

Reflections on ‘People Centered Principle’ in the East African Community: The Current Legal Controversy

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Abstract

Addressing the causes for the collapse of the first EAC in 1977 was crucial to the founders of the current EAC. Concentration of power on major decisions in the hands of governmental institutions and not the citizens of Partner States was among the factors that led to the collapse of the former EAC. In an attempt to avoid similar mistakes, founders of the EAC enshrined the principle of ‘People Centered Community’ in the current Treaty for the Establishment of the East African Community as one of the operational principles. In this regard, the EAC Partner States commit themselves towards putting the people of the community at the center of regional integration process. However, this principle seems to be only on paper and not reflected in the actual practice by the EAC Partner States. Therefore, this Article examines the principle of people centered community as provided for in the EAC Treaty and how is reflected in actual practice by the Partner States and institutions of the community. It is argued in this article that the people centered community is vital towards practical achievement of the objectives of the community and that its full implementation not only guarantees the long survival of the community but also creates an avenue for people to appreciate and enjoy the tangible benefits of the integration. Finally, the Article offers recommendations on how best the principle can be operationalized by the EAC-Partner States.

1. Introduction

The framers of the Treaty for the Establishment of the East African Community, 1999, (in short EAC) were very keen in trying to address various issues that caused the collapse of the former EAC in 1977.¹ One of those issues was lack of involvement of people in the whole process of regional integration in East Africa. In addressing this issue, the ‘people centered principle’ was enshrined in the EAC Treaty as one of the operational principles of the Community.² With this initiative, the community commits itself towards putting citizens of the Partner States at the center of the regional integration process. The people centered principle is an operational principle intended to guide the community towards practical achievements of the objectives set in the EAC Treaty.³ The people centered principle shows how serious the Partner States are committed towards addressing the question of non-involvement of people in the regional integration process.

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¹ Joshua M. Kivuva, “East Africa’s Dangerous Dance with the Past: Important Lessons the New East African Community has Not Learned from the Defunct”, *European Scientific Journal*, 10(34), 2014, pp. 359-374, p. 359.

² Article 7 (1) (a) of the Treaty for the Establishment of the East African Community, 1999 (As amended on 14th December, 2006 and 20th August, 2007).

³ Khoti C. Kamanga and Ally Possi, “General Principles Governing EAC Integration,” In Emmanuel Ugirashebuja, John Eudes Ruhangisa, Tom Ottervanger Armin Cuyvers (eds.), *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, Boston: Brill Nijhof, 2017, pp. 202-216, p. 205.

However, this commitment seems to be less complied with as the practice by EAC Partner States and various institutions of the community reveal a different approach. People are made the observers of the process instead of being at the center as envisaged by the EAC Treaty. This Article examines ‘the principle of a people centered community’ as provided for in the EAC Treaty and how it is reflected in actual practice by the EAC Partner States and Institutions of the Community. The Article recognizes the importance of the principle in meeting the objectives set in the EAC Treaty. Therefore, it offers recommendations on how best the principle can be operationalized for achieving the objectives of the community.

2. Regional Economic Integration in East Africa

Regional economic integration in East Africa is not of a newly born baby’s age. It is older than the post-colonial East African sovereign states that form the East African Community. The formal integration has its roots from the British colonial times particularly with the construction of the Uganda Railway from 1896 to 1901.⁴ This was an early relationship between Kenya and Uganda which were under the British colonial power. Then Tanganyika was a German colony. Tanganyika joined the two other countries immediately after the First World War when she was transferred to British administration under the League of Nations mandate following the defeat of Germany in that war.⁵ This integration was developed to a postal union and ultimately to a customs union level.⁶ It worked under various institutions such as East African Currency Board, the Court of Appeal of East Africa, the East African Meteorological Department and the East African Posts and Telegraphs department serving on inter-territorial basis.⁷

To strengthen the integration, the East African High Commission (EAHC) was established in 1948 to deal with matters whose interests were common among the Member States in the Governors’ meetings.⁸ The East African countries, namely Kenya, Uganda and Tanganyika, worked under the EAHC until 1961 when it lost its political legitimacy following independence of Tanganyika.⁹ It was replaced by the East African Common Services Organization (EACSO) in the same year. Attempts were made to form a political federation by the East African countries that is Kenya, Uganda and Tanganyika; they proved a failure.¹⁰ It is important to note that during colonial rule and the time before the union of Tanganyika and Zanzibar, Zanzibar

⁴ Khoti C. Kamanga, “An Enquiry into the Achievements and Challenges of the East African Regional Integration,” **African Review**, 43(1), 2016, pp. 51-74, p. 52.

⁵ Msuya W. Mangachi, **Regional Integration in Africa: East African Experience**, Cambridge: Safari Books Ltd, 2011, p. 36. The author cites Articles 5 and 10 of the Trusteeship Agreement as approved by the General Assembly of the United Nations, in New York 13th December, 1949. Under these provisions of the Agreement the Mandate authorized Britain to constitute Tanganyika into a custom, fiscal or administrative Union or Federation with adjacent territories under his sovereignty or control and to establish common services between such territories and Tanganyika provided that such a constitution was not inconsistent with the Trusteeship Agreement.

⁶ Khoti C. Kamanga, “Some Constitutional Dimensions of the East African Co-operation,” In **Constitutional Development in East Africa for Year 2001**, Kituo Cha Katiba Series, 2003, pp. 118-142, p. 120.

⁷ *Ibid.*

⁸ Victor Umbricht, **Consolidated Report of the Mediator, Proposals for the Permanent and Equitable Division of Assets and Liabilities of the Corporation and the General Funds Services of the East African Community**, 1981, p. 5.

⁹ Kamanga, “Some Constitutional Dimensions of the East African Co-operation”, *op.cit.*, p. 120.

¹⁰ Bhoke Munanka, **East African Legislative Assembly Report of the Select Committee on East African Federation**, 1974, p.3.

distanced herself from Regional Integration initiatives in EAC. For example, she never associated herself with EABC and EACSO.¹¹ That is why; the Article makes references to Tanganyika and later on Tanzania. This is due to the fact that Zanzibar is represented in the EAC by the government of the United Republic of Tanzania.

The EACSO members experienced serious problems that slowly culminated into deterioration of the integration. In 1966, the members witnessed the dissolution of the East African Currency Board consequently allowing each Member State to establish its own currency and central Bank.¹² Various Commissions were formed to address the problems in vain. Among the Commissions was the Commission under Professor Kjeld Philip “the Philip Commission” that was formed to inquire as to how the East African countries would maintain the integration. Basing on the Philip Commission’s recommendations the East African Community was established in 1967.¹³

The 1967 Community lasted for ten years as it collapsed in 1977. Mistrust among the heads of state, centralization of the EAC corporations and services in Kenya,¹⁴ disproportionate sharing of benefits and lack of political will were some of the causes of the failure of the community.¹⁵ It is also documented that lack of popular participation and policies to address these shortfalls contributed to the collapse of the Community.¹⁶ The community was revived in 1999 when the original Partner States that is, Kenya, Uganda and the United Republic of Tanzania, (hereinafter referred to as Tanzania) signed the EAC Treaty in Arusha, Tanzania.¹⁷ Currently, the community comprises six Partner States after the accession of Rwanda and Burundi in 2007¹⁸ and South Sudan in 2016.¹⁹

One of the distinguishing features of the new EAC is that, it addresses itself to the reasons that precipitated the collapse of the former Community.²⁰ One of the reasons for failure of the former community was non-adherence to the people centered principle. Failure to adhere to the principle was one of the challenges. Another challenge that had been complained of by Tanganyika and Uganda was Kenyan dominance of the Common Market during the colonial times.²¹

¹¹ Mahadhi J. Maalim, **The United Republic of Tanzania in the East African Community: Legal Challenges in Integrating Zanzibar**, Dar es Salaam University Press, Dar es Salaam, 2014, p. 3.

¹² Kamanga, “Some Constitutional Dimensions of the East African Co-operation,” *op.cit.*, p. 127.

¹³ Mangachi, **Regional Integration in Africa: East African Experience**, *op.cit.*, pp. 59-62.

¹⁴ Mangachi, *ibid.*, p. 109.

¹⁵ Peter Kimemi., “An Overview of the Performance of the East African Economies since 1985: Implications for the New Initiative on East African Co-operation”, **African Sociological Review**, 4(1),2000, pp. 119-137, at p. 120.

¹⁶ Kamanga, “An Enquiry into the Achievements and Challenges of the East African Regional Integration,” *op.cit.*, pp. 52 and 63.

¹⁷ Sangeeta, Khorana, Kato Kimbugwe and Nicholas Perdakis., “Assessing the Welfare Effects of the East African Community Customs Union’s Transition Arrangements in Uganda,” **Journal of Economic Integration**, 24(2), Centre for Economic Integration, Sejong University, 2009, pp. 685-708, at p. 686.

¹⁸ Wauna, Oluoch., “Legitimacy of the East African Community,” **Journal of African Law**, 53, 2009, pp. 194-221, at p. 194.

¹⁹ Overview of East African Community, found at <http://www.eac.int/about/overview>, retrieved on 10th April, 2017.

²⁰ See the Preamble to the EAC Treaty.

²¹ Mangachi, *Regional Integration in Africa: East African Experience*, *op.cit.*, pp. 51-53. Also, see Kamanga, “Some Constitutional Dimensions of the East African Co-operation,” *op.cit.*, p. 126.

Under the EAC Treaty, the Partner States undertook to establish among themselves, a Customs Union, Common Market, subsequently a Monetary Union and ultimately a Political Federation to underpin the integration.²² The Partner States also agreed to remove obstacles to the free movement of persons, labour and services and ensure that the people of the Community enjoy the right of establishment and residence within the Community.²³ In order to remove the obstacles to free movement of capital, services and people, the Partner States agreed to conclude Protocols addressing the objectives to be achieved.²⁴ The Council of Ministers was tasked to determine the time at when the Protocols were to be concluded.²⁵

The Protocols are annexed with several Regulations that together form integral parts of the EAC Treaty.²⁶ A Protocol forms an integral part of the treaty as a fresh treaty in another form with the purpose of supplementing a Treaty.²⁷ This assertion is derived from definition of the Treaty given by Vienna Convention on the Law of Treaties, 1969. According to the Convention:

Treaty means an international agreement concluded between States in written form and governed by international law, **whether embodied in a single instrument or in two or more related instruments** and whatever its particular designation;²⁸ [emphasis added]

Under the EAC framework, this position was illustrated by the East African Court of Justice (EACJ) in *The East African Law Society v. The Secretary General of The East African Community*.²⁹ In this case, the court held that the Protocols are negotiated under Article 151 (4) and therefore become integral part of the Treaty.³⁰ It is clear therefore that, reading the EAC Treaty only without regard to the Protocols and the Annexes made thereunder, one may be misdirecting himself. The Regulations contain the guidelines and procedures on how the provisions of the EAC Treaty and the Protocols should be implemented.

3. People Centered Community

The Partner States committed themselves to creating a people-centered Community. This implies that the Community is not only to be known but also owned by the EAC citizens for whose interest the Community was revived.³¹ People centeredness, therefore, denotes an approach of planning, running and implementing certain projects by incorporating the opinions and values of the people for whose interests the project is established.³² In this regard, people centeredness connotes the special glue that

²²Article 5(2) of the Treaty for the Establishment of the East African Community, 1999. Also, see Articles 75 and 76 of the EAC Treaty that govern the establishment of Protocols of a Customs Union and Common Market respectively.

²³ *Ibid*, Article 104(1) of the EAC Treaty.

²⁴ *Ibid*, Article 104 (2).

²⁵ *Ibid*.

²⁶ *Ibid*, Article 151(4).

²⁷ Kamanga and Possi, "General Principles Governing EAC Integration", *op.cit.*, p. 215.

²⁸ Article 2 (1) (a) of Vienna Convention on the Law of Treaties, 1969.

²⁹ EACJ Reference No. 1 of 2011.

³⁰ *Ibid*, p. 21.

³¹ Khoti C. Kamanga, "Progress, Prospects and Challenges of the East African Community," Occasional Papers, No. 2, 2012, p. 9.

³² John Raeburn and Irving Rootman, **People Centered Health Promotion**, England: John Wiley & Sons Ltd., 1997, pp. 3 & 137.

holds the Community and its people together. It, therefore, refers to the involvement of people in any activity that is expected to require their opinions. Without their opinions, the said activity loses its legitimacy. As noted in the introductory part of this Article, people centeredness is one of the principles upon which the EAC is based. This is gathered when reading Article 5 that entrenches the objectives of the Community³³ and Article 7 that covers the operational principles of the Community.³⁴

The principle aims at bringing mutual development to the people of the EAC Partner States. The Community may be made people centered through how its established organs such as the Summit, the Council, East African Legislative Assembly (EALA) and EACJ operate. For example, direct participation of Community citizens in electing their representatives in the EALA, the coverage of the representatives in the EALA, citizens' participation in negotiating various legal instruments and laws and even admitting new Members. Policy discussions in the Council and the whole process of law making may reflect the principle of a people centered community. While the Treaty provides for the principle of a people centered community, the issue is whether or not the principle is adhered to in practice. What takes place in practice is examined below.

3.1 Representation in the EALA

The EAC Treaty repeatedly makes the EAC a people centered Community. This implies that the Community citizens should be directly involved in the activities of the Community. This may include making decisions on various matters of the Community. However, it cannot be avoided that some matters of the Community, as it is in national matters, are technical and therefore need either professional people or those who are better placed to be able to comprehend those matters. It, therefore, it is not practical to involve all citizens in all matters. It becomes imperative to have representatives of the large population in some issues. For example, not all citizens of the Community can participate in the law making process in the EALA. Representatives are used in such a process. Since what these representatives to the EALA are discussing is for the benefit of the people of the community, the people should be the ones to decide who should be a member of EALA and who should not.

However, the situation in EAC is different though seemingly blessed by the EAC Treaty. Under the Treaty, it is the duty of the National Assembly of each Partner State to elect representatives to EALA.³⁵ These shall join the members from other Partner States in the Assembly. The members elected do not come from the members of the National Assembly³⁶ but must, among others, be qualified to be elected members of the National Assembly of that Partner State under its Constitution.³⁷

Moreover, the elected members represent as much as it is feasible, the political parties with representatives in the National Assembly, shades of opinion, gender and other special interest groups in the Partner State.³⁸ The procedures governing the election of

³³ Article 5(3) (d) of the EAC Treaty.

³⁴ *Ibid*, Article 7(a).

³⁵ *Ibid*, Article 50 (1).

³⁶ See Article 50(1) of the EAC Treaty and section 4 of the East African Legislative Assembly Elections Act, 2011.

³⁷ *Ibid*, Article 50(2) (b).

³⁸ *Ibid*, Article 50(1).

the members are to be determined by the Partner States.³⁹ The representatives at community level are nominated by the political parties with representatives in the Partner States' National Assemblies and finally elected by the Members of Parliament (MPs) of the National Parliaments.⁴⁰ This creates a problem because the representation of different groups (gender, political parties, shades of opinion and other special interests groups) in EALA depends on whether it is feasible or not for National Assemblies of Partner States. It is submitted that the use of the word 'feasible'⁴¹ under this Article, offers room for flexible interpretation by the Partner States and hence susceptible for misuse. For example, in the 2017 election of EALA representatives from Tanzania, it was only political parties which dominated the process. This is contrary to what is envisaged by the EAC Treaty on the representation of different groups. These may be among those elected but not because they represent their groups, it is because they were nominated by their political parties.

There is another problem in that, an EALA candidate should be qualified to be elected a member of the National Assembly of the Partner State. The problem arises because some Partner States have constitutions that require the Parliamentary candidates to be sponsored by a political party.⁴² This means that a person cannot contest for parliamentary election without a sponsorship of a political party. This requirement automatically excludes those groups mentioned in Article 50 of the EAC Treaty in favour of political parties' representatives. Addressing this problem depends on the wisdom of the Partner State to make rules that provide avenues through which these other groups would get an opportunity to represent the citizens in EALA without an attachment to any political party. The Partner States have taken advantage of their discretion to determine the procedure of electing EALA representatives by excluding the other groups from the process. This was noted by the EACJ in *Prof. Peter Anyang' Nyong'o and Others v. Attorney General of Kenya and Others*⁴³ where, among others, the court noted that:

The election rules provide in rule 4, that the National Assembly shall elect the nine members of the Assembly "according to the proportion of every party in the National Assembly". To that extent, there is partial compliance with Article 50. **However, the apparent absence of any provision to cater for gender and other special interest groups is a significant degree of non-compliance**, notwithstanding the discretion of the National Assembly in determining the extent and feasibility of the representation. [Emphasis supplied]

The procedures determined by Tanzania, for example, in the 2017 election indicate that for one to be validly nominated as a candidate for the election he/she must be nominated in a transparent and democratic manner by the political party sponsoring

³⁹ See Article 50(1) of the EAC Treaty and section 12 of the East African Legislative Assembly Elections Act, 2011.

⁴⁰ *Ibid.*

⁴¹ According to **Cambridge Dictionary** the word 'feasible' has a meaning of 'the possibility that can be made or achieved or is reasonable'.

⁴² See Article 67(1) (b) of the Constitution of the United Republic of Tanzania, Cap. 2 of Laws of Tanzania. This is not a requirement either under Article 80 of the of the Constitution o Uganda, 1995 or Article 99 (1) (c) of the Constitution of Kenya, 2010. However, it is hardly possible for independent candidates to be nominated by the Political Parties for EALA representation. So, the problem that emanates from EAC treaty persists even in Kenya and Uganda that allow independent candidates.

⁴³ Reference No. 1 of 2006, [EACJ], p. 37.

him.⁴⁴ In practice not much initiatives were put in place to reach all members of political parties. Thus, denying opportunity for those with interest to contest for those posts. Therefore, this renders the process less democratic and transparent. It is submitted that, initiatives may include advertisements in credible media such as newspapers with wide circulation, local televisions and radios. These were not sufficiently utilized.

It is argued that the EAC citizens are not fully represented, for they are not directly involved in the Community affairs. This argument is based on the following grounds. Firstly, the citizens are isolated from the Community particularly on important activities such as electing the people who are to discuss and pass matters that directly affect the citizens themselves. The problem starts from the EAC Treaty itself. The EAC Treaty links the representative role of the MPs in National Parliaments to their citizens, with that of representing the same citizens at Community level. This is wrong because, it is expected that the MPs in Partner States should do what they were sent to do by their voters, which is to deliberate on developmental matters of their constituencies.

Whether the MPs do what their voters expect of them or not, that is another story which is not within the ambits of this Article. Electing people who should represent the citizens in other forums falls under the contemplation of neither the citizens nor the contestants themselves during the election campaigns. Experience in Tanzania indicates, for example, that it is very rare even to mention the community itself in the candidates' areas of priority even though parties' election manifestations try to mention it.⁴⁵ This is the evidence that EAC is not in the hearts of the MPs that are mandated to elect the EALA representatives. This makes the political parties and members of the National Assemblies, who in actual sense are the images of their political parties, not the proper persons for nominating and electing EALA members on behalf of the people.

The situation under the European Union (EU) is different. EU is mentioned here because it is taken as a developed regional integration in the world and therefore worth citing as an example for other Regional Economic Communities (RECs) to learn. In EU, citizens are directly represented in the EU Parliament. Among the new changes brought by the Treaty of Lisbon, 2007 is to allow every EU citizen to participate in the democratic life of the Union.⁴⁶ This includes the use of universal suffrage in getting the representatives of the EU citizens in the EU Parliament. Additionally, the Lisbon Treaty promoted citizens' initiative by allowing them to participate in law making process and development of EU policies.⁴⁷ This is effected by giving a forum to the citizens of moving the European Commission on making legislative proposals.⁴⁸

⁴⁴ Rule 5 of the Rules of Procedure for Nomination of Candidates for the Election of Ministers of the East African Legislative Assembly, 2017. These rules are made under Order 12, rules 4(1) and 8 of the Third Schedule of the Parliamentary Standing Orders, January 2016 Edition.

⁴⁵ See CCM Election Manifesto, 2015, on page 167 and CHADEMA/UKAWA Election Manifesto, 2015 on pages 79 and 80.

⁴⁶ *Ibid*, Article 10(3).

⁴⁷ See Articles 10 (1) and (2) of the Treaty on European Union, Consolidated Version, 2012.

⁴⁸ European Commission, The European Citizens' Initiative, found at <http://ec.europa.eu/citizens-initiative/public/?lg=enpersons>, retrieved on 6th May, 2017.

Indeed, in the EU decisions are taken openly and as closely as possible to the citizens of the Union.⁴⁹ It is our humble opinion that, this is people centeredness worth emulating. The EU strives to make its citizens participate directly in the functioning of the Union through the established institutions of the Union. The institutions endeavour to make the functioning of the Union transparent and coherent, particularly the Commission which is the policy making organ and originator of the Union bills.⁵⁰

Secondly, the EAC Treaty makes it clear that various political parties that are represented in the National Parliaments are among the groups to be represented in the EALA.⁵¹ It is pertinent to note here that, not all citizens are members of political parties. Even if all or the majority were members of political parties, representation through political parties would depend on the number of MPs a political party would have in the National Parliament. It follows, therefore, members with majority of representation in the National Parliament would dominate the seats in EALA. For example, in the recent election of EALA members in Tanzania, out of the nine members the ruling party, CCM, that has majority representatives in the house is represented by six members in EALA, *Chama cha Demokrasia na Maendeleo* (CHADEMA) represented by two members, Civic United Front (CUF) only one member, NCCR *Mageuzi* and ACT both with one representative in the Tanzanian Parliament are not represented in EALA.⁵² This being the case, some citizens, namely, those whose parties have minority representation in the National Parliament and those who belong to no political party at all can never be represented. It is hereby submitted that, the principle of people centeredness in the EAC is only paper based and not respected in practice.

It is argued that had the EAC Treaty not included the political parties with representatives in the National Assembly in the groups to be represented, it is our humble opinion that, all these problems would not have happened. Therefore, the problems start with the constitutive document “EAC Treaty” of the Community. It cannot escape the blame from the EAC citizens for denying them a voice in the Community affairs. This has led to complaints among the EAC citizens including filing cases before the EACJ on the mode of getting EALA representatives. *Prof. Peter Anyang’ Nyong’o and Others v. Attorney General of Kenya and Others (supra)* is a good example. The EAC can pick a leaf not only from EU but also ECOWAS in whose constitutive document the principle is reflected. ECOWAS MPs must be directly elected by the Community citizens.⁵³ However, ECOWAS is passing through a transitional period where the MPs are elected from the members of the National Parliaments of the Member States.⁵⁴ The MPs elected during the transitional period are deemed to represent all peoples of the Community.⁵⁵ So, during the transitional period the situation in ECOWAS is equally not healthy. At least there is hope that when the provisions in the constitutive document are implemented people will be fully involved in the community activities.

⁴⁹ Articles 10 (1) and (2) of the Treaty on European Union, Consolidated Version, 2012.

⁵⁰ *Ibid*, Article 11.

⁵¹ Article 50(1) of the EAC Treaty.

⁵² Parliament of Tanzania, **Hansard**: Seventh Session – 1st Sitting on 4th April, 2017, p. 54. Found at <http://www.parliament.go.tz/hansards-list> retrieved on 25th April, 2017.

⁵³ Article 7(1) (i) of the Protocol relating to the ECOWAS Parliament, 1994.

⁵⁴ *Ibid*, Article 7(1) (ii).

⁵⁵ *Ibid*, Article 2(2).

3.2 Representation in the Council

The Council is one of the organs of the East African Community.⁵⁶ It is the policy making organ for the efficient and proper functioning of the community.⁵⁷ The functions and powers of the Council in the EAC include initiating Bills to the EALA, to make binding regulations, directives and decisions to the Partner States and all other organs of the community with exception of the Summit, EACJ and the EALA.⁵⁸ Just like in the EALA, the principle of ‘people centered community’ has been watered down in the Council as well. The divergence from the principle is revealed in both the composition and mode of representation.

Divergence in Composition and Mode of Representation

Generally, the Council is made up of Ministers appointed in their respective countries to be responsible for EAC Affairs.⁵⁹ In other words, each EAC Partner State is required to designate one of its ministries to be responsible for matters pertaining to Regional Integration in East Africa. In Tanzania for example, matters concerning the East African Community have been merged together with those of foreign affairs. Now the ministry is known as the Ministry of Foreign Affairs and East African Cooperation.⁶⁰ It is crucial to note that, other ministers may be permitted to be members of the Council as determined by each Partner State.⁶¹ Lastly, the Attorney General of each Partner State also constitutes an important part of the Council.⁶²

Thus, a close examination of the composition and indeed mode of representation makes one realize that, all ministers appointed by their respective governments are the ones who sit in the Council. In that regard, they are representing the interests of their governments and not the people. What their governments command is what they should obey. Any divergence would lead to immediate replacement by appointment of a new minister for EAC Affairs in a particular Partner State. This is different from the practice that existed in the defunct EAC⁶³ in which there was the position of East African Ministers who were nominated by their Partner States and appointed by the Authority⁶⁴ to that post.⁶⁵ There were three, one from each Partner State. If they were holding other offices prior to their appointment, the 1967 EAC Treaty required them to resign from those offices and serve only as EAC Ministers.⁶⁶ Unlike the current members of the Council where their tenure of office is determined at the pleasure of their respective governments, it was not easy to remove EAC Ministers from office. The Treaty provided only three circumstances under which the EAC Ministers would

⁵⁶ Article 9 (1) (b) of the Treaty for the Establishment of the East African Community, 1999.

⁵⁷ *Ibid*, Article 14 (3) (a).

⁵⁸ *Ibid*, Article 14 (3) (b) & (c).

⁵⁹ *Ibid*, Article 13 (a).

⁶⁰ Welcome to Ministry of Foreign Affairs and International Cooperation, found at <http://www.foreign.go.tz/index.php/en> retrieved on 23rd April, 2017.

⁶¹ Article 13 (b) of the EAC-Treaty.

⁶² *Ibid*, Article 13 (c) of the EAC-Treaty.

⁶³ The East African Community of 1967 to 1977 established under the Treaty for East African Cooperation of 1967.

⁶⁴ Article 46 of the Treaty for East African Cooperation, 1967, the Authority was a principal executive authority of the Community and under Article 47 it was composed of the Presidents of Uganda, Tanzania and Kenya.

⁶⁵ *Ibid*, Article 49 (2).

⁶⁶ *Ibid*, Article 49 (3).

cease to be ministers.⁶⁷ These included resignation by the respective minister, cessation of qualification to be appointed as an East African Minister and termination of the appointment by the Authority upon request by the nominating Partner State.⁶⁸ The relevant provision provided that:

Article 50 – Tenure of Office of East African Ministers

An East African Minister shall not be appointed for a fixed term but shall vacate his office upon the happening of any of the following events;

- (a) if he transmits his resignation in writing to the Authority and the Authority accepts his resignation;
- (b) if he ceases to be qualified for appointment as an East African Minister;
- (c) if the Authority terminates his appointment, which it shall do upon the request in writing of the Partner State which nominated him.

All the three East African Ministers were staying at the EAC-Headquarters in Arusha. Therefore, it is proper to say that for all purposes, the East African Ministers were the ministers of the community and representing the interest of the community and the people at large. This is different from the current membership and representation in the Council. The current membership in the Council does not reflect the principle of people centered community enshrined in the current EAC Treaty.⁶⁹

4. The Law Making Process in the EAC

The law-making process under the EAC Treaty can either be initiated by the Council which submits a bill to the Assembly⁷⁰ or any member of EALA subject to the rules of procedure of the Assembly.⁷¹ Here, some problems that continue to undermine the principle of people centered community ensue. Firstly, the Council comprises Ministers that are appointed by the governments of the Partner States to represent their governments at the Community level. Some of these Ministers, in the first place, were elected by the citizens in the constituencies to represent the people's interests in the National Assembly and not otherwise.

So, when appointed to hold the posts of Ministers, they become accountable to another entity and not to their voters. They are therefore representing their appointing powers, the governments, in whatever they are doing including their role in the EAC Council. They are not EAC Ministers as it used to be under the defunct EAC.⁷² It is argued in this article that, it is hard to link the move behind the bills initiated by both the Council and EALA representatives with the interests of the citizens because they [the Council and EALA members] do not represent the citizens. It may be believed that the initiation of a law may be influenced by the interests of the political parties or governments, for no servant would wish to anger his boss by doing what is not in the interest of the boss.

⁶⁷ *Ibid*, Article 50.

⁶⁸ *Ibid*.

⁶⁹ Article 7 (1) (a) of the EAC-Treaty.

⁷⁰ Article 14 (3) (b) of the EAC Treaty.

⁷¹ *Ibid*, 59(1).

⁷² See Articles 49 and 50 of the Treaty for the East African Cooperation, 1967.

Secondly, when bills are passed by EALA, they should be sent to the Summit for assent. The EAC Treaty empowers the heads of state to either assent to or withdraw the bill of the Assembly.⁷³ Reading closely, the EAC Treaty does not mention a Summit, it only mentions heads of state. If a head of state withholds assent to a resubmitted bill, after withholding the assent in the first submission, the bill lapses.⁷⁴

So, not the Summit that assents to the Bill, it is the heads of State. The Summit is the top-most organ of the Community consisting of the heads of state of the Partner States only.⁷⁵ It boggles the minds of the present authors as to why the framers of the EAC Treaty chose to copy and paste the assent system as known in municipal law-making systems. It is submitted here, if the Bill covers a matter not in the interest of a Partner State, it would not be assented to by that particular head of state. Thus, even if that particular matter were of great interest to the people of EAC it would still fail to make it through. The Community would be people centered if the law-making process were to be confined to the EALA and the Council as a policy organ that would be required to collect the views of the people before submitting the bill to the Assembly as is the case in EU.⁷⁶ However, since EALA and the Council are also not people centered the principle of people centered community lacks a forum from which it could be implemented. Apart from the EAC Treaty, the principle of people centered community is reflected neither in the Summit nor in the Council or EALA.

5. Admission of New Members to the Community

Apart from involvement of the citizens in the negotiations towards adoption and passing of policies and legislation, the citizens of the Community should be involved when some new countries aspire to accede to the EAC Treaty. This follows the reason that under the principle of people centered community, the Community is owned and run by the people themselves. This of course is in line with the principle of subsidiarity,⁷⁷ which requires that the decision making process ought to start from the lowest level of the governments of the Partner States to the Community.⁷⁸ This aims at keeping the relationship between the Community and the Partner States alive and thereby ensures the closeness of the citizens and the Community. Since the Community is a legal person, it is the people who constitute the Community and run the agreed activities of the Community through various organs established under the constitutive instruments.

It is of paramount importance that if the Community is to be really people centered, the people of the Community should be involved in various discussions as to whether the prospective new member should be admitted or not. As proposed somewhere in this article, the citizens' involvement may be through Partner States initiatives such as the use of local televisions and radios through which citizens of the Partner State may provide their views on the admission of a new member. This may also work in case of

⁷³ Article 63(1) of the EAC Treaty.

⁷⁴ *Ibid*, Article 63(2) and (4).

⁷⁵ *Ibid*, Article 10(1).

⁷⁶ See Article 14 of the Treaty of the European Union, Consolidated Version, 2012.

⁷⁷ *Ibid*, Article 7(1) (d).

⁷⁸ Kamanga and Possi, "General Principles Governing EAC Integration," *op.cit.*, pp. 206-207. This part of the book comprehensively explains the principle of subsidiarity, how it works under EU, its scope and applicability under EAC and the shortfalls found under the EAC Treaty regarding the principle.

any policy to be adopted for the Community. Where citizens are actively engaged, the community would undoubtedly be felt at the national level.

It is very unfortunate that this has not been the practice in the EAC. All negotiations towards the adoption of policies and laws, as pointed out in this article, fall within the exclusive mandate of the Community organs particularly the Summit, the Council and EALA. For example, there is no evidence if there were efforts for EAC citizens to air out their views on the admission of Rwanda, Burundi and South Sudan. The EAC Treaty enjoins that the countries aspiring to join the EAC should, among others, adhere to the universally acceptable principles of good governance, democracy, the rule of law, human rights and social justice.⁷⁹ In other words, the prospective new members should clear their houses first before admission to the Community. For ease of reference, Article 3(3) (b) states:

Subject to paragraph 4 of this Article, the matters to be taken into account by the Partner States in considering the application by a foreign country to become a member of, be associated with, or participate in any of the activities of the Community, shall include that foreign country's:

(b) Adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice.

This Article shows how serious the Community is with regard to its fundamental and operational principles namely, democracy, rule of law, human rights observance and good governance.⁸⁰ If the Community's citizens enjoy and abide by the above mentioned principles, there is a good justification for the new member to observe the same prior to joining the Community.

Under the principle of people centered community, determining the state of human rights, democracy, social justice, rule of law and good governance should not fall within the confines of the organs of the Community only, as institutions. On the contrary, the community's citizens should be involved because of the very reason that, they are the ones to intermingle with new citizens who join the community. This was the concern when admitting South Sudan to the EAC. In the case of *Patrick Ntege Walusumbi and two others v. The Attorney General of the Republic of Uganda and five others*⁸¹ a group of Ugandan traders filed a case with the EACJ aiming at blocking the Partner States from admitting South Sudan for various reasons.⁸² One, South Sudan, as a newly independent state, had to clear her house on human rights observance. This could be done through enforcing the court decisions on human rights. Two, the Ugandan traders who had supplied their products in South Sudan had not been paid. Although Ugandan traders in South Sudan were not successful in their claims, they sent signals that people's views should be taken into consideration when admitting a new member to the EAC.

6. Human Rights *vis-à-vis* People Centered Community

The EAC aims at widening and deepening cooperation among Partner States in political, economic, social, cultural, research, technology, security, defence and judicial affairs fields.⁸³ There is no doubt that, the beneficiaries of these initiatives by

⁷⁹ *Ibid*, Article 3(3) (b).

⁸⁰ *Ibid*, Articles 6 and 7.

⁸¹ Reference No. 8 of 2013, [EACJ].

⁸² *Ibid*.

⁸³ *Ibid*, Article 5 (1).

EAC Partner States are the common people in the community. To that effect, the EAC Treaty unequivocally states that cooperation among Partner States would accelerate economic development in the region and as a result the standard of living and quality of life of the people would be improved.⁸⁴ Among many strategies worked out to realize these objectives, was the adoption of the Protocol on the Establishment of the East African Community Common Market.

The Common Market Protocol encompasses four freedoms and two rights. The freedoms include free movement of goods,⁸⁵ services,⁸⁶ capital⁸⁷ persons⁸⁸ and workers,⁸⁹ as well as right of establishment⁹⁰ and residence.⁹¹ While enjoying these freedoms and rights, people want to see their rights being protected and guaranteed. Unfortunately, that is not the case. It is argued that, the area of human rights jurisprudence in the EAC legal framework is yet another huge divergence from the principle of ‘people centered community’. This is partly because of the fact that people in EAC cannot directly file applications concerning human rights violation in the EACJ.

No explicit powers have been vested in the EACJ to entertain issues concerning human rights.⁹² Therefore, this makes people feel not sufficiently involved in matters concerning their rights even if the matter arises out of implementation of the Treaty. What the court can do is to exercise its interpretative powers even though the matter at hand has elements of human rights.⁹³ This was a ruling in the case of *James Katabazi and 21 others v. Secretary-General of the East African Community and the Attorney General of Uganda*,⁹⁴ in which the High Court of Uganda granted bail to James Katabazi and others who were charged with treason. Immediately after the grant of bail, Ugandan Security Agents arrested them within the court premises. This was clearly a violation of the right to liberty and the Constitutional Court of Uganda ruled that the actions by the Security Agents were unconstitutional but the agents refused to release any of the suspects from custody. When the matter was taken to EACJ, it was considered and decided in the light of breach of rule of law and fundamental principles of the EAC Treaty and not on the basis of human rights. The EACJ was of the view that:

⁸⁴ *Ibid*, Article 5 (3) (b).

⁸⁵ Article 6 of the East African Community Common Market Protocol.

⁸⁶ *Ibid*, Article 16.

⁸⁷ Annex VI – The East African Community Common Market Schedule on the Removal of Restrictions on the Free Movement of Capital.

⁸⁸ Annex I - The East African Community Common Market (Free Movement of Persons) Regulations, 2009.

⁸⁹ Annex II – The East African Community Common Market (Free Movement of Workers) Regulations, 2009.

⁹⁰ Annex III – The East African Community Common Market (Right of Establishment) Regulations, 2009.

⁹¹ Annex IV - The East African Community Common Market (Right of Residence) Regulations, 2009.

⁹² Article 27 (2) of the EAC-Treaty stipulates *inter alia* that human rights jurisdiction of the EACJ will be determined by the Council in future dates and shall be operationalized by concluding a protocol to that effect. See also Ally Possi, “Striking a Balance between Community Norms and Human Rights: The Continuing Struggle of the East African Court of Justice”, **African Human Rights Law Journal (AHRLJ)**, Vol. 15, No. 1, 2015, pp. 192 – 213.

⁹³ *James Katabazi and 21 others v. Secretary-General of the East African Community and the Attorney General of Uganda*, Reference No. 1 of 2007, [EACJ].

⁹⁴ *Ibid*.

It did not assume jurisdiction to adjudicate on human rights disputes, however it did not abdicate from exercising its jurisdiction of interpretation under Article 27 (1) of the EAC Treaty merely because the reference included allegation of human rights violation.

Similarly, in the case of *Plaxeda Rugumba v. The Secretary General of the East African Community and the Attorney General of the Republic of Rwanda*,⁹⁵ the EACJ did not direct itself to the question of human rights violations where Lieutenant Colonel, S. R. Ngabo was arrested and detained by the agents of the Government of Rwanda without trial for a period of five months. Instead, the EACJ declared that the detention without trial of Colonel, S.R. Ngabo amounted to breach of the fundamental and operational principles of the EAC Treaty especially Articles 6 (d) and 7 (2) which provide that Partner States are bound by principles of ‘good governance and rule of law’. Thus, Rwanda breached these principles by detaining a person without trial contrary to the law.

From what has been stated above, it is clear that people in the EAC cannot raise human rights claims under the Treaty. This is so because the Partner States have not yet concluded a Protocol extending human rights jurisdiction to the EACJ.⁹⁶ The practice of the court has been merely to rely on other causes of action including the breach of fundamental and operational principles such as rule of law and good governance. The rationale for relying on the fundamental and operational principles is revealed in the case of *Attorney General of the Republic of Uganda v. Tom Kyahurwenda*⁹⁷ in which the EACJ maintained that the provisions of Articles 6 and 7 of the EAC Treaty which provide for fundamental and operational principles are justiciable before the EACJ, national courts and tribunals. Furthermore, those provisions are at the heart of the community itself. Failure to enforce them amounts to a breach of the EAC-Treaty and impairment towards achieving objectives of the community.

It is submitted that absence of human rights regime in the EAC legal framework hinders people of the East African Community from raising human rights claims in the EACJ. It should be remembered that, there are a lot of claims on the violation of human rights in the region.⁹⁸ However, it is the same region which does not give access to its people to approach regional courts on claims involving violation of human rights. In that regard, people do not feel the impact of regional justice system and hence, the principle of people centered community is not honoured in practice.

7. Conclusion and Recommendations

⁹⁵ Reference No. 8 of 2010 and Appeal No. 1 of 2012, [EACJ].

⁹⁶ Article 27 (2) of the EAC-Treaty.

⁹⁷ Case Stated No. 1 of 2014, [EACJ].

⁹⁸ Legal and Human Rights Centre (LHRC), Tanzania Human Rights Report, 2015, found at <http://www.humanrights.or.tz/userfiles/file/TANZANIA%20HUMAN%20RIGHTS%202015.pdf> retrieved on 25th April, 2017. See also, UNMISS, Report on Violations and Abuses of International Human Rights Law and Violations of International Humanitarian Law in the Context of the Fighting in Juba, South Sudan, July, 2016, found at <http://www.ohchr.org/Documents/Countries/SS/ReportJuba16Jan2017.pdf> retrieved on 25th April, 2017. See also, the Human Right Watch Report, Burundi Events of 2016, found at <https://www.hrw.org/world-report/2017/country-chapters/burundi> retrieved on 25th April, 2017, which among other things the report covers incidences of killing done by Security Forces and Ruling Party Youths in Burundi.

This Article focused on ‘the Principle of People Centered Community’ as enshrined in the EAC-Treaty and its reflection in actual practice by the EAC-Partner States. It has shown that lack of popular participation was among the factors that led to the collapse of the defunct EAC in 1977. One of the ways of addressing the problem was incorporation of the principle of people centered community in the EAC-Treaty of 1999. The Article reveals further that, the principle is reflected in both the objectives⁹⁹ and operational principles of the Treaty. It also notes that, operational principles are meant to guide the community towards practical achievement of the objectives set in the EAC Treaty. Therefore, including the principle of people centeredness among the operational principles shows how serious the EAC Partner States are, in addressing the reasons that led to the collapse of the former EAC. The same is reflected even in the slogan of the EAC which is ‘One People, One Destiny’.¹⁰⁰ Indeed, the slogan recognizes the importance of the people towards reaching the destiny or objectives of the community.

Moreover, it has been argued in this Article that, the principle is largely reflected on paper but not in actual practice. In order to back up this argument, the Article has explored the practices of the Partner States and various institutions of the EAC such as the EALA, the Council and EACJ. Among other things, issues of law making within the organs of the community and how the same diverge from the principle of people centered community is discussed. The divergence on admission of a new member, representation in both the EALA and the Council and human rights vis-à-vis people centeredness have been examined. In all these discussions, it has been shown that there has been a complete divergence from the aim of creating the people centered community. People have been made the observers of most of the decisions and actions taken in the community instead of being active participants. This trend is not conducive for a community which aims at meeting its objectives.

On the basis of the arguments raised in this Article, the following recommendations are made.

First, there should be more involvement of the people in many programmes and schemes of the community. The involvement should give a podium through which people in the community can air out their views. This may even be implemented by using local televisions and radios in the Partner States.

Second, when admitting a new member to the community, it is important to first gather views of the people in the region. This means the views of both citizens from the applicant state and those of citizens of existing Partner States should be considered. This will add legitimacy and increase the support of the people towards integration process in the region.

Third, members of the EALA should be elected directly by the people themselves. Currently, members of EALA are elected in the National Assemblies of the Partner States. The process of getting them starts from their respective political parties and therefore, tends to represent their political parties instead of the people in the EALA. Thus, vesting the powers to elect members of EALA in the people will help to remove some elements of party supremacy and enable a true representation by the people.

⁹⁹ Article 5 of the EAC-Treaty.

¹⁰⁰ East African Community: One People, One Destiny, found at <http://www.eac.int/> retrieved on 25th April, 2017.

Fourth, membership in the Council should as well be revisited. This should ensure that Council of ministers really represents the people and the community at large. Unlike the current trend where members of the Council represent the interests of their governments and not necessarily the people of EAC, it is important to revisit this arrangement even if it means to adopt the modality under the defunct EAC.