The East African Political Federation: Progress, Challenges and Prospects for Constitutional Development

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Contents *

1.0 Introduction **1**

1.1 Background 2

2.0 East African Political Federation **2**

2.1 Political Federalism 2
2.2 The Political Federation: Which Model? 3

3.0 The State of Constitutional Development (2005 to present) **4**

3.1 Kenya 4
3.2 Tanzania 6
3.3 Uganda 7

4.0 What then is the role of the EAC in advancing constitutionalism? **8**

5.0 Challenges and Prospects for constitutionalism within the context of a fast tracked political federation **10**

6.0 Conclusion **12**

7.0 Notes **13**

8.0 References **14**

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1.0 Introduction

The Treaty establishing the East African Community (EAC), which was ratified in November 1999 and came into force in July 2000 was a tri-partite initiative to revive cooperation between Uganda, Kenya and Tanzania that was disbanded in 1977. The Treaty is a culmination of regional efforts to resurrect cooperation in the planning and implementation of regional programmes for integrated development. The Treaty establishing the EAC has the hallmarks of a constitution including a preamble that highlights the historical and political context, the aspirations of the people and the fundamental principles and rules that define the powers of the various organs of the Community.

The EAC Treaty is unique in Africa and perhaps in the world because its objectives are premised on the development of policies and programmes specifically aimed at widening and deepening cooperation among the three partner states in the political, economic, social and cultural fields. For example, the objectives of the Economic Community of West African States (ECOWAS) are to promote cooperation and integration in economic, social and cultural activities, while the cardinal objective of the Southern Africa Development Community (SADC) is cooperation within an economic and social framework. Other arrangements elsewhere have purely economic objectives, such as the North America Free Trade Arrangement (NAFTA).

In accordance with the provisions of the EAC Treaty (Article 5, Paragraph 1), the partner states undertook to establish among themselves a Customs Union, a Common Market, a Monetary Union and, ultimately, a Political Federation. The purpose of this unique arrangement is to strengthen and regulate the industrial, commercial, infra-structural, cultural, social, political and other relations of the partner states so that there is *accelerated*, harmonious and balanced development with sustained expansion of economic activities that will be shared equitably. [i]

To-date, the Protocol for the Establishment of the Customs Union is operational. After three hiccups the Heads of Summit signed the protocol in March 2004. The protocol came into force on 1st January 2005. Currently preparatory work is underway for commencing work on the debating a Concept Paper on the Establishment of a Common Market where there shall be free movement of labour, goods, services, capital and the right to establishment and residence.

The operational principles of the EAC are two-fold and it is the second principle that speaks to the theme of this symposium today – **"The Future of East African Federation: Progress, Challenges and Prospects for Constitutional Development."** The second operational principle under Article 7 of the Treaty states, and I quote, " The Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

1.1 Background

Article 7 of the EAC Treaty, which highlights the operational principles of the community, provides for partner states undertaking to abide by the principles of good governance, adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.[ii] Institutions such as ECOWAS [iii] and SADC support democratization within their respective sub-regions by demonstrating their opposition to armed conflicts and dictatorships and by expressing support for democratic transitions and constitutionalism. What has been the stand of the EAC on these issues? What is the role of the EAC in promoting constitutional development in the partner states? What mechanisms are in place at the EAC to monitor the adherence to Article 7 of the Treaty by the partner states? Why is it important for the EAC to have monitoring mechanisms in place with indicative criteria and indicators or benchmarks for democratic practices, the rule of law, the observance of human rights, the functioning of electoral processes and the independence of the judiciary, for example? Are there any indications that this role or function has been formalized and institutionalized? Should the EAC take on the 'watch dog' role and name and shame partner states that fail to maintain minimum standards?

The media have quoted the Secretary General of the EAC expressing his opposition to President Museveni's bid for a third term in office.[iv] It is not clear, however, if the views expressed were the views of an individual citizen of East Africa or if they were the official views of the EAC.

In total, there is little evidence of the EAC having taking a formal stand and making pronouncements on the performance or non-performance of the partner states on constitutionalism, good governance and democratic development.

2.0 East African Political Federation

Whereas Article 5 of the EAC Treaty clearly provides for the establishment of a political federation there is no subsequent article that elaborates on the **provisions** for the establishment of a political federation. Therefore, there are no answers to several key questions related to the establishment, operation and growth of an East African Political Federation. What is a political federation? What does it entail in the East African context? What are key pre-requisites for establishing a political federation? What mechanisms are essential for forging a political federation? What is the role of the EAC? (More on this later)

2.1 Political 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.[v] Federation entails the surrender of some powers by federating units to the center and vice versa. Where a federation is constructed of states that are already sovereign (as is the case for Uganda, Tanzania and Kenya) it requires them to surrender some of their sovereignty.
Federalism is a political system under which 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-

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

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.[viii]

John. S. Mill identifies three conditions for a federation to succeed. First, 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. [ix] Do we have a semblance of a hegemonic state in East Africa? Are the partner states on similar economic, social, cultural and political levels? If the responses to these three questions are in the negative then it is essential and critical for initiatives that attempt to address these questions be undertaken for risk analysis and putting in place mechanisms for risk management.

On an optimistic note federalist theorists argue that federalism creates a robust constitutional system that anchors pluralistic democracy. They also argue that it enhances democratic participation through providing dual citizenship in what they call a compound republic.[x]

2.2 The Political Federation: Which model?

What type or what political federation model are East Africans going to opt for? Will it be a locally crafted/indigenous model? What are the lessons, if any, to be drawn from using African experiences? Are there lessons for us from the United States, Swiss, or Australian models and experience? But more importantly, **how and when** are we going to get going on further consultations, debating, dialoguing, submitting memoranda, collecting the views of the people and then synthesizing the numerous conceptions and perspectives that may emerge through what I think should be a more broad-based all-

inclusive consultative process – a process that will enable us achieve consensus on a plausible model that is especially more important because January 2010 is only five years away.

You will recall that the EAC Committee on Fast Tracking the East African Federation, in its report presented to the 6th Summit of the Heads of State in November 2004, recommended January 2010 as the time when the Federation of East Africa will be launched and the Federal President and his/her Cabinet, Members of the Federal Parliament and the Chief Justice and Judges of the Federal Supreme Court sworn into office. [xi]

The Committee suggested that the period between 2010 and 2012 be considered as the Consolidation Phase of the Federation of East Africa. During this period it recommended that the Presidency rotate between the sitting Presidents of the partner states. It further suggested that an enlarged Federal Parliament be elected along the lines of the method used in electing the current East African Legislative Assembly or as may be recommended by the Constitutional Commission. It also suggested that from 2010 to 2012 the Electoral Commission and other institutions provided for under the Federal Constitution should be put in place. Federal Constituencies should also be delineated and between January and March 2013, elections for the President and the Federal Parliament should be held.[xii]

Hon. Amos Wako who was the Chair of the Fast Track Committee stated that the road map is indicative and emphasized that with adequate political will and resources the time frame provided for in the road map could be compressed to enable the East African Federation to be realized much earlier. [xiii]

I wonder because even though a few East Africans were consulted the majority was not. I was taken aback by the recent pronouncement by President Museveni and his guest President Kikwete because I did not hear any mention of consulting the people. Where are the people in this whole set up? Where are the **peasants?** Why are citizens' rights being appropriated? Why is the African Charter for Popular Participation in Development and Transformation being set aside or forgotten?

If the political federation is to be successful, it requires the participation and genuine ownership by the people through their institutions of choice. The ultimate decision of when and how to federate must be put to East Africans in a referendum to endorse or reject a widely negotiated Federal Constitution. [xiv] This has to be preceded by wide consultation.

3.0 The State of Constitutional Development in East Africa (2005 to date)

A review of the three East African partner states in 2005 and part of 2006 highlights constitutional developments – both progressive and retrogressive, which have implications, some serious, for the advancement and launch of a political federation in 2010.

3.1 Kenya

The constitutional making process continues to be at the center of the democratisation process in Kenya. At the opening of the ninth session of parliament in March 2005 there was hope of reaching a consensus on the contentious issues that had previously held up the enactment of a new Kenyan constitution. The key issues in the 'Bomas Draft' were the proposed structure of the executive, the devolution of presidential powers, and the establishment of Khadhi Courts and the most contentious issue was the type of government system – a choice between a parliamentary system (UK-with the PM as head of government) or a presidential system (where a president is head of state and of government.).

The Multi-Sectoral Forum on the constitution met in February to chart the way forward on the stalled constitutional review process. The forum was comprised of over three hundred delegates from different sectors and regions of Kenya. The forum disagreed with the government road map that was published in November 2004 which was based upon the 2004 Consensus Act, and which gave parliament powers to amend the draft constitution. The Forum argued that parliament did not have the powers to amend the constitution and that parliament had only room to endorse the constitution. The Forum called for the final draft constitution to be presented for a referendum in order for Kenya to have a new constitution by 1st August 2005.

Charles Keter, a Kenya African National Union (KANU) Member of Parliament tabled a Constitutional Amendment Bill which sought to repeal sections 58 and 59 of the Constitution and replace them with new sections 58, 59 and 59 (a). The proposed section 58 gives the National Assembly the power to determine its parliamentary calendar. The

proposed section 58 stated, "parliament shall stand prorogued on the 30th November in every year and the new session shall commence on the first Tuesday of February in the following year." Further, parliament shall stand dissolved on the 30th November of the fifth year after parliament meets after a General Election and all business of the National Assembly shall lapse. It is felt that the proposed sections 58 and 59 are democratic and necessary to safeguard the independence of parliament. The controversial part of Keter's Bill is the proposed Section 59 (a), which among other things, states that if the National Assembly passes a resolution that is supported by the votes of a majority of all the members of the Assembly declaring that it has no confidence in the Government of Kenya, the President shall be deemed to have resigned from his office. During the consequent vacancy in the President's office, the Speaker shall discharge the functions of the office of the President with some exceptions such as power to appoint or remove cabinet ministers and run for presidential elections. The Keter Bill sought to give members of parliament a definite five-year parliamentary term, and control over its business; section 59a) sought to create a mechanism for members of parliament to be able to shorten the President's five-year term in office; to strip the Vice President of the right under Section 6 (2) to exercise the functions of President in the event of that office falling vacant; and to give Members of Parliament the power to be able to remove the president by a majority vote of 65 percent, through a vote of no confidence.

An on-going crisis in leadership in the National Rainbow Coalition (NARC), coupled with factionalism, continued to deter meaningful progress in democratic governance. The inability of the government to hold regular and constructive parliamentary group meetings was one of the key factors fueling divisions within the party. [xv] At another level, the continued failure to control corruption acted as a powerful impediment to social and economic growth.

In March 2005 two bills – the Constitution of Kenya [Amendment] Bill and the Constitution of Kenya Review [Amendment] Bill, were framed setting out a new programme of constitution review. In July 2005 the Constitution of Kenya (Amendment) Bill was enacted with provisions for a mandatory referendum through which the people of Kenya were to approve their constitution. The Act gave parliament the powers to effect changes to the

Bomas draft. Parliament finally passed an "amended" Bomas Draft – the "Wako Draft" - which was subsequently assented to by the President and voted for in a referendum that was held on 21 November 2005, the outcome of which was a rejection by a majority of 58% of the votes cast. The referendum split the nation on ethnic lines and deepened the rift within the executive.

On 23 November 2005 President Kibaki sacked his entire cabinet including assistant ministers and on 24 November he suspended Parliament at a time when there were calls for his government to resign on the grounds that the referendum results were a vote of no confidence in the government.

On the foreign affairs front there were fears of an impending major clash of interests with the United States following strong indications that the Kenyan government would not sign the Bilateral Immunity Agreement which Uganda, the only government in the East African Community trade bloc had signed. The Agreement was meant to shield United States soldiers from falling under the jurisdiction of the International Criminal Court (ICC). Kenya's refusal was strengthened by the fact that it had previously signed the Rome Statute.[xvi]

We also do recall the raid by security personnel on the headquarters of The Standard Group and the burning of newspapers due for circulation as well as the shutting down of the KTN television station. This event was preceded by the Anglo-Leasing scandal.

3.2 Tanzania

With presidential elections slated for October 2005 the media, civil society, political parties, the business community and the government all gave considerable attention to electoral processes. The hegemony and supremacy of Chama Cha Mapinduzi (CCM) as a political party both on Tanzania mainland and Zanzibar, was challenged as the race for presidential nominations heated up in what was described as "CCM's fiercest contest ever" [xvii]

In April 2005, in an undemocratic move the Tanzania government suspended the registration of new parties, on the premise that it was checking the mushrooming of weak

parties. The government also used this to buy more time to accommodate amendments to the 1992 Political Parties Act, ahead of the October general elections.[xviii] According to Prof. Mwesiga Baregu, Lecturer of Political Science at University of Dar-es-Salaam, "the decision will deny people the right of socialization, which is a basic human right" [xix]

In Zanzibar election related violence took center stage in the build-up to the presidential elections. Violence gripped Zanzibar's voter registration exercise, and twelve Civic United Front (CUF) members were injured when youths, wielding pangas, iron bars and bicycle chains attacked two registration centres in Zanzibar municipality. [xx] This violence threatens the CCM-CUF peace accord – the *Muafaka*. The death of CCM's Ahmed Diria, a veteran diplomat and politician who had been appointed to the powerful portfolio of the Minister of State for Constitutional Affairs and Good Governance, and a member of both the Union Parliament and the Zanzibar House of Representative, further complicated Zanzibar's volatile politics which is in serious need of political maturity, experience, and diplomatic wisdom.[xxi]

The Zanzibar Electoral Commission's decision to set elections in Zanzibar on the same day resulted in an immediate protest by CUF citing breach of Article 27(3) of the Zanzibar Constitution. Critics of the government warned that the choice of election date was a CCM ploy to plunge the island into a constitutional crisis and hijacking the elections.[xxii]

Some issues that form the basis on which the 'Union' between Tanzania mainland and Zanzibar was created still remain unresolved and if not addressed may threaten peace and stability.

3.3 Uganda

In preparation for the political transition from the Movement political system to a Multi-Party political system, the government of Uganda finally presented the political road map leading to the 2006 elections to parliament in February 2006. Many observers decried the prolonged delay as well as government's proposal to present the Bill as an omnibus. [xxiii] The donor community also expressed their concerns over the slow pace of the political transition process. [xxiv]

Key benchmarks in the road map were the 2005 Constitutional Amendment Bill and the 2005 Referendum Bill to decide the political system under which Uganda is to be governed. However, by March 2005 several laws that had to be amended in order for presidential and parliamentary elections to take place had not been amended. These were the Political Parties and Organisations Act (2004), the Police Act, the Presidential Elections Act, the Parliamentary Elections Act, the 1997 Local Governments Act, The Electoral Commission tAct and the Administration of Parliament Act.

On April 9, 2005 the Justice and Constitutional Affairs Minister tabled the Constitutional Amendment Bill (2) 2005 that sought to introduce the regional tier, articles that require ratification by two thirds of district councils and support by two thirds of the members of parliament at the second and third reading. The Minister also tabled the Constitutional Amendment Bill (3) 2005 that sought to repeal and replace Article 105 (2) to lift the two five-year term limits for the president which would require a two-thirds majority at the second and third reading. Having abandoned the Omnibus Bill, Article 74 of the constitution (which spells out how to change political systems) was dropped from the amendments and a motion requiring the Electoral Commission to conduct a referendum on the change of the political system was moved.[xxv]

On April 2005 a motion calling for a referendum to change the political system from Movement to Multi Party was tabled in parliament. A second motion was tabled and passed on 28 April 2005 after the first motion flopped on 21 April 2005 because of lack of quorum.[xxvi] This happened amidst opposition calls threatening to boycott the referendum. The referendum was held in July 2005 and 92.4 % of the voters supporting the shift from the movement political system to a multi-party political system. [xxvii]

In the last quarter of 2005 parliament hurriedly passed amendment legislation paving the way for elections in February 2006. Key among these was the PPOA (Amendment Act), which opened the space for political party activity, albeit late.

The return of Dr. Besigye in December 2005 witnessed a rush by segments of the electorate to register. Even with extensions to the period for registration hundreds of people failed to get registered because the Electoral Commission did have the capacity to do so within the extended timeframe.

Come February 28, 2006 all the political parties except the National Resistance Movement Party were not ready for the elections in terms of structures and reach. There is no denying that the playing field was never leveled and that the implementation of the road map and the whole process of transition were flawed from the word 'go' The campaigns leading up to the presidential and parliamentary elections were marred by armed violence, instances of rigging, voter inducement, disenfranchisement of segments of the electorate and intimidation of voters. Neither was the 'independent' media spared intimidation and threats by government.

In the presidential election President Museveni garnered 59.8 % of the votes while Dr. Besigye polled 37.8%. As I speak, Dr. Besigye is contesting the results and the entire electoral process and has lodged a petition with the Supreme Court.

It is evident that the three partner states exhibit deficiencies on all fronts with Uganda still having worrisome security concerns and issues to address.

4.0 What then is the role of the EAC in advancing constitutionalism?

Given the most recent scenarios in the three partner states with regard to democratic governance, constitution making and reviewing, observance of the rule of law, and the protection and promotion of human rights what is the role of the EAC in advancing constitutionalism in Eastern Africa -if indeed the framers of the EAC Treaty did envisage a role or function for the EAC?

Whereas Article 7 (2) of the Treaty requires partner states to abide by the principles of democracy, the rule of law and maintenance of human rights standards, it is not clear how the EAC, given the fact that it is the cardinal implementer of the Treaty, should advocate for these issues, especially in view of the fact that one of the objectives for integration is

political. What concrete actions need to be taken by the EAC to promote constitutionalism, good governance and democratic development in Eastern Africa? Are there lessons to be learnt from within Eastern Africa or elsewhere on the continent? Are there applicable indigenous African practices that can be adapted and/or adopted?

I believe the EAC should undertake to study *The New Partnership for Africa's Development* (NEPAD) African Peer Review Mechanism (APRM) on 'Democracy and Governance' with a view to setting up something similar so that the EAC can play a lead role in consolidating the democratization process in Eastern Africa. For instance, the overall objective of the NEPAD African Peer Review Mechanism for Democracy and Governance is to consolidate a constitutional political order in which democracy, respect for human rights, the rule of law, the separation of powers are realized so that sustainable development and a peaceful and stable society are ensured. [xxviii] The EAC should develop and operationalise a monitoring mechanism with clear standards, criteria and indicators that would consolidate a constitutional political order in the three partner states as they move towards a political federation which is slated to be launched 1st January 2010.

Mechanisms for the adoption of the NEPAD APRM for the EAC could be developed. For example, the standards for a constitutional political order in each of the three partner states (and in the future Rwanda and Burundi) would be the African Charter on Human and Peoples' Rights and other international human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.

The NEPAD APRM indicative criteria listed for democracy and governance are: (1) Are the provisions of the constitution for democracy, human rights, the rule of law and the supremacy of the constitution clear and firm with adequate provisions for enforcement? (These indicative criteria would indeed be of relevance to Kenya as it is still grappling with adopting a new constitution and to Tanzania, which has never had an all-inclusive participatory constitution making process.) (2) Are the constitutionally mandated institutions of democracy, human rights, the rule of law and the supremacy of the constitution properly

constituted and resourced for their effective functioning? (3) What is being done to create an enabling environment for meaningful popular participation in all forms and levels of governance? (4) What is the resulting state of democracy and political governance in the country? and (5) how easy or difficult is it to change the constitution of the country? [xxix] These are some of the benchmarks that the EAC could use to advance constitutional development in Eastern Africa. Details that answer questions such as how and when could be conceptualized in consultation with the citizens of Eastern Africa. Consultations would also include issues of enforceability and sanctions for non-compliance or backsliding.

Indicators for progress on democracy and governance under the APRM are: (1) Adequacy of express provisions in the constitution; (2) Effectiveness of democracy and law enforcement institutions; (3) Independence and effectiveness of Electoral Commissions to ensure fair and free elections; (4) Adequacy of legal framework for free association and formation of non-governmental organisations and trade unions; (5) Effectiveness of independent media in informing the public and providing freedom of expression; (6) Public perceptions of the degree of satisfaction with democracy and political governance, and (7) Congruence of the national Constitution with the Constitutive Act of the African Union.

Efforts are underway at the EAC to establish a NEPAD Coordination Desk indicating that this is not something new to the institution and therefore an East African Peer Review Mechanism Desk (EAPRM) can be created under the auspices of the EAC.

5.0 Challenges and Prospects for Constitutionalism within the context of a fast tracked political federation

The challenges for advancing constitutionalism in East Africa are many because of the variances in the pace and scope of democratization processes in each of the three partner states. While progress has been registered in Kenya, Tanzania and Uganda, much more still needs to be accomplished if all three partner states are to be brought to par in terms of meeting the minimum standards for the respect for rule of law, the approximation of some national laws essential for a political federation to take root, securing judicial

checks and balances on the executive, protecting human rights and freedoms, and creating a conducive environment for the evolution of democratic governance.

In the arena of the rule of law, much is left to be desired when it comes to understanding and respecting the fact that an individual is innocent until proven guilty; the right not to be imprisoned without trail; and that all individuals regardless of their status enjoy the same rights before the law, or that nobody is above the law.

The independence of the judiciary needs to be further secured in the partner states with regard to the terms and conditions surrounding the appointment of judges that would shield them from undue and improper personal and political pressure. Dismissal by the executive undermines the institution of the judiciary. Judges must be protected against unwarranted removal. The integrity of the judicial system must be protected and accorded control over its own procedural and administrative affairs.[xxx]

In the three partner states acceptance and support of political pluralism is still wanting. There is a general resistance to diversity in political thinking and 'veiled' restrictions limit certain freedoms such as freedom of speech. The recent onslaught by Kenya government security agencies on *The Standard* and *Kenya Television Network* (KTN) are indicative of the scope of press freedom.

Whereas progress in freedom of association has been registered under the multi-party politics dispensation in Kenya, Uganda and Tanzania, more needs to be done in terms of creating an environment conducive for political parties to grow. Existing regulatory frameworks could be viewed as being restrictive. For example, under the prevailing multi-party political system dispensation efforts to expand a political pluralist culture needs to be financially resourced. Credible parties that have been established should be provided with funds by the state. CCM in Tanzania and the NRM in Uganda are much better resourced than their opposition and as a result there is a danger that 'one political party rule' will stifle the growth of political pluralism and of multi political parties.

With this backdrop how should the organs of the EAC such as the East African Legislative Assembly and the East African Court of Justice advance on these issues both prior to the establishment of the political federation and thereafter? The biggest challenge is the limitation of the EAC to implement the Treaty because of the absence of an East African Community jurisprudence. Although Article 8(2) obliges partner states to recognize the Treaty as part of their national law, an enabling law is yet to be enacted that is all encompassing. Unlike the European Community where Community laws are paramount and binding on all member states, EAC member states are not limited by such restrictions.[xxxi] However, moves to addressing this are underway where currently the EAC is consulting stakeholders on the Zero Draft Protocol to Operationalise the Extended Jurisdiction of the East African Court of Justice.

The **prospects** for constitutional development in Kenya, Tanzania and Uganda are somewhat promising in that progress has been registered incrementally on several fronts. For example, we are seeing the emergence of a more astute and vibrant civil society emerging (as witnessed in Kenya recently) and more women and men exercising their democratic rights by questioning their governments, holding them accountable and demanding increased transparency. These developments indicate that, however slowly, progress is being made. What needs to be strengthened is civil society networking that spans the three partner states so that civil society speaks with one voice on critical issues such as having an East African Bill of Rights under the political federation. This is taking place in an environment where public participation is widely accepted as being necessary for development to take place.

Article 7 of the EAC Treaty underscores the importance of the EAC being people centered and people driven. Way back in 1990 the African Charter for Popular Participation in Development and Transformation, guided by the Economic Commission on Africa and a joint initiative of non-governmental organisations, community based organisations and governments adopted a human-centred approach and emphasized that popular participation is central to all proposals for development because it encourages people to accept the fact that sacrifices have to be made.[xxxii] The World Bank's Popular Participation Learning Group defines participation as 'a process whereby those with legitimate interests in a project

influence decisions which affects them.' The World Bank identifies four different levels of participation. The first level is information sharing where people are told about a development project and how it may affect them, enabling them to, in theory, decide on their level of involvement in the project. The second level is consultation where people are consulted on key issues and may provide vital feedback to the initiators of the project. The third level is decision-making where people are involved in the design and implementation of a project, and thus influence its development at every stage. The fourth level is action initiating where people organize themselves to take action in the face of a shared problem or area of interest, rather than responding to the initiative of outside agencies.[xxxiii]

A broad-based popular media whether it takes the form of national FM radio stations, local newspapers in English, Kiswahili and other East African local languages, East African newspapers such as *The East Africa*, or *East African Television* (EATV), will facilitate a cross-national awareness raising on issues of a constitutional nature under the political federation. The role of the media, such as the FM radio stations and newspapers in local languages have contributed significantly in raising awareness at community level on human rights, duties and obligations, electoral processes, good governance, access to justice and democracy.

Efforts by the EAC to widen the jurisdiction of the East African Court of Justice (EACJ) so that it has appellate, human rights and other jurisdiction are encouraging. Furthermore, the Treaty makes the EACJ accessible to diverse stakeholders including the partner states and the rules of procedure are accessible. [xxxiv]

6.0 Conclusion

The East African Political Federation is in the horizon and by all indications will be here to stay. We can confidently say that the stages for implementing integration can no longer be rolled back. As East Africans we have to prepare ourselves for what is coming our way.

The EAC has to embrace the role of promoting and monitoring constitutional developments in the three partner states. This will complement on-going civil society efforts aimed at consolidating a culture of constitutionalism. The EAC should play a lead role by

collaborating with national governments and other inter-governmental agencies but more importantly, through working together with the people.

The critical issue that needs the attention of all East Africans and needs to be underscored repeatedly is that the political federation has to be **people- led** with policies designed collectively with civic actors and with the involvement of all segments of society including the marginalized. This requires the commitment of civic actors, democratic institutions and the political will of the Heads of Summit who have to abide by the will of the people.

The most important thing about the political federation is that it has to be people centered or it faces the potential risk of collapsing like its predecessor. The political federation has to be owned by the people. The people have to determine through consensus the type or model of political federation they desire and which they think will work best for them. Participatory consultations that are all-inclusive have to be set in motion immediately and all modes of reaching the *wananchi* through the use of the popular media should be expansively utilized. The process should not be top-down or seen to be led by a few.

I would like to conclude with a common saying, **"Opportunity Knocks But Once."** In the case of the East African partner states opportunity has knocked twice – it knocked on the door in 1967 when the East African Cooperation Treaty was signed by Presidents Nyerere, Obote and Kenyatta and opportunity knocked again in 1999 when the East African Community Treaty was signed by Presidents Museveni, Moi and Mkapa) However, I am not so sure whether opportunity will knock a third time should the EAC disintegrate the second time round.

I hope that my paper raises issues for further contemplation, debate and dialogue as we move towards a fast tracked political federation

Notes

[i] Treaty for the Establishment of the East African Community (2000) EAC Publication No. 1 p 12-13
[ii] Ibid p. 15
[iii] The ECOWAS Declaration of Political Principles in 1991 sets out member states' commitment to uphold human rights, democracy and the rule of law.
[iv] Semujju Ibrahim Nganda, "Maj. Mushega, Matembe, Muntu protest 3rd Term." *Sunday Monitor.* 30 March 2003. p.1-2
[v] Wikipedia. Available at http://n.wikipedia.org/wiki/Federalism Accessed 20 March 2006
[vi] See Rudolf Schlesinger (1945) "Theoretical Conceptions of Federalism." In Karl Mannheim (ed.), *Federalism in Central and Eastern Europe.* Oxford University Press p. 36
[vii] See Benson Tusasirrwe, "Constitutional Development in the East African Community(EAC) in 2002." In Fredrick Jjuko (ed.), *constitutionalism in East Africa: Progress, Challenges and Prospects in 2002.* Fountain Publishers Ltd p. 148
[viii] See Wikedia, op. cit
[ix] Schlesinger, op. cit p. 494
[x] See Wikedia, op. cit
[xi] East African Community News Available http://www.eac.int/fasttrack/news_2004_12-speech-wako.htm Retrieved 24 March 2005
[xii] *In The New Vision* of 23 March 2006 President Museveni is quoted as having said, and I quote, "In 2013, there will be elections in the whole of East Africa to elect the leader. That is easy." The President of Tanzania is quoted as having said that the East African Federation would be achieved in two phases. The first phase would be triangulate, with annual alternate leadership (Mukasa, Henry. 2006 Kikwete Arrives. *The New Vision*, 23 March 2006, p.2
[xiii] East African Community News op.cit
[xiv] Deya, Donald. (2006) The Emerging East African Federation and Its implications for Civil Society, Governance and Accountability, Particularly in Tanzania." A Paper.
[xv] *The East African* April 4-10, 2005 p.9
[xvi] Ibid Aril 25- May 1, 2005 p.5
[xvii] James Mwakisyala "Party Unity Cracks in CCM's Fiercest Contest Ever," *The East African,* March 21-27, 2005. p. 6
[xviii] *The East African* April 11-17, 2005 p. 5
[xix] Ibid April 11-17, 2005. p. 5
[xx] Ibid April 18-24, 2005. p. 4
[xxi] Kamana, Stanley. "Ahmed Diria, Defender of Press Freedom," *The East African,* March 28-April 3, 2005. p. 21
[xxii] Kamana, Stanley. "Zanzibar's New Poll Date Raises Fears of a Crisis," *The East African*, June 20-26, 2005. p. 4
[xxiii] One hundred and fourteen (114) articles were presented for amendment.
[xxiv] Mutumba, Richard "Government, Donors Meet Over Transition," *The Monitor* 12 March 2005 p.1-2
[xxv] Musoke, Cyprian. "Government Tables Two New Bills," *The New Vision* 9 April 2005 p. 3
[xxvi] Mukasa, Henry & Milton Olupot "MPs Reverse decision on Referendum," *The New Vision,* 29 April 2005 at 1-2
[xxvii] The voter turnout was low - at 47.3%
[xxviii] NEPAD Objectives, Standards, Criteria and Indicators for the African Peer review Mechanism Available http://www.nepad.org/ Accessed 21 March 2006 p.1-31
[xxix] Ibid p 7-15

[xxx] See Spencer M. Zifcak, " Securing Judicial Independence: A Practical Analysis." In Irena Grudzinska Gross (ed.), *Constitutionalism & Politics* Proceedings of an international symposium November 1993 p. 42-45
[xxxi] See Nassali Maria, "The East African Community and the Struggle for Constitutionalism: Challenges and Prospects." In Issa G. Shivji, (ed.). *Constitutional Development in East Africa for Year 2000 E &* D Ltd, Dar-es Salaam. p. 132
[xxxii] Ibid p. 138-139
[xxxiii] The Oxfam Handbook of Development and Relief 1995 Volume 1. An Oxfam Publication p.14-15
[xxxiv] See John Ruhangisa, "The State of Constitutional Development in East Africa: The Role of the East African Community." In Benson Tusasirwe, (ed.). *Constitutionalism in East Africa: Progress, Challenges and Prospects in 2003* Fountain Publishers Ltd, Kampala. P. 113-115

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