined by the Senate. The High Court for East Africa should have original jurisdiction in respect to fiscal matters of the Federation (Revenue), inter-financial institutions disputes, issues relating to immigration, diplomatic relations and citizenship

Specialised Courts There should be established specialised Courts for the Federation made up of such Justices as the Senate may determine, dealing with a number of sectoral issues. The Specialised courts should include but not limited to those dealing with customary laws, Islamic law and Martial law. The specialised Courts should have original jurisdiction in respect of the sectoral issue in the Federation. An appeal from the Specialised Courts should lie with the High Court for East Africa.
Subordinate Courts: The Senate should have the power to establish such subordinate courts applying federal law as it deems appropriate.
All Justices of the Superior Courts and the Specialised Courts should be appointed by the President of the Federal Government on approval by the Senate.
Tenure of Office: All Justices of the Superior Courts and Specialised Court should be appointed for a non-renewable term of seven years and should only be removed from office before the expiry of their tenure by a resolution supported by two third majority of the Senate for incapacity to perform his/her functions or gross misconduct as defined by federal laws. In case of death, resignation or removal of a Justice of Superior Court or Specialised Court before the expiry of the tenure as hereinabove specified, the President should appoint such temporary Justice of the Superior Court upon approval by the Senate.

Justice System: The Justice System for the federation should be conscious of the different justice systems obtainable in the East Africa Community

State Judicial System: Each Confederate State should retain its obtaining Justice System as per the respective State Constitution and the laws passed by the National Assembly, provided that the administration of the Justice system by the State should not impede the Justice system under the Federal laws.

Administration of Elections
All elections in the Federal Government should be administered by an independent body referred to as the *Federal Electoral Commission.*
The Commission should be chaired by a Superior Court judge of not less than fifteen years standing. The Chair of the Commission should be assisted by a Vice-Chair and a Secretary, provided that not any two holders of the position of the Chair, Vice-Chair and the Secretary should come from the same confederate state. The Senate should appoint such members of the Commission to hold the position of the Chair, Vice-Chair and the Secretary.
The members of the Electoral Commission should be nominated by House of Assemblies of the confederate states and appointed by the Senate, provided that a 15 member Interim Federal Electoral Commission should be put in place for purposes of facilitating elections of the initial Federal Government and the mandate of the Interim Federal Electoral Commission ceases upon the appointment of the Federal Electoral Commission by the Summit.
The number of Commissioners in the Federal Electoral Commission should be determined by the Senate.

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