SCHOOL OF HUMANITIES AND SOCIAL SCIENCES


INGUTIA BRENDA EDNA

627948

A Thesis Submitted to the School of Humanities and Social Sciences (SHSS) in Partial Fulfillment of the Requirement for the Degree of Master of Arts in International Relations

SUMMER SEMESTER 2016
Student’s Declaration

I, the undersigned, declare that this is my original work and has not been submitted to any other college, institution or university other than the United States International University-Africa in Nairobi for academic credit.

Signed: ___________________________    Date: __________________

Ingutia Brenda Edna

This thesis has been presented for examination with my approval as the appointed supervisor.

Signed: ___________________________    Date: __________________

Dr. George Katete

Signed: ___________________________    Date: __________________

Dr. Tom Onditi
Dean, School of Humanities and Social Sciences (SHSS)

Signed: ___________________________    Date: __________________

Prof. Ruthie Rono
Deputy Vice Chancellor, Academic Affairs (DVCAA)
Dedication

I dedicate this thesis to my heavenly Father and God who has made everything possible. He has taught me to trust Him every step of the way and that when He begins something, He is faithful to complete it.

To all the East African citizens, ignorance and apathy are our greatest enemies in the move towards political federation. We have to overcome them.
Acknowledgement

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Above all, all glory goes to God for life, good health, guidance, provision, and wisdom throughout this process. My MA completion has been a walk of faith and He has proven Himself trustworthy.
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<tr>
<td>ACP-EU</td>
<td>Africa-Caribbean and Pacific – European Union</td>
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<tr>
<td>AEC</td>
<td>African Economic Community</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>AWEPA</td>
<td>Association of European Parliamentarians with Africa</td>
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<tr>
<td>CCM</td>
<td>Chama Cha Mapinduzi</td>
</tr>
<tr>
<td>CEMAC</td>
<td>Central African Economic and Monetary Community</td>
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<tr>
<td>CEPGL</td>
<td>Economic Community of Great Lakes Countries</td>
</tr>
<tr>
<td>COMESA</td>
<td>Common Market for East and Southern Africa</td>
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<td>CP</td>
<td>Citizen Participation</td>
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<td>CPA</td>
<td>Commonwealth Parliamentary Association</td>
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<td>CRC</td>
<td>Constitutional Review Commission</td>
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<td>CSOs</td>
<td>Civil Society Organizations</td>
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<td>CUF</td>
<td>Civic United Front</td>
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<td>EAC</td>
<td>East African Community</td>
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<td>EACJ</td>
<td>East African Court of Justice</td>
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<td>EACLA/LEGCO</td>
<td>East African Central Legislative Assembly/Legislative Council</td>
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<td>EACSOF</td>
<td>East African Civil Society Organizations' Forum</td>
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<tr>
<td>EAHC</td>
<td>East African High Commission</td>
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<tr>
<td>EALA</td>
<td>East African Legislative Assembly</td>
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<tr>
<td>ECA</td>
<td>Economic Commission of Africa</td>
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<tr>
<td>ECCAS</td>
<td>Economic Community of Central African States</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Commission for West African States</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<td>------------</td>
<td>---------------------------------------------------------------------------</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FAWEU</td>
<td>Forum for African Women Educationalists Uganda</td>
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<tr>
<td>IGAD</td>
<td>Inter-Governmental Authority on Development</td>
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<td>IOC</td>
<td>Indian Ocean Commission</td>
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<tr>
<td>IPFPHD</td>
<td>Inter-Parliamentary Forum on Population, Health and Development</td>
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<tr>
<td>IPLC-NR/EI</td>
<td>Inter-Parliamentary Liaison Committee on Natural Resources/Extractive Industries</td>
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<td>IPRLC-B</td>
<td>Inter-Parliamentary Liaison Committee on Budget</td>
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<td>IPU</td>
<td>Inter-Parliamentary Union</td>
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<td>MRU</td>
<td>Mano River Union</td>
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<tr>
<td>NAFTA</td>
<td>North Atlantic Free Trade Area</td>
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<tr>
<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<td>NRM</td>
<td>National Resistance Movement</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
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<td>OLPC</td>
<td>One Laptop per Child</td>
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<tr>
<td>PAP</td>
<td>Pan-African Parliament</td>
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<tr>
<td>PSD</td>
<td>Social Democratic Party</td>
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<tr>
<td>RECS</td>
<td>Regional Economic Communities</td>
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<td>RPF</td>
<td>Rwandan Patriotic Front</td>
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<tr>
<td>SACU</td>
<td>Southern African Customs Union</td>
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<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
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<tr>
<td>UEMOA</td>
<td>West African Economic and Monetary Union</td>
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<tr>
<td>UMA</td>
<td>Arab Maghreb Union</td>
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<tr>
<td>UNECA</td>
<td>UN-sponsored Economic Commission for Africa</td>
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<tr>
<td>VCLT</td>
<td>Vienna Convention on the Law of Treaties</td>
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Abstract

The East African Legislative Assembly (hereinafter referred to as “Assembly”), an organ of the East African Community (hereinafter referred to as “Community”) is central to the unification of the members states of the Community – one of its service delivery. This is based on its representative function which ideally should help to not only create awareness of the Community but also connect the people of the Community through the outreach activities.

The specific objectives of this study include focusing on the institutional provisions of the Assembly; the procedures followed by the Assembly in performing its legislative functions and the extent of EAC citizens’ involvement in law creation through the Assembly between 2005 and 2015. Theory of institutionalism will be used to explain the evolution and performance of the Assembly.

Considering the envisioned political federation, the legitimacy of the Assembly is critical. The legitimacy questions arise from the lack of popular consent in the election of Assembly representatives, lack of a uniform electoral process within the member states, and the weakness in the treaty in providing for ordinary citizens participation in the integration process.

Institutions such as the East African Civil Society Organizations' Forum and the East African Business Council have the potential to encourage citizen participation but the modalities of their participation need to be made clear. In addition, the treaty needs to equip these institutions with a greater mandate in participating in integration efforts apart from the observer status given to them. The need to involve citizens in the integration process is vital and can be enhanced when the citizens are able to see that the benefits of the integration outweigh the losses. Conversely, the EAC citizens need to get rid of the ignorant and apathetic attitude that limits their involvement.
CHAPTER 1

Introduction

International politics is no longer a preserve of states. Increasingly, non-state actors including regional economic communities (RECs) have taken a lead in determining its trajectory. RECs have become key players in world trade and economic development in general. Their evolution is pegged on the realization by states that they have more influence when lobbying as a group as opposed to individual states. As argued by Ruppel states’ resort to regional integration was influenced by their need to attract adequate financial transfers and the technology needed for increased economic development (2009). The integration sought by states is both political and economic and is mainly determined by geographical location.

This study is founded on the concepts of legitimacy and citizen participation. It will be testing the assumption that, citizens’ participation in the EALA is essential for its legitimacy which is essential in enhancing its service delivery. To support this position, the study will critically examine EALA’s performance between 2005 and 2015 as a case study and interrogate how people-representative it has been. It will examine how the Treaty has empowered it and what obstacles the Treaty could be putting in the way of citizens participation. It will also focus on how much citizens’ participation has been incorporated and make recommendations on how best it can be improved in order to fast-track the integration process towards a political federation in the East African region. The overall aim is to contribute to the scantily available literature that supports citizen participation in integration initiatives.

1.0 Background to the Study

At the heart of regional integration discourse lies the belief that cooperation among states not only creates mutual dependence but also provides larger economic spaces which promotes
growth (Chingono and Nakana, 2009). Haas (1958) has defined regional integration as the process through which national political actors yield some of their powers and privileges to a central body thereby having some level of authority over the national states. Mattli (1999) on the other hand viewed integration as the voluntary linking of the economic domain of two or more formerly independent states to the extent that authority over key areas of domestic regulation and policy was shifted to a supranational level. Whereas Haas definition encompassed both political and economic integration, Mattli’s (1999) focused on economic integration. These two definitions covers different regional bodies - those formed solely for trade reasons such as the North Atlantic Free Trade Area (NAFTA) and those formed for political and economic integration such as the European Union (EU) and African Union\(^1\) (AU) (Sore, 2010). The EU has been successful in forming a political federation while the AU, and other regional bodies within it, are still working towards that.

Regional integration has been spearheaded by globalization, a process through which sovereign national states are crisscrossed and undermined by transnational actors with varying prospects of power, orientations, identities and networks (Beck, 2000). Increased interconnectedness among states coupled with spillover effects of different phenomena called for cooperation among states. Regional integration provided an avenue for this cooperation.

In Africa, regional integration has its roots in Pan-Africanism, a concept which sought to respond to Africa’s underdevelopment (Murithi, 2005; Sore, 2010). Another perspective opines that regional integration was used by the colonial masters to manage their colonies (Alusa, 2013). Ogola et al (2015) add that the establishment of the UN-sponsored Economic Commission for Africa (UNECA) and the Organization of African Unity (OAU) in 1958 and 1963 respectively, formed the impetus for regional integration in Africa. ECA proposed the
division of Africa into regions for the purposes of economic development. The emergence of the AU in the millennium was seen as a revival of pan-Africanism (Adejo, 2001). Some of the activists behind pan-Africanism included W.E.B. DuBois, Amilcar Cabral, Marcus Garvey, Frantz Fanon, and Kwame Nkrumah. Pan-Africanism sought to bring Africans within the continent and those in the diaspora together to fight against western domination—an emancipation struggle that no single state could have fought on its own (Matera, 2005).

Dinka & Kennes (2007) opine that nearly all African countries, except for the Sahrawi Arab Democratic Republic, have embraced regionalism leading to Africa being home to more sub-regional organizations than any other continent. Most African countries are members of more than one sub-regional organizations. According to the Economic Commission of Africa’s (ECA) report (2004), there are 14 regional groupings in Africa, In West Africa the West African Economic and Monetary Union (UEMOA) and the Mano River Union (MRU) coexist with the Economic Community of West African States (ECOWAS). Central Africa has three groupings: the Economic Community of Central African States (ECCAS), the Central African Economic and Monetary Community (CEMAC), and the Economic Community of Great Lakes Countries (CEPGL). East and Southern Africa share six Regional Economic Communities (RECs) namely the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Inter-Governmental Authority on Development (IGAD), the Indian Ocean Commission (IOC), the Southern African Development Community (SADC), and the Southern African Customs Union (SACU). North Africa hosts the Arab Maghreb Union (UMA) and the Community of Sahel-Saharan States (CEN-SAD) (Economic Commission of Africa, 2004).

These sub-regional groupings, formed based on certain shared similarities, have helped individual member states to deal with region-specific issues spanning from economic growth,
peace and security to transnational crimes and incidences, among others. Other benefits include Mwase’s (1979) note that regional integration was used by developing countries as a tool in emancipating themselves from the high dependency on the developed countries and Mistry’s (2000) hope that the embrace of regional integration among African states would help them “overcome the difficulties posed by unviable markets through market enlargement.”

Paradoxically, there are two divergent views in Africa - on one hand there is call for economic and political integration towards larger regional entities and federations with supranational systems of governance, and, on the other hand, towards disintegration of existing state formations resulting from secessionist movements based on ethnicity or other sources of social identity (Kibua and Tostensen, 2005).

In the East African region, the East African Community 1 (then known as East African Co-operation) was said to be unique in the whole world and considered as one of the most integrated and most advanced of regional organizations for economic and political co-operation (Sebalu, 1972). Its history dates back to the colonial era when the British ruled the East African colonies (Kenya, Uganda, and Tanganyika⁴) under shared governance structures. Administration of these colonies was accomplished through the creation of the corporate judicial body - East African High Commission (EAHC) and the main decision-making body - East African Central Legislative Assembly (EACLA) also known as the Legislative Council (LEGCO) (Ogola et al, 2015; Tulya-Muhika, 1995). The British also constructed a unified railway system, post office and, later, an airline, in order to reduce the cost to the British Exchequer which was subsidising these services initially (Sebalu, 1972). The structures established coupled with the services provided a basis for the integration of the East African region.
At independence, the desire to usher in a political federation as a springboard for regional integration was rife among the three Heads of State of Kenya (Jomo Kenyatta), Uganda (Milton Obote), and Tanzania (Julius Nyerere). The signing of the Treaty establishing the East African Co-operation happened in 1967. This organization lasted for 10 years after which it collapsed due to among other issues, difference in political ideologies among the Heads of State and the lack of popular participation of the non-state actors including the East African individuals, the private sector, and the Civil Society Organizations (CSOs) in the integration process.

The common cultural, historical and infrastructural backgrounds, coupled with economic interests, in part, driven by the Kenya-Ugandan railway revived the desire to maintain cooperation among the three countries in the 1990s. Signing of an agreement to revive it in 1993 proved the commitment of the three Heads of State towards the East African Co-operation. This could be attributed to the opportunities for member countries’ economic growth and development, stability, democracy, and respect for human rights offered by the Community (Oluoch, 2009). Thereafter in 1999, a new East African Community (herein referred to as EAC 2) was established through the signing of a Treaty by Kenya, Uganda, and Tanzania in what Adar (2011) refers to as Phase V of the East African regional integration.

July 2000 marked the entry to force of the Treaty establishing the EAC 2 entered when the three founder member states ratified it. Burundi and Rwanda joined the EAC 2 later on in 2006 after they both ratified the Treaty. In essence, as noted by former President of Tanzania, Jakaya Kikwete the establishment of current EAC is derived from lessons learnt from the defunct EAC 1 (1967-1977) and the gains made by the Tripartite Commission on East African Cooperation (1966-1999). As provided by the Treaty, the process of EAC integration is divided into four distinct stages namely; i) Customs Union, ii) common market, iii) monetary Union and
iv) political federation (Article 5 (2), EAC Treaty, 1999). The Treaty additionally that the primary objective of the EAC is in development of programs and policies in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs that would help heighten the process of integration in the region (Article 5 (2), EAC Treaty, 2002). The increased cooperation among the member states is meant to set the pace for the establishment of a political federation. As of 2011, the region had a combined population of 130 billion people with a combined GDP of $745 million.

As noted in Article 9 of the Treaty, EAC is made up of a number of institutions including the Summit, the Council of Ministers; the Coordinating Committee; the Secretariat; the Sectoral Committees; the East African Court of Justice (EACJ); the East African Legislative Assembly, among others (EALA) (Reith & Boltz, 2011). These institutions and organs were established by the Treaty that established the Community to help arrive at the ultimate phase in the integration process – to establish a political federation. Achievement of this overarching goal requires participation of the East African citizens considering that lack of it, among other factors, contributed to the collapse of EAC 1. The collapse, coupled with the resultant bitter experience still influences some peoples’ attitude and raises apprehension about the nationalist and pan-Africanist goal of political federation.

EALA, like other EAC organs and institutions was first established by the Treaty establishing the EAC 2. EALA is to the EAC 2 what the European Parliament (EP) is to the European Union (EU) or the Pan African Parliament (PAP) is to the African Union (AU), and the ECOWAS Parliament to the ECOWAS and SADC Parliamentary Forum is to SADC. The membership of this organ is derived from nine members elected by each partner state; the minister responsible for East African Affairs from each partner state; the secretary General; and
the Counsel to the Community. The Assembly meets at such times as it determines but has a
maximum number of days fixed at eighty (80). These days are divided into five sessions which
are rotational (Ogalo, 2012). Ogalo adds that the functions of the Assembly include enactment of
laws, reviewing, monitoring and evaluating the activities carried out by the council of ministers
and debating the grievances of East Africans. EALA also performs the functions of budgeting
and setting up committees (Ogola et al, 2015).

This study will focus on EALA, the law-making body of the EAC, which among other
things, EALA has a significant role to play in deepening EAC’s regional integration. The
membership of EALA and its functions bring out the belief that EALA is a people
representative body capable of advancing the interests of the EAC citizens in the integration
process through involving the EAC 2 citizens in its day-to-day activities. EALA remains the
hope of the EAC citizens in their desire to be involved in the integration process given its role of
a law-making organ. The study will evaluate the capacity of EALA to deliver its set objectives as
outlined in the Treaty while considering questions of its legitimacy.

1.1 Statement of Research problem
Improved political will among the leaders of the EAC has shown the need for co-operation
amongst the Partner States. However, the Community has failed in mainstreaming individuals
and this has impacted negatively on its integration process. Awareness levels among the citizens
on what the Community is and the benefits it provides them with is very low. Low levels of
awareness result in minimal participation in integration issues yet as opined by Keohane (2006)
the establishment and effectiveness of state policies need to generate at least passive support
from the people whom they affect. Oluoch (ibid), qualifies Keohane’s (2006) argument by noting
that the legitimacy of the EAC, and that of EALA specifically, depends on its ability to fulfil its
objectives and the acceptance of its norms by its subjects – the EAC citizens. In addition, the formation of a political union, which is EAC’s desired end, exists only when the politicized decision-making process has acquired legitimacy and authority (Haas and Schmitt). The importance of legitimacy can therefore not be undermined.

EALA has been on the limelight on the extent to which it is representative. The representatives
d of the body as outlined in the Treaty are to be elected. However, the electoral processes in the member states differ bringing up the questions of democracy given that an election process is a key area through which citizens can exercise participation in EAC matters. Although citizen participation in EALA is critical to its legitimacy, available literature has not exhaustively looked into it. This study will evaluate how this lack of citizen participation has affected the institution’s legitimacy hence affecting its service delivery

1.2 Research Questions
This study seeks to answer the following questions.

1. What are the institutional provisions of the EALA?
2. What procedures has EALA followed in performing its legislative functions?
3. How far have the EAC citizens been involved in law creation through the EALA between 2005 and 2015?

1.3 Objectives of the Study
The overall objective of the study is to explore the legitimacy questions of the East African Legislative Assembly and how this has impacted on its service delivery. The specific objectives of the study are:

1. To establish the institutional provisions for the establishment of EALA.
2. To investigate the procedures followed by EALA in performing its legislative functions.

3. To examine extent to which EAC Citizens have been involved in law creation through the EALA

1.4 Hypothesis
The study is meant to test the hypothesis that citizens’ participation in the EALA is not only essential for its legitimacy but also in enhancing its service delivery.

1.5 Significance of the Study
This study is undertaken at a time when the discussions on fastening regional integration within the East African Community are rife. This study will therefore be helpful to both the EAC and its stakeholders as it will assist them to achieve their objectives by involvement of citizens. This is because whereas government leaders have taken the lead in promoting regional integration, they have failed to incorporate the common citizens leading to inefficiency of the regional body which has a lot of potential in bridging the gap between the developed countries and the developing countries. Knowing how to incorporate the citizens and the importance of incorporating them will help legitimize EAC and improve its effectiveness.

The five member states also seek to benefit from this Study as states are the building blocks of the Community who then need to integrate and incorporate the citizens in matters concerning integration for the overall impact on the Community. EALA as an organ of the EAC seeks its membership from the member states who then need to know how to involve their citizens in the electoral process of electing EALA representatives and how this would not only benefit EALA but the entire Community which seeks to be a political federation.
This study will equally be beneficial to the EAC citizens as it offers them guidance and clarity on how they can be involved in the integration process and how their involvement is necessary considering the benefits they stand to gain from the Community in this era of globalization. The academia equally stands to benefit from this research as it builds on the existing research on citizen participation and legitimacy but now brings out the connection between the two in the performance of the EALA.

1.6 Literature Review

1.6.0 Introduction

In this section, available literature of regional integration will be reviewed to provide the background of the study. Emphasis will however be made to regional integration among the African states, particularly, the East African states with the aim of locating political legitimacy and citizen participation in influencing the integration process.

1.6.1 Regional Integration in Africa

The move towards regional integration in Africa stems from the slavery and colonial experiences of Africans both within and in the diaspora when they were dominated over by the West. Individuals such as W.E.B. Dubois were not comfortable with maintaining this status quo hence mobilized others to fight against racist domination that subjected Africa to overreliance on the West for primary export commodity driving the pan Africanist agenda (Matera, 2005). “Pan-Africanism is an expression of continental identity and coherence, distinguishes regional integration in Africa from other regions in the developing world” (McCarthy, 1995, p. 14). However, it is important to bear in mind Dirar’s (2014) argument that the “founding fathers” of African regional integration had differing ways on approaching integration although they were all in agreement that Africa needed to integrate. His conclusion is based on the remarks by the three presidents. Nkrumah supported a “federal approach, with vertical central authority and
supranational authority over member states.” Nyerere\textsuperscript{14} sought to “promote a more gradual and intergovernmental confederal approach that enabled member states to retain most of their sovereign power”. In contrast, Selassie\textsuperscript{15} “neither advocated for federalism nor confederalism, but rather an agreement that showed that Africans stand united”. AU, which succeeded the OAU\textsuperscript{16}, remains the vehicle through which Africa can be integrated into the global economy.

The transformation of the OAU to AU in the millennium through the Abuja Treaty brought with it an increased emphasis on RECs which are considered building blocks towards the full realisation of the African Economic Community (AEC) (Bensah, 2011)\textsuperscript{17}. The delivery of services within these RECs differs from one REC to another. ECA on noting progress made by the RECs notes UEMOA and COMESA have made significant progress in trade liberalization and facilitation; ECOWAS in free movements of people; SADC and EAC in infrastructure and ECOWAS and SADC in peace and security (2004, ibid).

While comparing the integration process of the EU from the AU, Sore (2010), notes that the structures within the AU are similar to the EU which is the most successful model of regional integration. In addition, he notes that The EU took a practical bottom-up, step-by-step route to integration, while the AU adopted grand ideologies and a top-down design. The RECs seem to have taken the same approach in establishing themselves where the political leaders championed the agenda of integration without considering the citizens for whom the agenda was set. This comparison would go a long way in differentiating the legitimacy of the two institutions.

The AU has put up structures to facilitate involvement of African citizens in its affairs. The Pan-African Parliament (PAP) was specifically set up to ensure that the peoples of Africa and their grass-roots organizations are given a platform to be more involved in
discussions and decisions pertaining to the continent (Walraven, 2004). PAP’s performance has been limited by its status as a consultative body and not a full legislative body. This, according to Aggad is due to absence of political will among the leaders to empower the parliament. Sore (2010) argues that reviews done by PAP are so heavily dependent on the will of signatory states and this puts the parliament at risk of undetermined probation even if it provides tangible positive results.

Other legislative bodies have equally experienced similar predicament as PAP’s. SADC’s PF for instance, is equally a consultative body with minimal legislative, oversight and budget powers. This, according to Musavengana is due to SADC governments being averse towards being held accountable by parliaments and ordinary citizens.

1.6.2 Citizens participation in regional groups
The EU is one of the most established regional blocs in this century; as such it offers best practices and lessons that can be learnt by other regional groups hence its referral. In European governance, participation has been defined as one of the five major principles of “good governance” which is meant to enhance both the efficiency and the legitimacy of European governance (Magnette, 2003). The white paper on European governance (2001) stipulates that incorporation of a less top-down approach coupled with a more inclusive and accountable policy-making enhances the quality, relevance and effectiveness of EU policies creating more confidence in the end-result and in the institutions which deliver policies. A less top down approach basically means a more bottom-up approach, the kind of approach that takes cognizance of the involvement of the “least” of all people, the people for whom the policies are made.
The call for citizens’ participation in many instances has been for the purpose of democratic legitimacy and effectiveness as such citizen participation is an aspect of governance that cannot be ignored in the contemporary world where there is an increased role of non-state actors, individuals included. As noted by Magnette (ibid, p.4), contemporary governance is not imprisoned in closed institutions and is not the province of professional politicians. The practice of citizen participation in regional institutions can only go as far as it is entrenched in national institutions and practices just like the democratic nature of regional institutions is derived from the member state governments who are selected, scrutinized, and can be dismissed by duly elected parliaments (Milward, 1992).

The level of civic participation differs from one civilization to another. In the western world, civic participation is viewed as a continuum\(^\text{20}\) where on one end you have citizens who have no interest in participating in political matters and on the other end very active citizens who are interested in matters politics, get engaged through voting, joining political parties, trade unions, and other civic associations (Tilly, 1986). This continuum is not unique to Western democracies as a quick glance on African politics reveals the same although some people’s disinterest in political matters could be attributed to political, economic, or social marginalization.

Magnette (2003) notes that civic participation is a basic foundation of mass democracies and its decline is understood as a symptom of domestic pathologies. This subject of civic participation is not new to this age; it dates as back as the 19\textsuperscript{th} century. John Stuart Mill when commenting on governments pointed out that promotion of the virtue and intelligence of the people is the most important form of excellence that can be possessed by any form of governance (Mill, 1861, p.26). Magnette (ibid, p. 152) adds that cognitive mobilization of
citizens by the government is an essence of democracy. The European Commission (2001b, p.7) additionally noted that democracies have to create conditions required for active exercise of citizenship.

Citizen participation in governments and even in regional institutions is enhanced when citizens are able to: identify clearly the incentives and disincentives of participation (Przeworski et al, 1999); clearly understand the policies and issues at stake (Magnette, ibid), and when their opinion is sought after through public hearings, referendum, among other tools of engagement. Magnette (ibid, p. 152) further notes that the understanding of issues by the public is mainly through the image given by political leaders and the media and less informed by personal experiences.

The place of non-state actors in the overall integration process, as outlined in the Treaty is far from conclusive. These non-state actors include inter alia citizens, civil society organizations, private sector and other interest groups. Whereas there are Articles 21 within the treaty that attempt to address the issue of citizens’ participation, there are no mechanisms provided on how this participation can be achieved. Minimal involvement of citizens in both the establishment and the operation of the EAC have had adverse effects on the Community. Oluoch (ibid) further notes that the Community has been lacking in legitimacy since it has failed in meeting the standards of input legitimacy. 22 These standards are inclusiveness, decisiveness, and epistemic reliability. He adds that there is no record of involvement of non-state actors in the process leading to the establishment of both the Permanent Tripartite Commission for East Africa (established in 1993) and the Community (established in 1999) (ibid).
A report by a Team of Experts researching on the Fears, Concerns, and Challenges of East African Citizens noted that effective marketing of the community, especially to the residents who have myriad concerns, was key in achieving political federation (EAC, 2010). Marketing of the community to the residents of the community involves creating awareness, involving them in decision-making and maintaining visibility of the community in the different member states. Ambassador Mwapachu, in a Report noted that integration processes have become more a matter of managerial and technocratic process driven by governmental interests and power relations (2012) and not a process that involved the EAC citizens.

Article 5 of the Treaty indicates that the Community shall ensure a “strengthening and consolidation of the long standing political, economic, social, cultural and traditional ties and association between the peoples of the Partner States so as to promote a people centred mutual development of these ties and associations” (EAC, 1999:15). The extent of the strengthening of these ties is dependent on how well the EAC citizens own the integration process. Incorporation of citizens’ participation across all the institutions and structures within the EAC is thus central to the overall integration process. This is because apart from providing an opportunity for enhancing the institution’s legitimacy, it also, as noted by Oluoch (2009:195) provides a framework for regional governance which is a necessary component in ensuring success of any institution, whether local, national, regional or global

Currently, the Community is implementing its 4th Development Strategy (2011-2016) which mainly aims at intensifying the region’s economic growth. As noted by former Secretary General of the EAC, Richard Sezibera, the Community intends to do this through strengthening popular participation which is a common East African identity and political will
behind the regional integration process, mainly because of the “people-centeredness” ambition that the Treaty pursues. However, the extent to which participation of the citizens has been inculcated in the operations of the Community is yet to be known.

1.6.3 Political legitimacy

Legitimacy is a key component in governance that plays a key role in determining the effectiveness of a body. Gyekye (1997) distinguishes between two types of legitimacy - formal and informal legitimacy noting that formal legitimacy is the kind that is enjoyed by a government which has been elected in accordance with constitutional procedures accepted by the people. On the other hand, informal legitimacy does not follow constitutional procedures in either installation or removal or a government from power, for instance in coup d’états. Importance of focusing on legitimacy of governments while questioning the legitimacy of regional institutions is based on the fact that the regional bodies are made up of these member states hence affect their legitimacy.

Max Weber, on defining legitimacy noted that a regime may be termed as legitimate when the participants within it have certain beliefs or faith in the regime (1964, p.318). Weber adds that these beliefs could be drawn from the belief that a particular political or social order has been there for a long time (tradition), because they have faith in the rulers (charisma), or because they trust its legality—specifically the rationality of the rule of law (Weber 1918; 1964). He further argues that social regularities that result from legitimate institutions are more stable than those result from the pursuit of self-interest or from habitual rule-following (Weber 1964: 124).

Gyekye (ibid) on the other hand argues that popular participation by citizens through a plebiscite or through their representatives is an important principle of legitimacy. This is
equally an important principle in democracy – a government for the people, of the people, and by the people- expected in any government that considers itself democratic. However, this is not always the case, as Iraq presents an example where democratic elections were conducted but were not sufficient in creating political legitimacy (Rothstein, 2009, p.312). In addition, Africa, and Kenya specifically, presents examples where ethnicity has been used negatively to promote division and impunity. Representativeness of many of the governments in Africa is either ethnic or discriminative of social status thereby marginalizing the “least” communities.

In the EU, Magnette (ibid, p. 152) claims that although there is participation among citizens through a plebiscite, it is limited to the elite- a very small part of the citizenry comprising of civic groups, lobbies, associations and Brussels-based European umbrella organizations. This results in what Matolino (2010, p. 60) refers to as vulnerability of democracy where those in power are tempted to abuse it in order to further their own interests. When this happens in regional institutions, interests furthered are mainly individual and statist leaving the regional body “powerless” and unable to deliver its services for which it was formed.

The subject of citizen participation and legitimacy is not entirely new. In the EAC region, more emphasis has been laid on the top-down approach towards enhancing integration but little on the role of the citizens in legitimizing the institutions which then impacts the institutions’ service delivery. This study seeks to fill this gap by critical examination of the Treaty that empowers EALA to perform its function and the evaluation of procedures that have so far been followed by EALA in performing its duties. The interest on EALA is based on the premise that EALA is a representative organ within the EAC that has the potential and capacity to involve citizens in its work thereby fast-tracking the integration process.
1.7 Theoretical Framework of Analysis

Theory of institutionalism has been used to explain the formation and maintenance of international institutions (Lake, 2002). Institutionalism helps us understand the rise and operation of EAC and EALA specifically. Proponents of institutionalism, as noted by Keohane and Martin (1995) are of the view that interstate cooperation occurs if states have significant common interests. Its argument revolves around the role of institutions in providing information. Information about the distribution of gains from cooperation may be especially valuable if the relative-gains logic is correct as opined by liberal theorists (Keohane and Martin, ibid). Keohane and Martin (ibid, p. 45) further note that institutions can facilitate cooperation by helping to settle distributional conflicts and by assuring states that gains are evenly divided over time. This will help in building confidence of the institution in citizens of the member states who then are more likely to participate in issues of integration.

The normative approach towards institutionalism argues that political behavior is best understood through a “logic of appropriateness” that individuals acquire through their membership in institutions (March and Olsen, 1996). This implies that people within institutions behave based on the institutions’ customs as opposed to their individual benefits resulting from their membership. On the other hand, the rational choice institutionalism opines that given that institutions are made up of rules and incentives, individuals will respond in behavior on the basis of the rules and incentives. For these individuals, their preferences are not modified due to their membership in the institutions (Peters, 2000).

The policy and structural choices made at the inception of an institution are said to have a persistent effect over its performance for the remainder of its existence. This approach of institutionalism is referred to historical institutionalism (Steinmo, Thelen and
Longstreth, 1992). On the other hand empirical institutionalism has been used to explain behaviour of institutions. This approach is underpinned by the assumption that institutions may or may not make a difference in policy choices, or in political stability as it focuses on institutions as formal structures of governments (Peters, 2000).

The concept of participation is derived from the liberal conception of democracy (Magnette, ibid, p. 155). This liberal conception has been critiqued by writers such as Habermas (1973) who claim that the contemporary pluralist structures have supported the top-down mass that has not only ‘turned off’ large numbers of people to the political process but has also led to elitist policies which only have benefits for the privileged few (Fisher, 1993, p. 166).

There is a contemporary school of thought proposed by two German scholars whose argument is based on the theory that more accountability (input legitimacy), increased transparency (throughput legitimacy) and enhanced problem-solving capacity (output legitimacy) is expected to produce more legitimacy (Risse and Mareike, 2007). This school of thought has the citizenry at its core since regime should be accountable to and by its citizens, should be transparent to its citizens and solve the problems of its citizens. In the case of regional bodies, it has been argued that states come together in a regional body to solve the problems common to them as states, hence a regional body should be able to solve the problems of all the citizens who are its members by virtue of their states.

1.8 Research Methodology

In analyzing the role of citizen participation in legitimization of regional integration within the EAC, this research study shall pre-dominantly rely on the descriptive research design. Descriptive research design explains what exists, providing an accurate portrayal or account of characteristics. The researcher will use both primary and secondary sources of data. The primary
sources referred to comprise treaties and official documents of the Assembly. Secondary sources produced as early as 1958 and as current as 2016 will be consulted in the process of researching. These sources include books, academic journals and newspaper articles, conference papers, working papers and relevant internet sources.

Following a critical review of the various sources of data, the study is intended to make a new contribution to the literature in as far as the role of citizen participation in legitimization of institutions is concerned. The results will confirm the hypothesis Citizens’ participation in the EALA is essential for its legitimacy and will enhance the effectiveness of the Community.

1.9 Structure of the Thesis

Chapter one is the general introduction of the topic of discussion. It covers among other things the background to the study, statement of research problem, objectives and research questions of the study not forgetting the justification of the study and the literature review of past studies that supports the central premise of the study. Theoretical framework of analysis will also be included in this section not forgetting the research methodology.

Chapter two will delve into the institutional provisions of EALA by taking a critical examination of the Treaty that established EALA and how it has empowered EALA in performing its functions. This will be followed by an examination of the Treaty amendments and how these have served to either enhance or hinder integration. A review of the successes and challenges of the Assembly will also be done in light of the Treaty that mandates the Assembly to function in a given way. The Chapter will also look at the legal measures taken by the partner states and how they support or hinder integration.
Chapter three will be devoted on the procedures followed, including member countries’ electoral processes, which have been followed by EALA in a bid to discharge its responsibilities as outlined in the Treaty. The chapter will also delve into the legislation developed by EALA and how these have served in enhancing integration in the EAC region. The bills made by the Assembly will be used as sources of information.

Chapter four will give insight on the extent to which citizens of the Community have been involved in the functioning of the Assembly thereby affecting its service delivery. As seen in the previous chapter, the provision for citizen involvement in national legislation is limited by the differing levels of democracy in partner states thereby limiting citizens’ role in electing their representatives to EALA. An examination of the Treaty will also be conducted to ascertain the level of participation of non-state actors, individuals included, encapsulated in the Treaty. The engagement of the private sector the civil society organizations and other interest groups in integration will also be reviewed since they are possible channels for citizen participation. The role of political parties in promoting citizen participation especially through the EALA will be reviewed with the background on how they (political parties) can actually increase awareness of EAC-related issues through their manifestos and campaigns.

Chapter five will finally make conclusions and recommendations on how best EALA can improve its service delivery by involving the citizens it requires to represent
CHAPTER 2: INSTITUTIONAL PROVISIONS OF THE ASSEMBLY

This Chapter will delve into the institutional provisions of EALA by taking a critical examination of the Treaty that established EALA and how it has empowered EALA in performing its functions. This will be followed by an examination of the Treaty amendments and how these have served to either enhance or hinder integration. A review of the successes and challenges of the Assembly will also be done in light of the Treaty that mandates the Assembly to function in a given way. The Chapter will also look at the legal measures taken by the partner states and how they support or hinder integration.

2.1 History of EALA

The current EALA was established in November 1999 as an independent, legislative arm of the Community responsible for enacting laws that would govern the joint interactions between the partner states is not new to the revived EAC. This took place when the treaty instituting EAC 2 was signed by the original three partner states at its first sitting in Arusha, Tanzania. As stipulated in the Assembly’s Website the vision of the Assembly is to be “An effective and independent Regional Parliament” and its mission is “to promote timely legislation, effective oversight and broad representation through programs that facilitate a prosperous, competitive, secure, stable and politically united region in order to enhance the welfare of East Africans” (EALA Strategic Plan, 2013).

Among other values, the Assembly applies effectiveness; allegiance to EAC Ideals; transparency and accountability; objectivity and impartiality, in the running of its operations. Some of the partners the Assembly works with include: Westminster Foundation for Democracy;
One Laptop per Child (OLPC); The Association of European Parliamentarians with Africa (AWEPA); and the East African Court of Justice (EACJ) (EALA, 2016).

The current membership of the Assembly is at 52, 7 out of whom are ex-officio members. According to EALA’s official website (2016), EALA has had 2 Assemblies which have served 5 years each as stipulated in the Treaty. In the First Assembly (2001-2006), Abdulrahman O. Kinana, an Elected Member from Tanzania, was unanimously elected as the Speaker while in the Second Assembly (2007-2012), a Kenyan - Abdirahim Haithar Haji Abdi - was elected as the Speaker. The Third Assembly (2012-2017) saw the election of a Ugandan national- the first female speaker – Margaret Zziwa- who was later thrown out of office in 2014 for misconduct and abuse of office. The current speaker in the Third Assembly is Daniel Fred Kidega who is a Ugandan national. The fourth Assembly will have either a Burundian or Rwandan national as a speaker since the position is rotational.

2.2 The EAC Treaty

A treaty is a formal agreement that binds two or more contracting parties to its (treaty) provisions. The Vienna Convention on the Law of Treaties of 1969 (VCLT) provides the regulation of treaties including how they are made, amended, interpreted, how they operate and are terminated (Gunaratne, 2008). Article 2 (1) (a) of VCLT on defining a treaty indicates that a “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 (VCLT, 1969). Treaties are equally viewed as legal instruments which outline the road-map of regional integration process where the provide guidance “to issues such as the responsibilities and interactions amongst the contracting parties; powers or competencies of regional institutions, terminal destination of the integration
process and the nature of such process” (Fagbayibo, 2012). Given the increased role of non-state actors in international politics, the 1986 Vienna Convention included international organizations as parties. Institutional provisions of EALA are entrenched in the Treaty that established the EAC. They range from the powers bestowed on the organ to the functions to be performed by the organ.

The EAC Treaty has been viewed as largely being state centric due to non-involvement of civil society and other non-state actors in the conception, formulation and final packaging of the treaty (Adar, 2011; Oloka-Onyango 2005). In its formative years, people neither gave consent to the establishment of the Community nor the Commission which drafted the Treaty a representation of various interest groups (Oluoch, 2009). Indeed the formation of the Community was a decision of the executive of the partner state governments (Nassali, 2001). This could explain the continued non-involvement of citizens in EAC-related issues. This lack of inclusivity, an aspect of input legitimacy as outlined by Keohane, indeed raises many questions about the EAC and the organs thereof. For the purpose of this section, the study will look at what provisions are availed for EALA by the Treaty that established the EAC regardless of its weakness.

2.2.1 Membership of the Assembly

According to Article 48 of the 1999 EAC Treaty, the membership of the EAC comprises of 32 members, 27 of whom are elected from the original partner states. The other 5 are ex-officio members who include: the Minister responsible for regional cooperation from each Partner State; and (ii) the Secretary General and the Counsel to the Community. This article was amended in 2007 when Burundi and Rwanda joined the Community, increasing the total number of the members to 52 (9 from each partner state, and 7 ex-officio members). This increase
brought with it two other implications on the part of Rwanda and Burundi as noted by Abdi, the speaker of the Second Assembly. These were i) background of the three original partner states which is predominantly Westminster-Commonwealth system and ii) the question of official language, being English which is not widely spoken in the two new partner states. The new members were sworn in on 5\textsuperscript{th} June 2007; it is at this same time that the Second Assembly began its operations. These members are also expected to be members of the Committees within EALA which are designed to help in performing the different functions provided for in Article 49 of the Treaty. In addition, pursuant to Article 48 (4) the Council appoints a Clerk of the Assembly and other officers of the Assembly.

2.2.2 Functions of the Assembly

Apart from being the legislative arm of the EAC, EALA also performs some specific functions as outlined in Article 49 of the Treaty. These functions can be categorized into legislative, oversight and representative.

2.2.2.1 Legislative

The centrality of law to regional integration cannot be understated since regional integration is a creation of law (Fagbayibo, 2012). Therefore this is a critical role of the Assembly which is done in coordination with the Council of Ministers. Article 14 (3) (b) of the Treaty states that the Council shall “initiate and submit Bills to the Assembly.” These Bills are then scrutinized by the Assembly which then is able to advice the Council. EALA offers a platform for addressing issues of development through checks and balances on governments through the Council (Abdi, 2010). This cooperation between the organs of the EAC is aimed at developing an all-inclusive legislation. Article 49 (2) (a) also provides legislative opportunity for the “Assembly to liaise with the National Assemblies of the Partner States on matters related to the Community.” This is based on the view that the Assembly performs similar functions as the
national parliaments hence the need to link up in order to ensure sustainability and avoid duplication of activities (Trapp, 2008).

EALA has since its establishment passed 47 legislations meant to ensure a balanced, equitable and sustainable integration process; the majority of these legislations originated from private members’ Bills (Garston, 2015; Abdi, ibid). Bills under EALA are initiated either by the Council sending a motion to the house or through private Bills by individual members or the committee of the house (Garston, ibid). Rule 64 of the East African Legislative Assembly Rules of Procedure of 2001, gives “Every Member a right to move a Private Members’ Bill” and that “a Committee of the House may initiate any Bill within its area of competence” {Rule 64 (1), (8)}. The Treaty, in Article 59 (1) makes this provision possible by stating that motions and bills may be proposed or introduced respectively in the Assembly by any member. Apart from EALA, the EU Parliament is the only other regional legislative institution which such legislative functions (Garston, ibid).

2.2.2.2 Oversight

This role entails interrogating public policies and public funds earmarked to pursue these policies to ensure efficiency and effectiveness, fairness and equity in their administration or implementation (Abdi, 2010; EAC, 2014). The Assembly is expected to consider annual reports on the activities of the Community, audit reports of the Audit Commission and any other reports referred to it by the Council of Ministers (Article 49 [2] [c]; Mpanyane, 2009). The formation of Committees within EALA, as provided in EALA’s Rules of Procedures 2001, makes this process possible as the Community project reports are scrutinized by the Committee members, who also are EALA members, to ensure that the overall integration goal is attained and the Treaty is implemented.
On budgetary allocations, the Treaty, under Article 132 (5) empowers the Assembly, upon the recommendation of the Council, with the role of ensuring that “resources of the Community are utilized to finance activities of the Community. This role is also complemented by Article 49 (2) (b) which provides that the Assembly “shall debate and approve the budget of the Community” in line with what is of priority to the Community (Abdi, ibid). In addition to allocation of the budget, the Treaty gives the Assembly the power to audit the Financial reports as provided in Article 134 (3) that opines that the Council, having received the financial reports from the Audit Commission, “shall present the report before the Assembly within six months of receipt for debate and for such other consultations and action as the Assembly may deem necessary.” The result from the debate is meant to ensure that the funds allocated are managed well and serve the purpose of enhancing integration in the East African region.

2.2.2.3 Representative

The Assembly is considered as a representative organ of the Community given that its membership is drawn from elections in the partner states, although like in almost all regional legislative institutions, the EALA’s members are not elected directly (Mpanyane, 2009). EALA, just like the national parliaments, is expected to be the voice of the citizens, linking them to the various organs in the Community and apprising them {citizens} with the various deliberations made that affect their lives, including their government’s commitment, or lack thereof, to integration-related issues (Abdi, 2010). This should be done through public hearings – the composition of the public being as inclusive as possible for proper representation- and also through outreach programs that are equally expected to sensitize the people of East Arica. Some EALA members have taken part in visiting villages especially along borders to enlighten them about the benefits of integration especially the free movements of goods and services across borders.
Parliamentary diplomacy has resulted in the proliferation of international and transnational parliamentary bodies (Manda 2008; Stravidis, 2002; Karuuombe, 2008). These bodies offer a platform for knowledge sharing, peer learning, exchange of experience, and highlighting of lessons learnt and good practices (Karuuombe, 2008; Mpanyane, ibid). EALA has taken part in some of these bodies including the Inter-Parliamentary Union (IPU), Commonwealth Parliamentary Association (CPA), Pan-African Parliament (PAP) and Africa-Caribbean and Pacific – European Union (ACP-EU) sessions (Abdi, 2010). This participation has not only offered EALA with opportunities for participation and contribution to international issues exposure but also registered lot of interest towards support of the Assembly and the community (Abdi, ibid)

2.2.3 The Committees

Pursuant to Article 49 (e) of the Treaty, the Assembly “may for purposes of carrying out its functions, establish any committee or committees for such purposes as it deems necessary.” These committees, appointed the efficient discharge of Assembly’s functions, are set up based on the Rules of Procedure (Mpanyane, ibid; Rules of Procedure 77). Rule 78 under Rules of Procedure provides for the establishment of the following Standing Committees of the House: (i) Accounts; (ii) Legal, Rules and Privileges; (iii) Communication, Trade and Investment (iv) House Business; (v) Agriculture, Tourism, and Natural Resources (vi) Regional Affairs and Conflict Resolution; and (vii) General Purpose. In addition, in accordance with Rule 80, the Assembly, following nomination by the House Business Committee, may at any time upon a motion made after notice given, appoint a select Committee which will handle and report on matters handed to it for consideration. Among many other functions, the committees are charged with the responsibilities of: initiating Bills within their respective mandate; assessing and evaluating activities of the Community and examining policy matters affecting their subject areas.
in a bid to perform the Assembly’s oversight function; and also reporting to the Assembly on their functions.\textsuperscript{39}

\textbf{2.2.4 Relationship between EALA and the National Assemblies}

The effectiveness of regional institutions depends on the supremacy of transnational laws and policies and the exercise of institutional autonomy (Fay, 1966; Weiler, 1981). Karuuombe (2008) has noted with concern that the creation and consolidation of regional parliaments have led to an intra-parliamentary competition between the national and regional legislature and especially between members at both levels as to who has overriding powers. Due to the legitimacy enjoyed by the national assemblies through the universal adult suffrage, implementation of national policies has overridden that of regional policies. As noted by Karuuombe (2008), the distinction between the foreign and the domestic legislation is blurred leading to calls for an increased role of parliaments in regional integration given their representative role. As such, these regional parliaments, EALA included, ‘must step beyond the traditional Executive prerogative in international affairs, and subject governments to the same degree of oversight as in domestic policy arena’ (Inter-Parliamentary Union, 2006).

In accordance with the Article 49 (2) of the EAC Treaty (1999), EALA is mandated to “liaise with the National Assemblies of the Partner States on matters relating to the Community.” The national parliaments are key to EALA’s existence given that as per article 50 (1) of the Treaty, “the National Assembly of each Partner State shall elect, not from among its members, nine members of the Assembly, who shall represent as much as it is feasible.” EALA has put in place mechanisms to help interact with the national parliaments for the purposes of promoting coordination and increasing sensitization among the citizens in the partner states. Such mechanisms include the annual Nanyuki Series which brings together parliamentarians from the
partner states to deliberate over issues and share experiences. Other for a created by EALA to enhance the relationship between it and the national parliaments include among others: the Inter-Parliamentary Forum on Population, Health and Development (IPFPHD); the Inter-Parliamentary Liaison Committee on Natural Resources/Extractive Industries (IPLC-NR/EI); and the Inter-Parliamentary Liaison Committee on Budget (IPRLC-B); the Inter-parliamentary Liaison Committee on Trade (EAPLC) (Abdi, ibid).

Article 65 of the Treaty provides for the relationship between the Assembly and the National Assemblies of the Partner States. There is cooperation between the clerks of the two assemblies. The Clerk of the Assembly transmits to the clerks of the national parliaments copies of records of all relevant debates of the meetings of the Assembly and Bills introduced into the Assembly not forgetting the Acts of the Community. On the other hand, the clerks of the national parliaments transmit records of all relevant debates of the meetings of their National Assemblies to the clerk of EALA. Although there is exchange of information between the regional and national parliaments, reports submitted by EALA to the national assemblies are rarely debated on by the members of the national assemblies. This is because their mandate which is mainly on creation of domestic legislation, forces them to focus on domestic issues more than the regional issues (Kibua and Tostensen, 2005).

Article 7 of the EAC Treaty mandates the Partner states 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 (EAC Treaty, 1999). This is because effective implementation of (democratic) transnational objectives is dependent on an equally democratic milieu at the national level (Fagbayibo, ibid). In other words, the extent to
which the processes in the partner states’ parliaments are democratic will determine the extent to which those in the Assembly are democratic.

2.2.5 Separation of powers and institutional legitimacy

The subject of separation of powers is one that has spurred debates in both national and regional legislative organs. The executive organs in regional bodies have been accused of replicating their national dominance in that ‘the ruling elite set [and approves] the integration agenda and implement the same with little involvement of other non-state stakeholders [including parliaments]’ (Karuuombe, 2008; Matlosa 2006). Parliaments must be able to scrutinize the negotiations and be kept fully informed as they unfold and be afforded an opportunity to express to the executive their political views (Salih, 2005). Unfortunately, constitutional and legislative frameworks give primacy to the executive (Karuuombe, ibid). The Treaty that established EALA provides for a number of cases where the Assembly can only function under the guidance of the Council as indicated earlier under the functions of the Assembly.

According to article 14 (3) (b), the Council, which is made up of the Ministers responsible for regional co-operation of each Partner State, is charged with the responsibility to “initiate and submit Bills to the Assembly.” (1999 EAC Treaty) This leaves the assembly with minimum power albeit it is allowed to debate over the Bills. In addition, article 51 (2) authorizes the Summit, upon recommendation by the council to determine the terms and conditions of service of the Members of the Assembly. Article 59 on Bills and Motions of the Assembly, provides for consideration of reports on Community’s activities submitted to the Assembly by the Council. Article 62 provides that enactment of legislation of the Community shall be effected by means of Bills passed by the Assembly and assented to by the Heads of State. This means that
the Heads of State have the final word on the enactment of legislation given that as per article 63 (1) they also hold veto rights determining whether to assent to or withhold assent to a Bill of the Assembly. Bills lapse when any of the Heads of State withholds assent to them (Article 63 (4) 1999 EAC Treaty).

Article 132 on the Budget authorizes the Assembly to approve Community’s budget but there is no room for the Assembly to make recommendations. At the end of the day, like many regional parliaments, the assembly is reduced to the level of what Karuuombe (ibid) refers to as putting ’rubber stamp’ on decisions including regional and international treaties, protocols and other instruments. The executive is indeed not obliged to take any recommendations made by the Assembly. This then implies that that the voice of the people is not well represented in the budgeting process since the organ responsible for representing the ordinary people has limited powers.

The need to have well defined separation of powers between the executive, judiciary and the legislature in EALA is necessitated by slower process of integration attributed to the observation that regional integration has been a preserve of the executive (Karuuombe, ibid). Even in cases where the Assembly has the mandate to legislate and represent, domination by ruling parties poses a challenge as members of the Assembly are nominated by ruling parties and as such serve to maintain the interests of the parties.

2.2.6 Treaty Amendments

Given the reality that society evolves over time and unforeseen situations occur, rules cannot remain static (Fagbayibo, ibid). Paragraph 1 of Article 150 states that the “Treaty may be amended at any time by agreement of all the Partner States.” The Assembly has the mandate of ensuring that the Treaty has been implemented and that every measure is taken to ensure that the
integration process in the EAC is attained. Some of the measures to be taken include the amendment of any clause within the Treaty which may hinder the achievement of the integration process.

A number of occurrences have necessitated amendment of the Treaty including the expansion of the Community to accommodate Burundi and Rwanda in 2006. Article 48 of the Treaty, on defining membership of the Assembly stipulated that the Assembly was to be made up of 27 elected members drawn from the three states that founded the Community. This article had to be amended upon the accession of Rwanda and Burundi to the Community. Additionally, Article 62 of the Treaty required amendment given that it provided for words of enactment in every Community Bill to read as “enacted by the East African Community and assented to by the President of the Republic of Kenya, the President of the Republic of Uganda and the President of the United Republic of Tanzania” (Oluoch, ibid).

The November 2006 interim ruling of the East African Court of Justice in Prof. P. Anyang’ Nyong’o et al vs. Attorney General of the Republic of Kenya et al concerning the election of the nine Kenyan parliamentarians who were to be sworn in to the Second Assembly led to Treaty amendment. This amendment was fueled by concerns arising from Partner States which were against the ruling and who amended the Treaty with a view to among other things, extending the grounds for removing judges from the Court of Justice (Pieter van der Mei, 2009). This move did not stop the judges from making the judgment that stated that both the Kenyan elections rules and the treaty amendment infringed the Treaty (ibid). This case will further be discussed in the Chapter 3 as the study examines the electoral processes of the partner states.
2.3 Assembly’s Success

In view of the Treaty, the Assembly has had a number of successes since its establishment, chief of which is the creation of legislation. Although this process of law creation has been argued to be highly influenced by the Executive, EALA has also played an approval role in it. Some of the laws created include the EAC Customs Management Act 2004. Abdi (2010) provided a list of laws that have been legislated by EALA since its inception. They include inter alia: The Community Emblems Act 2004; The Lake Victoria Transport Management Act 2007; The East African Community Budget Act 2008; East African Community Common Market (Free Movement of Persons) Regulations 2009; and The Inter-University Council for East Africa Amendment Act 2012 (Abdi, ibid: EALA, 2016; Law Reform Commission of Tanzania, 2016).

In a paper presented at the Regional Parliamentary Seminar on “Africa’s Regional parliaments: State of Development, Cooperation and Potential, Gervase Akhaabi noted a number of successes achieved by EALA from EALA’s perspective. His views are similar to those of Abdi (ibid) who was also a member of the Second Assembly. They both purport that EALA has served as the main democratic link between the institutions of the EAC and the EAC citizens. The extent of this achievement can be argued by the observation that majority of the EAC citizens can still not able to demystify regional integration and what benefits it provides them with (Arita, 2013). The two have justified this achievement by noting that the Assembly has conducted public hearings, workshops, seminars, & public rallies on major stages of integration and legislation. Apart from the reports on EALA’s website, it is difficult to come by any that shows the occurrence of these meetings. If the process of formation of the Community,
which is believed to have been non-inclusive, is anything to go by, then the level of ordinary citizens’ engagement is highly questionable.

Another success mentioned by the duo is under its role on oversight. EALA prides itself in having interrogated public policies and public funds that were set aside for the pursuit of integration. It has also provided guidance to EAC on utilization of resources including spending and allocation. At this stage, it is important to note that EALA is not directly involved in the budgeting process although it offers this oversight role (Mpanyane, ibid). In addition, even though after interrogation the Assembly may make recommendations, neither the Council nor the Summit is obligated to consider them.

Another achievement recorded is on the tours and outreach programs that have been conducted by EALA members for the purposes of creating awareness of the Assembly and performing its representative role. In the recent past, EALA members from Uganda have held sensitization meetings with civil society organizations such as Forum for African Women Educationalists Uganda - FAWEU; In Rwanda, EALA representatives held a discussion on gains of EAC integration the University of Rwanda-College of Education; In Kenya, EALA representatives held a public lecture on East African Integration at Mount Kenya University and launched an EAC Club in Technical University of Mombasa in a bid to sensitize students on their role in the integration process. In Burundi, EALA reps have held talks on the recent Burundi crisis, this served to sensitize the public on the existence of the Assembly and on the role it plays in regional integration where peace is an important component.
2.4 Assembly’s Challenges

The Assembly has faced a number of challenges which have contributed towards the slowing down of the integration process notwithstanding the centrality of the organ in fast-tracking regional integration. These challenges stem from both within and without. Those from within could be attributed to the provisions of the Treaty. For instance, the challenge emanating from the doctrine of separation of powers is propelled by the Treaty which empowers the Assembly with limited authority. No formal connection exists between the summit and the legislature apart from the annual address, which was an innovation of former Speaker Abdirahin Abdi (Ogalo, 2012). Legal instruments have been passed through parliaments instead of being passed by parliaments (Karuucombe, ibid) as the Summit and Council (regarded by Ogalo [ibid] as the executive arm of the Community), hold more powers. This has not only limited the autonomy of the Assembly but rendered it to a rubber-stamping institution. Akhaabi (ibid) in the same report, noted that as much as Article 49 (2) (c) provides for the Council to present reports to the Assembly, there have been cases of being subjected to scrutiny and at times alterations by a series of Sectoral Committees of Partner States composed of middle level Civil Servants.

There are no practical and formal linkages between the Assembly and the Summit where the two Organs can meet and share ideas in the process of law making (Akhaabi, ibid). In essence, the relations between and among organs within the EAC have posed a challenge to the Assembly’s operation. Oloka-Onyango (ibid) notes under this that EALA is simply a paper-tiger given its failure to achieve meaningful concessions regarding the passing of the budget for the institution. The case of Calist Mwatela, Lydia Wanyoto vs. Secretary General of the East African Community has served to demarcate the responsibilities of the different organs in order to avoid
interference experienced especially between the Assembly, the Council of Ministers and the Secretariat (Ogalo, 2012).

As noted by Odiko, inadequate mechanisms for effective engagement of the civil society sector and other stakeholders, limited staff capacity to effectively execute EALA’s work at Committee and Assembly levels have been noted as the recent challenges affecting the Assembly (2016). The representative role of the Assembly demands the engagement of various stakeholders to capture the concerns and views of the stakeholders. Therefore, it is imperative that mechanisms for engagement be provided and that stakeholders in all the partner states, including the small interest groups such as farmers and petty vendors, be involved. The EAC is home to 158 million citizens, of which 22% is urban population (EAC, 2016). This high population requires a representative organ of EALA’s stature to have more staff in order to effectively and efficiently run its work.

Lack of a legislative program has resulted to most of the legislative work in the national assemblies of the partner states being generated by the executive. This has posed a challenge to the Assembly as noted by Akhaabi the former member of the Second Assembly. He notes that although the Rules of Procedure provides for the Council to communicate the legislative agenda to the Assembly at the beginning of each parliamentary session for the purpose of effective planning, the Council never done so resulting to an impasse in planning and budgeting for sessions.

While presenting a paper on the “Overview of the Organs of the East African Community and Functionality of the Current East African Community Institutional Framework”, Dan Ogalo noted that inadequate funding has forced the Assembly to depend on donor funding from entities such as European parliamentarians for Africa (AWEPA) and African CB Foundation.
especially for its committee work (2012). This dependence on donor comes with its dynamism where the interests of the donor also have to be met sometimes impeding the autonomy of the committees. In addition, he noted that the Assembly does not have administrative and financial independence making it dependent on the Council and the Secretary General for running of its operations.

2.5 Partner States Constitution and their support to integration initiatives

It has been argued that the constitutions of the EAC partner states have not made much reference to the EAC integration (Lwaitama, Kasombo, & Mkumbo, 2013). This then implies that the citizens are either not aware or less aware of the integration thereby creating hurdles to EALA’s representative role. Additionally, lack of awareness about the institution affects its legitimacy thereby impacting negatively its ability to deliver services. The extent to which partner states promote the integration through their constitutions will not only help the EAC organs function effectively and efficiently but also determine the fast-tracking process towards the ultimate goal of EAC’s integration – political federation.

2.5.1 Burundi’s Constitution and EAC

On matters concerning international organizations, Article 291 of Burundi’s constitution provides for the Republic of Burundi to freely cooperate with other states in forming international organizations for common administration and coordination or “conclude agreements of association or of community with other States.” This law provides the framework for Burundi’s involvement in both regional and sub-regional organizations including but not limited to the AU and the Community respectively. This is because Burundi values interdependence and mutual assistance which enhance its ability to meet the needs and interests of its populace (Manirakiza, 2013).
It is important to note the supremacy of the constitution of Burundi when it comes to international treaties as opined in Article 297 which states that when the Constitutional Court has declared that an engagement at the international level contravenes the Burundi constitution, “the authorization to ratify this engagement may only intervene except after amendment or revision of the Constitution” (2005).

With regards to appointment of Ministers, Burundi’s constitution provides for president’s appointment of Ministers who hail from the different political parties that have received more than one-twentieth of the votes and that desire the position. In addition, the ethnic composition of the Cabinet is that of 60% Hutus and 40% Tutsis with a 30% of the total being set aside for women (Manirakiza, ibid). The importance of this to EALA is that the Burundi’s representation in the Community’s Council has acquired the citizenry mandate given that this ministers are elected representatives. To that end, Burundi’s constitution supports regional integration in the Community.

2.5.2 Kenya’s Constitution and EAC

The promulgation of the new Kenyan Constitution in 2010 presented twists to the pursuit of regional integration. With it came the presidential appointment of Cabinet Secretaries who in the previous constitution were drawn from elected members of parliaments. Article 132 (2) of the Constitution provides for the President to nominate the Cabinet Secretaries and upon the approval of the National Assembly, may appoint or dismiss. As quoted by Akhaabi in a media briefing51 “the community’s binding directives are made by council of ministers yet under the new Constitution, Kenya’s ministers cease being people’s representatives from the next general election, meaning they may lack the mandate of citizens as they make crucial decisions,” Lack of citizens’ mandate has a downward effect on legitimacy of the institutions thereby affecting the
implementation of regional integration in East Africa. This is because of what Keohane (2006) describes as input legitimacy which focuses on the processes by which decisions are reached.

Another twist resulting from the promulgation of the new constitution had to do with the devolution of government. In an interview with Business Daily, former minister Mukhisa Kituyi feared that the high number of counties each working towards raising revenues for their counties would impose barriers to free movement of goods as they seek to maximize revenue collection (2010). He added that unlike in the previous constitution where the Treasury had the power of direct budgetary control, the new constitution provided for the parliamentary committee to have the budget control. This, according to him, handicaps Kenya in her quest to meet some of her financial obligations.

General rules of international law and any international instrument ratified by Kenya forms part of Kenyan laws as outlined in Article 2(5) and (6) of the Constitution. The extent to which this has been adhered to is arguable. For instance, as noted by Hellen Sambili, the former Minister for East African Community, the change of the dates in which the reading of the budget was done sought to reduce the cooperation between the East African countries which had a common day of reading their budgets in their respective countries. This contravenes this provision. She added that the new constitution “could as well have left a leeway for Kenya to import foreign laws without the involvement of citizens” in light of the provisions of Article 2 (5) and (6).

2.5.3 Rwanda’s Constitution and EAC

Rwanda's Constitution of 2003 which was revised in 2010 also provides for engagement of Rwanda in other regional and sub-regional organizations. For instance, with regards to cabinet composition, the constitution in Article 116 demands that membership shall be drawn from the political organizations depending on the number of seats these organization
hold in the Chamber of Deputies. A rider to this article provides for a possibility of appointing a more qualified person to a cabinet seat regardless of their involvement in political organizations. These members can be appointed or removed from office by the President upon the Prime Minister’s proposal. This makes the power to lie with the president and not the people ad these members are not necessarily directly elected by the citizens. This means that representation of the Rwanda in the Council, just like in Kenya, lacks the mandate of the citizens and may fail to represent the views of the ordinary citizens.

In matters international engagement, the President remains the point of contact with the treaties and agreements as the power to ratify lies with him. Article 190 indicates that the gazettment of any of the treaties and or agreements enforces said treaties or agreements to be “more binding than organic laws and ordinary laws except in the case of non-compliance by one of the parties.” In addition the constitution can be amended when the said treaties and or agreements contravene the Republic’s constitution before they are ratified. But as it is stated in Article 193, the authority to initiate a constitutional amendment lies with the President following a proposal of the Cabinet and each Parliament Chamber drawn from a resolution passed by a two thirds (2/3) majority vote

2.5.4 Tanzania’s Constitution and EAC

Tanzania’s interest in cooperation and regional integration can be seen in its membership in a number of both regional and sub-regional organizations. Like in other states, the president is charged with the duty of deliberating upon and ratifying all treaties and agreements that Tanzania is party to. Article 55 of the 1977 Constitution provides that both Ministers and Deputy Ministers have to be Members of the Tanzanian Parliament for them to be appointed by the President in who is expected to consult with the Prime Minister. This implies that the Tanzanian
representative in the EAC Council, just like the Burundian, is bestowed with the citizenry mandate, thereby representing their views while discharging his functions.

The drafting and preparation of Tanzania’s new constitution saw increased citizen engagement. According to Polepole (2015), Stage one saw over a million Tanzanians attending the public meetings organized by the Constitutional Review Commission (CRC). This indicates inclusivity of the process. The proposed constitution is said to embrace continuity more than change (Branson, 2015). The biggest challenge with the Tanzanian situation is the extent of representation considering the autonomy of the Zanzibar Island and its push for further autonomy which has dominated contemporary politics in both parts of the union. The continuous battle between CCM and the Civic United Front (CUF) has increasingly become provocative as CCM leaders orate that only a bloody revolution, like the one that occurred in 1964, would cause them to exit power (Weghorst and Roo, 2015). Zanzibar does not have the power to transact, negotiate or treat regionally or internationally (Kituo Cha Katiba, 2013).

2.5.5 Uganda’s Constitution and EAC

Uganda’s constitution provides that Cabinet Ministers are drawn from members of parliament who get to power through universal adult suffrage. These are selected by the President with the approval of Parliament. This provision is similar to other that of other states except Kenya but the provision of the clause “or persons qualified to be elected members of Parliament” presents a situation where it is not clear what qualifications of embers of parliaments are and who elects these persons who are considered qualified. The representation of Uganda in EAC’s Council is therefore expected to be having full mandate of the citizenry except otherwise. To that extent Uganda has put measures to promote integration.
In matters pertaining execution of treaties, conventions and agreements, the Constitution bestows the authority on the President or a person authorized by the President to make these legal instruments between Uganda and either any other country, international organization or body. The Ugandan Parliament is mandated to make laws that would oversee ratification of the said legal instruments. Article 287 of the Constitution protects the agreements, and treaties which Uganda became party to before the Constitution entered into force. This means that the enforcement of the constitution does not affect Uganda’s status in the agreement.

In conclusion, the examination of the constitutions of the partner states of the EAC reveals that there are laws that seek to promote the move towards a political federation given their involvement of citizens in the process. Unfortunately, there are other provisions which do not support the process of integration. This is an important revelation which will form basis of recommendation in the final chapter of the Study.
CHAPTER 3: PROCEDURES FOLLOWED IN CREATING LEGISLATION

3.1 Introduction

This Chapter will be devoted on focusing on Partner States’ electoral processes and the procedures followed by EALA in a bid to discharge its responsibilities as outlined in the Treaty. The chapter will also delve into the legislation developed by EALA and how these have served in enhancing integration in the EAC region.

3.2 Legitimacy Questions in EALA

Legitimacy has been defined by Allen and Keohane (2006) as “the right to rule, understood to mean both that institutional agents are morally justified in making rules and attempting to secure compliance with them and that people subject to those rules have moral, content-independent reasons to follow them and/or to not interfere with others' compliance with them.” To address the subject of law creation within the Assembly, the study seeks to use Scharpf’s (1999) concept of “input legitimacy”. In his study on The Contingent Legitimacy of Multilateralism, Keohane (2006) describes this concept as a source of legitimacy which is derived from the processes by which leaders make decisions.

Keohane (ibid) adds that these processes may contain attributes that are regarded to be important by those that are affected by the decisions. In the case of EALA, this implies the processes through which members of the Assembly create law meeting certain democratic standards. As noted by Oluoch (2009), legitimacy of the EAC organs, EALA included, is determined by the extent to which the structures, composition, and administration of these organs are legitimate. The structures, composition, and administration of the Assembly are key in its
service delivery, which is what this study focuses on. Certainly, legitimate processes of decision-making ensures effectiveness of the organization (Keohane, ibid).

Inclusiveness, decisiveness, and epistemic reliability have further been identified by Keohane (ibid) as important standards of input legitimacy that institutions need to meet in order to make legitimate policy. Inclusiveness focuses on the representativeness of valid interests. In addition, these interests are established by a process that is open, liable and operational providing the representatives with the capability to represent the interests (Keohane, ibid; Oluoch, ibid). A close association of these interests to the decision-making processes does not only improve the quality of the decision but also the legitimacy of the institution (Heritier, 1999).

Decisiveness is concerned with the capacity of the institution to take necessary action regardless of opposition faced by the strongest member in the institution. In the case of EALA, its decisiveness is pegged on its ability to take decisions which are within its mandate without fear of the Summit and the Council of Ministers. Lastly epistemic reliability as a criterion of legitimacy implies that the process of making decisions is adequately transparent and can be subjected to criticism from both within and outside. Therefore, for EALA to be considered legitimate in its function of creating legislations, divergent views from various interest groups have to be considered and incorporated. Having done that, it should makes the necessary decisions and ensure that the process of making the decision is transparent and laid open to critical examination. In the end, the Assembly will be able to experience of its purpose thereby enjoying “output legitimacy”.

This analysis is similar to the one propounded by Risse and Mareike (2007) that discourses that accountability (input legitimacy), increased transparency (throughput legitimacy) and enhanced problem-solving capacity (output legitimacy) is expected to generate more
legitimacy. We will examine the procedures followed by EALA in creating its laws and in the electoral process against the three criteria - inclusiveness, decisiveness, and epistemic reliability.

3.3 Partner States’ Electoral Processes and Regional Integration

The East African Legislative Assembly Elections Bill, 2011 provides a legal framework for the laws, regulations and procedures relating to election of Members to the Assembly. The Bill was assented to by the Heads of States between October 2011 and May 2012 with Burundi’s President being the first to assent to the Bill and Uganda’s President being the last. The main part of this Bill is part 2 which offers guidance on election of members of the Assembly. This act provides for the partner states’ legislatures to elect, in compliance with their own national rules and procedures, members of the Assembly within 90 days before the expiry date of the outgoing assembly. These members should not be from among members of the legislatures (EALA Elections Act, 2011).

Pursuant to Article 50, partner states’ national assemblies have the authority to elect members of the Assembly who represent not only the political parties in that Partner State but also other shades of opinion, gender and other special interest groups. This is determined by the Partner States’ rules and procedures. The freedom to use one’s own rules and procedures may encourage diversity considering the uniqueness in the states but it also creates a room for abuse of law and inconsistencies. The election of 9 members from each Partner State has been argued to be a practice which does not take cognizance of the demographic differences between the partner states, in that one EALA representative from Burundi, Kenya, Rwanda, Tanzania and Uganda is believed to represent nearly 889,000, 4 million, 1 million, 5 million and 3 million people respectively (Oluoch, 2009; International Democracy Watch, 2012).
3.3.1 Burundi’s Electoral Process

Unlike other partner states, Burundi and Rwanda elect their EALA members without the basis of the political parties of the country. According to Burundi’s Constitution (2005), legislation powers are exercised by the parliament which is bicameral in nature. Article 147 of the Constitution of the Republic of Burundi (2005) confers the two chambers as the National Assembly and the Senate with members of the former being referred to as ‘Deputies’ and those of the latter ‘Senators.’ Before the promulgation of the Current Burundian Constitution in 2005, Burundi had undergone a series of political and institutional instability which culminated in the signing of the Arusha Peace and Reconciliation Agreement in 2000. (Bizimana, 2012; Manirakiza, 2013) The constitution was developed to help stabilize this East African state. Although the National Assembly and the Senate perform the legislative function, a presidential decree, issued upon the advice of the constitutional Court, can modify an act of the legislative (Article 160; 161). This leaves a lot of power with the president who can modify vital legislation such as his term in office.

The National Assembly is made up of at least\(^6\) 100 representatives 60% of whom are Hutu and 40% Tutsi with at least 30% of the total number being reserved for women (Article 164). On the other hand, the Senate is composed of 41 individuals whose eligibility to the position is clearly stated in the Constitution and who are elected by an electoral college composed of local representatives of the municipal council (Manirakiza, ibid). Two representatives representing the Hutu and Tutsi Community are elected from each of the 17 provinces, 3 others are co-opted from the Twa Community to ensure ethnic, gender and political pluralism (Article 180; Chemouni, 2014) and the remaining four slots are set aside for former presidents (Inter-Parliamentary Union, 2015). Like in the National Assembly, 30% of the total number must be set aside for women whether through election or co-option. With the creation of
an 18th province in March 2015, two additional Senators were elected bringing the total number of Senators to 43 (IPU, 2015).

The elections in Burundi have sparked a lot of debate in the international community. In 2010, the opposition boycotted the elections when they disputed the results of municipal elections (Palmans, 2012). This resulted to a one party rule as the National Council for the Defense of Democracy and the Forces for the Defense of Democracy (CNDD-FDD) won with an overwhelming majority. Since then, CNDD-FDD has been accused of closing the political space by among other things, passing laws that limits freedom of media, continuous intimidation of the members of opposition parties, and clientelism in public sector recruitment (Chemouni, ibid; Palmans, ibid). CNDD-FDD is largely represented in both the National Assembly and the Senate to the point that it controls not only the government but also nearly all of the institutions (Chemouni, ibid; Palmans, ibid). In accordance with article 129 the cabinet members are derived from different political parties with more than one-twentieth of the votes, CNDD-FDD is one such party.

Clinching positions in the government and getting access to public procurement and financial administration is considered the best way of getting rich (International Crisis Group, 2012). This then means even those representing Burundi in regional bodies such as the EALA are in it for their very own benefit considering that before one gets the ticket to vie for a position under CNDD-FDD, they have to part with a couple of months’ salary beforehand (Chemouni, ibid). Palmans58 notes that elections in Burundi are a struggle for power as a means of gaining access to economic resource (2012). This is in contravention of Article 16 of the Burundian constitution which provides for all citizens to have equal opportunities to be a part of the government. This implies that respect to the rule of law is low in Burundi.
Prior to the July 2015 elections, the government attempted to make constitutional revisions that would cater for another presidential term due to an argument posed by Nkurunziza’s supporters who alleged that the first election in 2005 which saw Nkurunziza securing the presidential seat was not by direct popular suffrage. However, this argument is in contravention to Article 7 of the Arusha Agreement. This was a move which was highly contested by the opposition, civil society, and the Catholic Church which is considered powerful (Chemouni, ibid). Series of violent attacks and abuse of human rights have been witnessed in Burundi since April when the call for Presidential third term was raised by CNDD-FDD the ruling party (Kent, 2016).

Generally elections in Africa and Burundi specifically tend to be associated with violence in spite of the optimism that ensued more than two decades ago when African states were moving away from authoritarian regimes to multi-party politics (Palmans, 2012; Lamin, 2011). Elections of Burundi EALA’s representatives is not in any way different from the general elections within the country. According to The Greater Horn Outlook, Burundians do not feel the impact of joining the Community, this could be attributed to the failure of their EALA representatives in sensitizing them because they [representatives] are out to serve their personal and government interests considering the struggle they had to go through to get the position (2012). Election of the representatives is determinant of the parties which nominate them. And as it is averred in the constitution, parties need to have received more than one-twentieth votes to get positions in the Cabinet. The Ibrahim Index of African Governance (2015) shows that in the area of Safety & Rule of Law, Burundi scored 39.8, ranking 44th on the continent. Accountability, Personal Safety, and National Security have continued to deteriorate since 2011.
Failure to ratify the African Charter on Democracy, Elections and Governance could be used to explain this.

Kassim Majaliwa\textsuperscript{59} has noted that a prosperous EAC region is dependent on better governed Partner States which adhere to democratic principles, and the reverse leading to frustration of the integration process (2016). Like in other EAC countries, the ruling party – CNDD-FDD- has had the majority share of the 9 slots reserved for Burundi in the EALA. The undemocratic electoral process in Burundi implies an election of illegitimate representatives who though they are members of the different ethnic communities in Burundi, fail to represent the voice of Burundians in the integration process thereby negatively impacting Assembly’s service delivery. The focus is more on self-interest and interest of the political parties they hail from. This explains why Burundians don’t see much value added to their country after joining the EAC (The Greater Horn Outlook, 2012). Nonetheless, Burundi has tried to ensure that its representation in the EALA, in accordance with the Arusha Agreement has both communities represented. It is important to note that due to language barriers, accessing Burundi’s rules and procedures of the National Assembly was a challenge, leading to reliance on literature from other credible sources.

3.3.2 Kenya’s Electoral Process

The electoral process in Kenya has undergone some changes following the promulgation of the Constitution in 2010 that saw an increase in the number of legislators and a reduction in the number of cabinet ministers. Given parliament’s key role in regional integration, the current Kenyan parliament has actively engaged in regional integration matters. This has been done through nomination and election of EALA representatives through the parliament using a set of standing orders and also setting up of a Committee on Regional Integration that is charged with
the responsibility of handling all matters relating to regional integration processes (Oloo, 2015). This is also done against the background of Article 2(5) which states that the general rules of international law shall form part of the laws of Kenya, making it imperative for the laws to be scrutinized in order to be consistent with the constitution, the supreme law (Oolo, ibid). The duty to scrutinize is handled by the parliament.

Elections of Kenyan representatives to the First Assembly brought to the limelight the subject of gender representation as the rules required the political parties to ensure that a third of their nominations were women (Ang’ila, 2004). Article 50 of the Community Treaty provides for gender representation in the Assembly though it does not explicitly provide the ratio. Depending on the strength of the party in the parliament, the rules allowed the parties represented in the parliament to share the 9 slots among themselves and nominate the representatives which is contrary to the Treaty (Ang’ila, ibid). In the end, in spite of the criticisms from the various quotas, Kenya ended up having only two women in the First Assembly making it the most gender insensitive country and one that is more politically polarized with a charged genda (Ang’ila, ibid).

The 2006 Election of EALA representatives saw Kenya appearing before the East African Court of Justice – EACJ- to answer to the complaints brought forward by some eleven (11) Kenyans led by Prof Anyang’ Nyong’o and the team who sued the Attorney General of Kenya and the Speaker of Kenya’s National Assembly. In the Prof Anyang’ Nyong’o and Ten Others v Attorney General of the Republic of Kenya and Five Others case, the EACJ was to determine i) whether the election of these Kenyan representatives to the Second Assembly was within article 50 of the Treaty and ii) whether article 50 of the Treaty complied with Kenya’s election rules (Oluoch, 2009; Oolo, 2015). According to the judgment, the Court found
Kenya’s election rules being inconsistent with article 50 of the Treaty yet Article 8 (5) of the Treaty required that the Partner States create legal instruments that would necessitate Community organs, institutions and laws to take precedence over similar national ones (EAC Treaty, 2001; Judgment at 37 and 43).

Additionally, the Kenyan parliament did not elect the EALA representatives within the correct interpretation of article 50 (Oluoch, ibid). The judgment also specified that the terms “election” and “elect” referred to selection of the EALA representatives being done through voting although the literal interpretation of "election" is "choice “or "selection’ (Onoria, 2010). As far as the applicants in this case were concerned, the Kenyan representatives to EALA were not elected. In their defense, the respondents argued that the EACJ did not have the jurisdiction to preside over the case in terms of the outcome of the elections but that its mandate was to go to as far as determining the legality of the Kenyan Election laws in relation to the Article 50 of the Community Treaty (EACJ, 2006). In addition they argued that the Kenyan representatives in the first Assembly were elected through a similar manner. Kenya went further to initiate amendments to the treaty which would minimize both the power of the court and the freedom of the judges (Oluoch, ibid).

The result was the amendment of Article 27 and 30 (3) of the Treaty which limited the court’s jurisdiction in Treaty interpretation and in ruling of cases which can be handled by Partner States institutions respectively (East Africa Community, 2006). The Second Assembly had three women representatives. The Third Assembly saw four women namely - Sarah Godana, Agnes Ng’aru, Nancy Abisai, and Judith Pareno representing Kenya in the Assembly. This is an increase compared to that in the other two Assemblies and could be attributed to the affirmative action that has seen an increase in women representation in public and private spheres within the
country. The election processes have left little or no space for the participation of the ordinary citizens given thereby undermining the principle of popular participation (Ang’ila, ibid; Lumallas, 2013).

Kenya’s latest performance according to the Ibrahim Index of African Governance is perturbing considering the principles of good governance it claims to adhere to. With a score of 53.8 in Safety & Rule of Law underpinned by performance loss in Personal Safety and National Security show and a score of 63.3 Participation & Human Rights category (IIAG, 2015), Kenya needs to work on creating an environment where its citizens are secured and protected in order to encourage them to embrace the proposed political federation.

3.3.3 Rwanda’s Electoral Process

Having joined the Community and assented to its Treaty in 2007, Rwanda was not represented in the First Assembly. Rwanda strived to adhere to Article 50 of the Treaty and elected five women and four men to represent her in the Second Assembly. Two of those who secured the seats were former cabinet ministers (Kimenyi, 2008) bringing forth the argument that EALA seats are used to further individuals’ political ambitions (Munyegera, 2016). It is reported that the participants were drawn from the various political parties represented in the House and from other special interest groups including the National Women Council, the National Federation for the Disabled and the National Youth Council (Kimenyi, ibid). One of the uniform rules in all the Partner States is the requirement that qualified political parties must have a reasonable representation in the House.

There is little documentation available that provides for the rules and procedures used by the Rwandan legislature in electing EALA representatives that would help ascertain the consistency of the rules vis-à-vis the Treaty of the Community. This could be attributed to the
limited democratic space and language barrier. However, it is important to note that the
democratic space within Rwanda is limited. According to the United Nations Development
Program, the aftermath of the 1994 Genocide was a total breakdown of institutions, systems,
structures and human capacity in Rwanda. Although the current President, under the auspices of
Rwandan Patriotic Front (RPF) has been lauded for his efforts in stabilizing the country in the
post-genocide era, there have been claims for increased authoritarianism within the country
(Reyntjens, 2015).

Kagame’s RPF has been accused of “eliminating political opposition and autonomous
civil society, violating human rights, killing scores of its own citizens, and keeping tight
Rwanda’s performance in Participation & Human Rights, was below the African average with a
score of 46.3, ranking 30th on the continent. The decline has been noted since 2011. In 2015, a
High Court ruling in Rwanda gave the President the right to vie for another term in office
through parliamentary amendment of the constitution (Rogo, 2016). The constitution was
amended after a referendum and it has allowed Kagame to run or another seven-year term in
2017, followed by two five-year terms afterwards (Reuters, 2016). There have been increased
efforts by incumbents in the continent to change rules to stay in power and this only serves to
weaken democratic institutions (Rogo, ibid).

Freedom of Expression, mandatory representation of minorities, limits to changing the
leadership have led to Rwanda being considered to be relatively democratic (Nahmias, 2011).
Anyone who opposes the government in Rwanda is accused of ‘forgetting’ the genocide (Pflanz,
2014). This statement is used to ensure that there’s no opposition to RPF’s leadership. With this
in mind, the credibility of the composition of the House can only be questioned considering the
supremacy of RPF as a party. Consequently, the election of EALA representatives implies election of individuals who are pro-government. The representatives can only seek to further the interests of Rwanda which are consistent with those of RPF. Therefore, in as much as there has been representation from a number of groups, the extent of this representation is problematic.

In the recent past, Rwanda has seen two of its representatives resigning from their roles as EALA representatives. Abdul Karim Harelimana, a member of RPF who had previously served in Rwanda’s cabinet resigned in February 2015. In June 2015, Celestin Kabahizi, a member of the Social Democratic Party (PSD) – Rwanda’s second largest party resigned citing “personal reasons” for quitting; these reasons are believed to be linked to the removal of presidential term limit within the constitution thereby allowing President Paul Kagame to run in the 2017 election (The East African, 2015; Laccino 2015).

3.3.4 Tanzania’s Electoral Process

Similar to the other countries where the ruling parties have been blamed for taking huge shares of the nine slots, other parties in Tanzania once sued the ruling Chama Cha Mapinduzi - CCM party for this. In addition, CCM has been accused of appropriating itself with subjective powers to define who from the opposition meets the qualification to be an EALA candidate (Observer, 2012). The composition of the representatives from Tanzania has been fairly representative albeit CCM has been taking the hugest share. In the First Assembly, given that the election rules provided for the nine seats to be divided between the political parties based on their ratio in the parliament, CCM took 8 seats with the other one seat being left for the opposition (Ang’ila, 2004). Ang’ila further notes that there was no public advertisement on nomination; only political parties which had representation in the parliament had the information (2004). This further questions the extent of public involvement in election of EALA
representatives who are meant to represent them. In the Second Assembly, CCM had 7 slots out of the 9 with which it elected four women, two youth, and one person with disability. The remaining two slots were left for the opposition parties.

In 2007, a reference was filed at the EACJ which challenged the election of members of EALA by the Tanzanian National Assembly. In the Christopher Mtikila vs. AG of Tanzania & others the applicant argued that two members - Dr. Norman Sigalla and Mrs. Hulda Stanley Kibacha had not yet completed their 5 year-term when in October 2006 the Tanzanian National Assembly held general elections and later elected 9 representatives to EALA (EACJ Reference 2, 2007). According to the applicant this was in contravention to Article 51 (1) of the Treaty which avers that the tenure of every Member of the Legislative Assembly to be five years. In its judgment, the court ruled that it was not in its jurisdiction to invalidate the elections conducted by the National Assemblies of the partner states pursuant to Article 50 of the Treaty (EACJ Reference 2, ibid; Lumallas, 2013).

Tanzania’s election rules, like Kenya’s, provides for nomination of candidates to be done by either a political party or a grouping of parties with the number of candidates nominated being directly proportional to the number of legislators the party has in the national assembly (Ang’ila 2004). The nominated is only considered valid when conducted in a transparent and democratic manner by the political party which is sponsoring the candidate (Bunge la Tanzania, 2016). The rules also provided for the classification of candidates into four categories namely - Women, Zanzibar, Opposition parties, and Mainland categories. This is meant to help manage the subject of representation.

According to the 2015 Ibrahim Index of African Governance Tanzania’s score in Participation & Human Rights has declined in over the past four years. The report further notes
that this has been underpinned by weakening performance in Freedom of Expression, Freedom of Association & Assembly and International Human Rights Conventions. This score is important in analyzing the extent to which the electoral process is democratic in Tanzania considering the just concluded elections that saw the coming to power of Pombe Magufuli. This is because; EALA is an intergovernmental institution whose level of democracy is directly determined by that in the Partner States. Tanzania, like Kenya, is currently represented at the Assembly by four women and five men.

3.3.5 Uganda’s Electoral Process

The 2001 election rules provided for nomination of candidates to be by a voter supported by signatures of at least 50 MPs. In addition, candidates were categorized either as Women candidates or Non-gender candidates with women slots being three out of the nine. Ang’ila (2004) on writing on the Processes of The East African Legislative Assembly noted that in practice, the elections were done per region with each of the four regions being apportioned two slots- one for a woman and the other for a man. The ninth slot was open to anyone from any of the regions but all those nominated were required to garner backing from 50 parliamentarians. Like in the Tanzanian case, no advertisement preceded the nominations (Ang’ila, ibid)

Treaty interpretation is as diverse as the individuals interpreting it. Article 50 was in 2012 interpreted by some opposition political parties in Uganda to imply that each party represented in Parliament, including the independents who represented a shade of opinion, was qualified to send a representative to the EALA (Onoria, 2010). This was as a result of National Resistance Movement’s (NRM) claim that by the virtue of having more representatives in the Assembly, it was entitled to more slots. It has been argued that the stranglehold of NRM and its dislike for opposition has meant that elections are clearly a farce (Jonyo, 2012)
This led to the Democratic Party of Uganda filing a reference in the EACJ challenging the consistency of Uganda’s Rules of Procedure of Parliament, 2006 with regards to the Community Treaty. The applicant noted that the although the composition of the members of parliament captured the different parties and shades of opinion, that of EALA was not because majority of the slots were taken up by NRM. He proposed that the political parties and shades of opinion totaling six to be allowed to nominate candidates to the Assembly who then can be elected uncontested or competitively. The court, in its ruling agreed that indeed the national election rules were in consistent with the Treaty hence needed to be amended (EACJ Reference 6, 2011). This case had also been earlier challenged before the Constitutional Court which rendered its decision on 28 May 2008 and noted its concern over parliament’s delegation of its role to the political parties whose duty was to nominate members and not to elect (Onoria, 2010).

Uganda is represented by four women and five men in the Third Assembly. The speaker in the said Assembly – Fred Kidega is a Ugandan given that the position of a speaker is rotational. At the commencement of the Third Assembly, Margaret Zziwa had been elected as the Speaker of the Assembly but she was later replaced by Kidega due to among other things, inability to perform the functions of the office arising from misconduct in accordance with the provisions of the Treaty and the Rules of procedure, poor time management, abuse of office, and favoritism. Margaret had been the first Woman Speaker and her removal from office was endorsed by two-thirds of the elected members of the House (EALA, 2014).

Uganda has been under the leadership of Yoweri Museveni since 1976; a factor that has made some scholars question Uganda’s democracy terming it party-less (Ang’ila, 2004). The obliteration of the constitutional limit on presidential terms by parliament abolished has given President Museveni the power to remain in power indefinitely (Sekaggya, 2010). According to
Jonyo (2012), Uganda runs a movement political system which contravenes the Treaty that explicitly acknowledges in Article 6 (d) that “good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights” are among the fundamental principles guiding its operation.

The Ibrahim Index of African Governance (2015) reported a continued decline in Participation & Human Rights category within Uganda. With a score of 46.7 in Participation subcategory, Uganda faces a challenge in creating an environment that allows its citizens to freely take part in various political and civic engagements without the fear of being categorized as anti-government. Persistent repressive legislation, harassment of critics and opposition leaders, and impunity for those in power has characterized Uganda’s political scene for many year now (Sekaggya, ibid). This only breeds more question as to whether the EALA representatives are really the voices of the people or of the government, and NRM in particular.

3.4 Process of Creation of Legislations in the Assembly

As part of its mandate, EALA is charged with the duty of creating legislations. The first and inaugural Assembly is credited for passing 19 Acts while the Second Assembly passed 35 pieces of legislation (Lumallas, ibid). Among the laws created include among others:

1. The Laws of the Community (Interpretation) Act 2004
2. The East African Legislative Assembly (Powers and Privileges) Act 2004
3. The East African Community Competition Act 2006
4. The Lake Victoria Transport Management Act 2007
5. The Summit (Delegation of Powers and Functions) Act 2007
6. The East African Community Budget Act 2008
7. The East African Community Customs (Amendment) Act 2008
8. The East African Budget Act 2008
Pursuant to Article 14 (3) (b) of the Treaty, the Council has the authority to initiate and submit Bills to the Assembly. In addition, as noted in Rule 64 (1), (8) of the Assembly’s Rules of Procedure, Private Members’ Bill may be moved by any Member who wishes to do so and a Committee of the House may equally initiate any Bill within its area of aptitude (2001). This is subject to the rules of procedure of the Assembly. The Private Member’s Bill is brought before the House after leave of the House to allow a member to proceed with the drafting of the Bill and its publishing in the gazette. Presentation of Bills before the House is the first step in creating legislation within the Assembly.

In a working paper on “The Role of EALA in Enacting Regional Legislation” presented by James Ndahiro,70 the legislative role of EALA is well carved out. Introduction of these Bills is anchored on Article 59 of Treaty and is further elaborated under Rules 61-71 of EALA’s Rules of Procedure. After the Bill is introduced in accordance with Article 59 of the Treaty which avers that if a private member’s Bill imposes a charge on the funds of the Community or derogates right of individuals or institutions then the Bill cannot be introduced to the House (2015). This limits the introduction of Bills which as much as they may impose a charge on the Community funds, are necessary for either fast-tracking or enhancing the integration process.

Subsequent to the introduction of the Bill, 3 readings of the Bill are made in the Assembly as provided for in the Rules and Procedures of the Assembly, 2001. These readings are meant to enlighten the members on the contents of the Bill in question, providing justification to all stakeholders involved. Rule 66 provides for the Bill being read for the first time without any questioning. It is then committed to the relevant Committee within the Assembly which then is given 7 days to report on the Bill. While the Bill is before the Committee, its details are
discussed and any amendments relevant to the subject including obvious misprint and punctuation errors are made (Rule 67).

As noted in Rule 68, Chairman of Council of Ministers or other Member in charge of the Bill can move a motion on the second reading of the Bill whose merits and principles can be debated on by the Assembly. Nonetheless, before being presented to the House, the Committee is obligated to undertake an elaborate consultative process through a Public Hearing exercise in all Partner States and also through memoranda involving among others: Members of the Council; Partner States representatives; citizens who are the main consumers of the Bill; and National Parliaments (Ndahiro, 2015). The report of the Committee on the Bill is then presented to the House by the Chairman of the Committee or a designated member of the Committee that was working on the Bill. After a conclusive debate, “the Clerk shall read aloud the short title of the Bill, and the Bill shall then be taken to have been read the second time” (Rule 68 [4]).

The adoption of the report on the Bill is followed by the third reading of the Bill. Deletion or amendment is provided for before the third reading is made and the Bill considered passed by the Assembly. As provided in the Treaty, after the passing of the Bill, it is then forwarded to the Heads of State for assent because the enactment of legislation of the Community is effected by when the Bills are passed by the Assembly and assented to by the Heads of State (EAC, 2006/2007). The Heads of State as earlier noted hold the veto power rendering the whole process meaningless if one Head of State fails to assent to the Bill. As proposed by Nyirabu (1998), indeed simple majority rule in the Summit decision-making structure would be more useful unless the issue concerned involved extreme national survival. This furthers the argument on the extent to which EAC is people-centered as it purports in Article 7 (1) (a) of its amended Treaty (EAC, 2006/2007).
Involvement of the people is vital in the enactment of Community legislation not only for ownership of the prescribed rules but for enhancing the legitimacy of the Community and the organs therein. As witnessed in the amendments made in the Treaty following the judgment in Prof Anyang’ Nyong’o’s case, it is obvious that the government-driven aspect of the Community serves the interests of the government officials led by the Heads of States who fail to condemn each other’s position that is decelerating to the integration process and not the interests of the citizens. The role of the private sector, civil societies and other interest groups in all the Partner States cannot be understated if the goal of having an East African federation is to be achieved.

Common practice observed among states reveals that the EALA representatives have been nominated and not elected by popular vote. This nomination process, which is mainly done by the political parties in the members states’ National Assemblies, has no common citizens’ involvement. Consequently, the positions have been politicized leading to election of members who are not necessarily qualified and who do not have the vision of integration at heart. As noted by Oluoch (2009), the Assembly has been seen as a “political dumping ground for failed national political careers or a reservoir for rewarding political supporters and sycophants.” The cases highlighted herein highlight the political undertones of electing Assembly members in the partner states’ national assemblies (Onoria, ibid). As a result, the body has neither represented the voice of the EAC citizens nor has it been accountable to the citizens as it ought to be. Indeed the core principle of people-centeredness contained in article 5(3) (d) has thereby been paid short shrift (Ang’ila, ibid). Lack of direct election of EALA representatives by the people or even by the people’s representatives (the Members of Parliaments) poses questions on the legitimacy of these representatives (Oluoch, ibid).
In conclusion, constitutionalism in the Community has been challenged by a number of factors including the removal of presidential term limits. The Community, has however, through the Assembly adopted a number of protocols, laws and policies to ensure the effective realization of constitutionalism as reflected in the Community’s stated objectives (Nkusi, 2014). But considering the subject of jurisdiction of the EACJ, the Community may not be able to ensure strict compliance with the Treaty. This only calls for political will from among the Partner States, especially the Heads of State, who hold veto powers. The process of creating legislation although in theory is expected to integrate the ideas of the citizens - consumers of the legislation, in practice is impeded by the negligible resources and time allocated for that.
CHAPTER 4: CITIZENS’ PARTICIPATION IN LAW CREATION

Introduction

This chapter will give insight on the extent to which citizens of the Community have been involved in the functioning of the Assembly thereby affecting its service delivery. As seen in the previous chapter, the provision for citizen involvement in national legislation is limited by the differing levels of democracy in partner states thereby limiting citizens’ role in electing their representatives to EALA. An examination of the Treaty will also be conducted to ascertain the level of participation of non-state actors, individuals included, encapsulated in the Treaty. The engagement of the private sector the civil society organizations and other interest groups in integration will also be reviewed since they are possible channels for citizen participation. The role of political parties in promoting citizen participation especially through the EALA will be reviewed with the background on how they (political parties) can actually increase awareness of EAC-related issues through their manifestos and campaigns.

In a bid to explain why actors may abide to rules, Hurd (2009) gives three reasons: (1) because the actor fears the punishment of rule enforcers, (2) because the actor sees the rule as in its own self-interest, and (3) because the actor feels the rule is legitimate and ought to be obeyed. Coercion, self-interest, and legitimacy have been identified by political theorist as mechanisms which correspond to the three outlined reasons. ’Hurd further notes that legitimacy is defined by the actor’s, in this case individual’s perception of the institution since legitimacy springs from the relationship between the actors and the institution. Relating this argument with that of Keohane (2006) can bring one to the conclusion that the processes (which Keohane refers to as input legitimacy) through which this interaction is championed determines the achievement (Keohane’s output legitimacy) of the institution.
4.1 Citizen Participation in the EAC

Citizen participation (CP) refers to “many types of CP forums implemented in an even more diverse environment of government planning” (Rosener, 1978). Unfortunately, CP has been affected by among other things: citizens’ ignorance and lack of interest in participation, poor understanding of the merits of specific issues, and unwillingness among elected officials and bureaucrats to share their power (Oluoch, 2009; Rosener, ibid; ). Other critics have cited socio-cultural barriers as limitations in citizen participation since they make public hearings inaccessible to large portions of the community, contribute to domination of citizen participation forums by unrepresentative interest groups, and too much reliance on superficial opinion surveys (Milbraith, 1965; Gittell, 1980; Almond and Verba, 1963; Arnstein, 1969; Rosener, ibid).

The current population of the East African countries, with the inclusion of South Sudan which just joined the Community stands at around 160.3 million. This represents a population that calls for their involvement in charting the integration process forward. Therefore it needs to be encouraged to participate in the integration process by creating an environment for the same. Indeed as noted by Deya successful regional institution requires the people to "want it, own it, design it, drive it, monitor and evaluate it, and redesign or reform it" (2007). This implies that even in situations where people may not necessarily agree with their state leaders’ ideals, they will still support such a regional institution of which they are members noting that the institution has incorporated their ideas and they too have confidence in the institution.

In a study conducted in 2009 on Benefits Experienced by Ordinary Citizens from East African Community (EAC) Regional Integration it was noted that the East African citizens have varied expectations when it comes to regional integration and the benefits it offers them. Almost half of the Tanzanians who were interviewed in the process of conducting the study
noted that they did not expect any benefits from East African integration (EAC Report, 2009). The study revealed that there was little sensitization on the processes of integration among the citizens despite of the 64.6 percentage of the citizens who had a strong sense of belonging as East Africans. Even with the launch of the sensitization manual in 2012, a lot still needs to be done to create awareness among the population regardless of their social status. The extent of the importance of citizens’ involvement can be viewed from the angle of the collapse of the former EAC which according to Walsh (2015) was caused by inter alia, failure to adopt a people-centered inclusive approach to its structure and actions and instead maintaining nationalist tendencies of the then partner states’ leaders.

4.2 Treaty provisions for citizen participation

Pursuant to Article 7 (1) (a), the Community employs a people-centered and market-driven approach towards its operations. This can be attributed to the statement in its preamble which associates the collapse of EAC 1 to lack of effective participation of the civil society and the private sector in cooperation activities (EAC, 1999). However, a closer examination on the different organs of the Community reveals that this has not been the actual case. To begin with, as noted by Oluoch (2009), the whole idea of re-initiating regional integration within the East African region was spearheaded by the Head of States and had little or no involvement of the ordinary citizens – the consumers of the products and services offered by the Community.

Although Article 7 (2) calls for Partner States’ to abide by the principles of good governance, including among other things, adherence to the principles of democracy which gives the individual rights to take part in the political processes, the EAC has not been able to achieve this. Citizen participation is vital in legitimizing an institution and as much as laws may be
created, when citizens abide to them due to their [laws] legitimacy, more results may be achieved.

The principle of subsidiarity as outlined Article 7 (1) (d) provides for an opportunity for citizens involvement in the Community affairs. This principle, as stated in the preamble, visualizes the whole idea of multilevel participation of various participants in matters concerning economic integration. It basically introduces a platform where different stakeholders, individuals included, can participate in various Community issues. This principle entails Partner States of a Union or Federation ceding only those matters that are better done through common institutions than by member states acting separately (EAC Secretariat, 2010).

The role of women in socio-economic development and in business has been discussed in Articles 121 and 122 respectively of the Treaty with a number of provisions made with regards to promoting their participation. The Treaty offers provisions such as abolishing legislation and prejudices that limit women participation (121 [b] [e]); effective creation of awareness and educational strategies for women empowerment (121 [c]); 122 [d]; providing stable employment opportunities and professional progress for women and recognizing and supporting women associations (121 [d]; 122 [e]). Nonetheless, none of these provisions are affirmative in their nature leaving the partner states with the power to decide how much of women involvement shall be provided and modalities of the same.

Article 127 of Chapter 25 seemingly covers the concern of citizen involvement in Community affairs. Under this Article, the Treaty i) envisages the creation of an enabling environment for the continued participation of both the civil society and the private sector in matters pertaining the Community; ii) calls for strengthening of the private sector; and iii) offers opportunities for cooperation among businesses organizations and professional bodies through
intensive consultations. (EAC Treaty, 1999; Odhiambo, 2010) This is expected to be done through offering forums for consultations and dialogue between the Community and the mentioned non-state actors and involving them in policy-making. It is however not clear how these non-state actors can be engaged in the Community’s processes albeit their role is provided in the Treaty. This renders the provision somewhat ineffective.

The Community in 2001 developed rules of granting observer status to the non-governmental organizations (NGOs) and the civil society in order to enhance their participation in the Community. These rules required the organizations to have interest and accept the fundamental principles underlying the operation of the Community as stipulated in the Articles 6 and 7 (Odhiambo, 2010). In addition, the organization is expected to have a regional dimension by being registered in all the partner states and should have been actively in operation for at least three years (Annex to EAC, 2001; Odhiambo, ibid). Some organizations have criticized these rules (Odhiambo, ibid) while others, due to their scope of activities and resource capacity, have failed to meet the requirements needed to be granted the observer status. Issues of regional integration are rarely addressed by NGOs given that most of the donors that fund them are not entirely focused on supporting regional initiatives, as they are on individual partner states.

As outlined above, the Treaty does offer provisions for citizens’ involvement through CSOs, NGOs, private sector, and women associations but it does not explain the modalities of the process. This level of involvement does not seem to yield much fruits in promoting the will of the citizens given that some lack affirmative actions and others are limited to situations that are not fundamental in the integration processes. The role of the youth in the Community is explicitly missing with the entire Treaty only addressing them under Article 120 on social welfare where partner states are expected to develop and adopt a common approach towards
safeguarding the welfare of the marginalized and disadvantaged in the society among them children, youth, the elderly, and persons with disability. The role of the youth cannot be ignored considering the ratio of their population in relation to the entire population. Involvement of citizens is not clearly delineated in the Treaty. In actual fact, the term citizens appears only 5 times, compared to 22 times for private sector, and 13 times for civil society demonstrating that promotion of citizens’ participation within the Treaty is largely driven through selected groups of structured stakeholders (Lwaitama, Kasombo & Mkumbo, 2013).

4.3 Citizens Participation in enacting legislation

As discussed in the earlier Chapter, the process of enacting legislation in the Assembly is mainly driven by the legislators who are ideally expected to be citizens’ representatives. The Assembly’s legislative power is said to be limited given that it only meets once in a year to discuss matters some of which are vast in importance (Kingah and Cofelice, 2012). In addition, as stated before, the power to assent to the Bills in order to make them Acts of the Community lies with the Heads of States. This not only renders citizen involvement in law creation obsolete but also has potential to stall the integration process as the Assembly is responsible for making recommendations to the Council necessary in the implementation of the Treaty. Some of these recommendations would include drafted Bills. Indeed as noted by Ambassador Muthaura in 2011 while giving a keynote address at the East African Legislative Assembly Symposium on Fast Tracking East African Federation, “one of the greatest weaknesses of regional integration is the slow speed at which decisions are made and implemented.” The structures of bureaucracy tend to make the decision-making processes longer while the Treaty itself seems to leave much of the decision making with the Summit rendering the other organs such as EALA consultative.
Citizens, through public hearings, are expected to be involved in creation of Community legislation at the stage where the Bill is read for the Second time. As noted by Ndahiro, the Committee on Legal, Rules and Privileges is obligated to undertake an elaborate consultative process through a public hearing exercise in all Partner States and also through memoranda involving among others: Members of the Council; Partner States representatives; citizens who are the main consumers of the Bill; and National Parliaments (2015). As noted by Zziwa during the Nanyuki VII series, EALA conducted public hearings before passing the Vehicle Axle Load Control, One Stop Border Posts, and the Customs Management (Amendment) Bills of 2013.

The composition of the citizens in these hearings is not clear and the advertisement of these hearings is equally not known. Active involvement of citizens would require awareness of the same through a number of means such as the media. Regrettably, issues of EAC public hearings are rarely advertised in the media let alone the proceedings of such gatherings. In addition, use of public hearings unfortunately provides an opportunity to only some members of the community to participate, instead of involving the whole community (Lwaitama, Kasombo & Mkumbo, ibid). In most cases, the academia, and other professionals have been mainly involved in such consultations (EAC Secretariat, 2010) as much as the hearings may be open to the entire public.

4.4 EALA Outreaches in Partner States

EALA has organized and participated in a number of outreaches to help citizens get a glimpse of what the court does, understand the benefits that come with embracing regional integration, and addressing the concerns of the communities, especially those living along the borders. EALA utilizes its rotational meetings to conduct the outreaches mainly due to its limited
resources given its reliance on member states contribution and donor agencies. During the 18th sitting of the Third Assembly’s fifth meeting in Kigali Rwanda, the Assembly representatives visited Muhanga Concession Mining Plant in Muhanga District and the Kinazi Cassava Plant in Nyanza District and participated in commemorative activities at the Gisozi Genocide Memorial Museum. This visit, as noted by the then Speaker of the Assembly, Hon. Zziwa exposed the parliamentarians to the development progress in Rwanda and was offered guidance in creation of legislation and strengthening of collaboration with citizens of Rwanda (EALA, 2013).

In Kenya, the EALA representatives of the Third Assembly took art in public lectures in Mt. Kenya University76 and Technical University of Mombasa77 (Ministry for East African Community-Kenya, 2016). These outreach programs were meant to educate the youths in these institutions of their role in regional integration. The visit in Pwani University culminated in the launch of the EAC Club that is designed to provide an opportunity for students to engage in Community-related issues and also create awareness of the same. As mentioned earlier, little of such outreaches are known to the public, thereby limiting their involvement. Such information could only be obtained from the website and not the radio and television.

In 2011, while celebrating a decade of its existence, EALA committed itself to planting 50,000 trees in the member states (EALA Magazine, 2011). The Green Bunge project kicked off in Tanzania where the Community’s head office is based. The parliamentarians urged local communities to grow and conserve trees and integrate the same in their farming systems in a bid to conserve the environment. This helped to raise the awareness of the Assembly’s existence among the EAC citizenry even as the Assembly pledged its support towards establishing legislation that would seek to protect the environment.
4.5 Citizens Participation through non-state actors

Within the community, non-state actors are allowed to engage in Community-related issues through the civil society organizations, the private sector, and other interest groups. The Community has engagement structures for civil society. This is done through engagement, Department of Gender, Community Development and Civil Society established in June 2008 within the Directorate of Productive and Social Sectors at the EAC secretariat. In addition, the “Department in charge of Investment and Private Sector Promotion” at the EAC Secretariat is responsible for coordinating the implementation of the Private Sector Development Strategy and promoting the direct involvement of the private sector in Community integration processes.

4.5.1 Civil Society Organizations: East African Civil Society Organizations' Forum (EACSOF)

The EACSOF was established in 2007 as an all-inclusive forum of civil society organizations in East Africa that would promote grassroots interests to the Community and its organs and institutions and in the process, complement the efforts of the states in the integration process (EACSOF, 2016). This forum is made up of legally-registered CSOs who are committed towards promoting an East African society based on friendship, solidarity and mutual respect; that endeavors to build an independent, self-reliant economy (EACSOF, ibid). As noted earlier, having recognized the role of civil society in the collapse of the first Community, the Treaty provides for increased participation of the CSOs in the integration process in Article 127. However, the CSOs participation is painstakingly limited to observer status and participation in consultative forums organized by the Secretary General (Chikwanha, 2007; Lwaitama, Kasombo & Mkumbo, ibid).
4.5.1.1 Observer status

CSOs that are granted observer status may: i) be invited to be present for official opening and closing of all the meetings of the Community; ii) attend meetings of all the organs of the Community which are related with a subject of their interest; iii) participate in the proceedings of the meeting to which they are invited but with permission from the Chairperson; iv) make statements on matters of concern to them provided the Secretary General is in receipt of the text on the statement and has forwarded it to the chairperson of the meeting; and v) respond to questions directed to them in a meeting (Odhiambo, ibid; ).

The observer status heightens participation as significant agenda items of meetings and policy proclamations are likely to be made at the opening and closing sessions. On the other hand, attending meetings of all the organs of interest to the CSOs gives them an opportunity to follow up with issues of interest. The opportunity to make statements and respond to questions helps to offer more insight into issues (Odhiambo, ibid; Lubega-Kyazze, 2005). Unfortunately, not all CSOs within the Community have been granted the observer status and even at that, this status is restricted to passive participation with no possibilities to influence the political decision making processes of the EAC (Overlade, ibid)

On the flip side, the discretion to be invited to the meeting lies with the Secretary General and/or the Chairperson of the meetings. Therefore, not always will the CSOs get the opportunity to attend and participate in these meetings limiting their participatory role in Community affairs. In addition, even when the invite is granted, presentation of statements or response to questions is equally restricted because the provision is not clearly stated leaving the discretion with the meeting Chairperson. As further noted by Odhiambo (ibid) while referring to the interview with Edith Kibalam of Uganda’s Kituo Cha Katiba in 2008, management of the processes during the
meetings poses a challenge to the CSOs as sometimes the EAC calendar of activities changes and other times documents for the meetings are sent late leaving the CSOs with little time to prepare for the meetings.

4.5.1.2 Consultative Dialogue Forums

As noted earlier, pursuant to Article 127 (4) “the Secretary General is mandated to provide the forum for consultations between the private sector, civil society organizations, other interest groups and appropriate institutions of the Community.” These Consultative forums are rarely organized thereby restricting the extent of their participation in integration issues. The first regional workshop for CSOs organized by EAC Secretariat was hosted between July 28 and 29, 2005 under the theme of “Civil Society Mobilization for Effective Participation in the EAC” (Odhiambo, 2010). Odhiambo further notes that to evaluate the consultative frameworks one has to look at Principles of Engagement; Bases of Engagement; Levels of Consultation; Consultative Categories; and Participatory Structures (ibid). In light of these; among other things, EACSOF lacks broad principles that address relationship with the EAC, and the constitution does not have a clear-cut provision on the level of consultation and the consultative categories for civil society (Odhiambo, ibid).

Consultative forums have also been utilized in collecting views of the citizens in the Community by among other Commissions and/or committees, the Wako Commission. However, as noted earlier, use of them limits the participation of the whole community since only a select-few are involved and may not necessarily represent the views of the entire population. Following the report released by Wako Commission in 2004 on Fast-tracking the integration process, it was discovered that the East African citizens were really interested in taking ownership of the
integration process (Fast-tracking Report, 2004) and referendums were thought to be the best platforms to facilitate this.

Referendums\textsuperscript{79} at the national level were seen as ideal mechanism through which majority of the citizens could take ownership of the process by having their views expressed, represented and respected. It is nonetheless important to note that referendums are restricted to the level of awareness among the people such that if the people are not aware of the issues in the integration process, conducting a referendum will not suffice in representing the peoples’ views. Although this mechanism was flaunted by the Commission, no referendum has been conducted so far.

EACSOF has in the last year (2015) initiated talks with the Assembly through the Speaker considering that the two bodies have a representative nature in their operation yet do not cooperate. The cooperation that currently exists between the CSOs and the EAC is initiated by the Secretary General. Therefore a framework for collaboration between EALA and EACSOF was long overdue. Through their Secretary General, EACSOF proposed to collaborate with EALA in the EALA Plenary Sessions and in the annual regional meetings such as the Inter-Parliamentary Relations Seminar (famously known as Nanyuki Series). This is because of the limited provision of CSOs involvement and collaboration with the Assembly. In addition, engagement with EALA National Chapters and the establishment of an annual CSO-EALA (Speaker's) Forum where ideas and best practices are exchanged was seen as a fora for cooperation between the two bodies (EACSOF, 2015).\textsuperscript{80}

The EACSOF has continued to take part in advocating for constitutionalism in the partner states especially in Burundi. In particular, EACSOF in partnership with Pan African Lawyers Union (PALU) filed an application with the EACJ to obtain its ruling on the legality of the
decision reached by Burundi’s Constitutional Court that granted Pierre Nkurunziza’s another presidential term in office (EACSOF, 2015b). In addition, EACSOF was among organizations that called for peace talks in South Sudan and participated in the rescue of victims of Karagwe evictions where more than 7,000 people of Rwandan ancestry had been forced out of Tanzania.

4.5.1.3 Challenges facing the CSOs in Participating in Integration Process

The challenge that has been experienced is that in most cases, CSOs are largely urban-based, thereby limiting the majority of the population who hail in the rural areas (Lwaitama, Kasombo & Mkumbo, 2013). Even in the urban areas, not all the residents can be said to be informed of, and actively participate in EAC-related affairs either due to ignorance or apathy. It is argued that those informed are the elites engaged in various fields such as NGO activists, academicians, the business community, journalists, and the civil servants and technocrats (Lwaitama, Kasombo & Mkumbo, ibid). This then implies that interests represented in such meetings may not cater for the interests of the common citizen and considering the ration of the common citizens versus that of the “informed,” the common citizens’ is higher necessitating their fair representation in various platforms. The same is extrapolated in national forums organized by EACSOF ahead of annual Secretary General’s Consultative Dialogue Forums (CDF) where government representatives, development partners, CSOs, parliamentarians, media, regional partners, and academia grace the forums.

Another challenge faced by CSOs as established in the report by Lwaitama, Kasombo & Mkumbo (2012) is that CSOs, especially in Kenya, focus more on issues at the national level thereby failing in forging significant partnerships and reinforcement of “cross-border collaboration, research and dissemination capacities to tackle issues at the regional level.” The result is failure in promoting regional issues. The EACSOF has tried to address this issue by
offering the regional platform but the CSOs still need to work around having a regional angle in their operation if they crave to play a substantial role in the integration process.

Due to limited democratic space in a number of the countries, the involvement of CSOs has also been met by some resistance. The operating environment for CSOs is believed to be characterized by political hostility, negative perception and unnecessary bureaucracy (EACSOF, 2015a) In Tanzania, for example, the Non-Government Organizations Act No. 24 of 2002, and the Societies Act Cap. 337 R.E 2002 still limit the activities of CSOs and NGOs (Lwaitama, Kasumbo & Mkumbo, ibid). They require the CSOs/NGOs to be partisan and participate in politics yet the scope of politics is difficult to ascertain.

The nature of politics in many of the African countries is characterized as aggregations of personalities, than ideological and philosophically contrasting programs (Prah, 2006). In Kenya for instance, formation of political parties keep taking a different angle considering individuals’ vested interests in party leadership leading to high flow of defection among members. Indeed, political actors shift alliances frequently in order to secure elections and access to public positions by employing any discursive tool and political strategy (Overlade, 2009). The organization of parties within many of the states is subject to change every now and then depending on the prevailing politics amongst the leaders. This only leads to confusion should the CSOs be politicized. In addition, given that CSOs are useful in offering checks and balances, politicizing the CSOs means that they will fail to represent many of the common citizens who may not be party members.

4.5.2 Private Sector: East Africa Business Council (EABC)

Established in 1997 with support from the Community, the EABC, formed with a vision of fostering sustained economic growth and prosperity in the region, is responsible for fostering
the interests of the Private Sector in the integration process of the Community (EABC, 2016).

Considering that the private sector is a non-state actor and that the Treaty clearly articulates that integration shall at all times be people centered and private sector driven, the EABC is relevant in addressing the level of citizens’ participation in the integration process. Compared to the civil society, the private sector has been better organized and has participated more effectively in the integration processes Lwaitama, Kasombo & Mkumbo, ibid; EAC Secretariat, 2012).

The private sector has engaged in Community affairs both informally through workshops and conferences as part of the EAC delegation in conferences such as the EAC Business Forum that took place in Kampala in 2013\textsuperscript{52} and formally through Public–Private Dialogues (PPDs) (EAC Secretariat, 2012). The formal engagement has been endorsed both at the national and regional levels. At the national level; the Tanzania Private Sector Federation (TPSF) in Tanzania; the Kenya Private Sector Alliance (KEPSA) in Kenya; the Private Sector Foundation of Uganda (PSFU) in Uganda; the Rwanda Private sector Federation (RW-PSF) in Rwanda and the Federal Chamber of Commerce and Industry of Burundi (FCCIB) in Burundi have been instrumental in spearheading national dialogues with the states (EAC Secretariat, ibid). On the other hand, individual companies advance their engagement through the EABC at the regional level.

Through the support from Trademark East Africa, the EABC has been able to constitute platforms to help more individuals who are engaged in businesses get involved in the integration agenda and in the process get their interests promoted in the Community. These platforms cater for the promotion of individuals in professional services, women in business, private sector standards, and the employers within the East African community. Generally, cooperation with the Assembly is mainly in creation of legislation that is business-related and that would allow free movement of goods and services within the Community. Conversely, in 2014, the EABC
presented its concerns to the Assembly over not being consulted before enactment of key Bills such as the East African Community Polythene Materials Control Bill, 2012 and even the East African Community One Stop Border Post (OSBP) Bill 2012.83

Additionally, Kadaga84 once in her speech noted that the EAC tax regime was bent towards favoring the white investors at the expense of the indigenous EAC citizens for whom the integration efforts were aimed at (East Africa Legislative Assembly, 2013). This seems to retaliate the words of Mamdani who noted that many Community citizens feared that the community would strengthen the reach of the wealthy and the mighty at the expense of the poor and the weak, thereby disputing the calls for political federation (2011). That notwithstanding, EABC in its advocacy work succeeded in unifying nationalistic interests in the issue of Common External Tariff and in offering a consolidated private sector view to the Community (EABC, 2016)85.

4.5.3 Other Interest Groups

The term “other interest groups” has not been defined in the Treaty but according to the Secretariat, it encompasses “organized non-state groups that do not neatly fall into the category of civil society or private sector or are not comfortable being put together as part of these two categories to also engage distinctly” (2012). Some of these interest groups include trade unions, faith-based organizations, indigenous groups, farmers associations and professional groups. The East African Trade Union Confederation (EACTUC) was established in 1988 as an aegis for the partner states’ trade unions to voice the interests of the trade unions in the integration process. Its key achievement was in the establishment of the Social Dialogue Charter that sought to emphasize imperative social aspects of a Common Market within the Community (EAC Secretariat, ibid). One of the professional bodies representing its members in the Community
affairs is the East African Law Society (EALS). EALS serves to represent the interests of all lawyers within the EAC region.

4.5.4 Political Parties and their Role towards a Political Federation

Political parties ought to be institutionalized in order to play their democratic roles effectively thereby enhancing citizen participation and accountability. (Basedau and Stroh, 2008; Thames, 2007). As noted by Gunther and Diamond (2001), functions of political parties include: articulation and aggregation of interest; political socialization and recruitment; creation of legislation; representation; and government formation. In light of these, the political parties in the Community can effectively further the integration agenda through the articulation and aggregation of the Community.

Apart from their role in nominating representatives to the Assembly as provided for in Article 50 (1) of the Treaty, the political parties are increasingly gaining momentum in participating in regional integration especially with the increased calls for fast-tracking regional integration for the EAC political federation (EAC Secretariat, ibid). According to the Secretariat, EAC has supported the role of political parties by appointing a Deputy Secretary General in charge of political parties. In addition a consultative meeting of political parties was conducted in 2011 with a purpose of exploring ways and means for enhancing involvement of parties in regional integration. This consultative meeting was followed by a forum involving delegates from political parties in the EAC in 2012 where the then Kenya’s Prime Minister cited huge lacuna between the political class and bureaucrats within states as a challenge in implementation of decisions (Lwaitama, Kasombo & Mkumbo, ibid). Given the identity politics that characterizes politics in Africa and the mass following that these parties enjoy, supporting their
involvement and participation in integration issues will help in creating awareness of regional integration among their followers.

The Inter-Parliamentary Relations Seminar, otherwise known as the Nanyuki Series, has been used as a platform through which politicians from the partner states can be made aware of the work done by EALA as per the provisions of Article 49 (2) of the Treaty (EALA, 2013). Nanyuki VII series was aimed at addressing the extent of EAC’s people-centeredness through evaluating the different stakeholders’ role. The parliamentarians’ role goes beyond their involvement in nominating representatives to the EALA to their inclusion of regional matters in their campaigns and in their parties’ philosophies. In fact, one of the recommendations cited in the Nanyuki VI series meetings held that the politicians should develop and share with the public manifestoes that spurned the EAC integration (EALA, 2011). Subsequently, they also play a critical role in promoting the move towards a political federation by sharing with their citizens on the benefit of the integration.

Most, if not all, political parties within the Community rarely participate in integration matters (Lwaitama, Kasombo & Mkumbo, 2013). In Kenya for instance, the neither does new constitution nor the manifestoes of the political parties make much reference to the integration. In Tanzania, although there are more than nineteen parties that are registered, only six have seats in the Union Parliament (Lwaitama, Kasombo & Mkumbo, ibid). In addition, when it comes to nomination of EALA representatives in Tanzania, the CCM-ruling political party has more shares than the remaining five. The Civic United Front and National Convention for Construction and Reform normally get a slot each to nominate the EAL representatives. This in turn reduces the role of the political parties in pursuing integration issues since the segment of citizens participating either as members or voters is small. This seems to be the case in most of
the countries as outlined in the previous chapter on the relationship between the national parliaments and the Assembly.

Citizens’ participation in political parties is heightened during the general elections and at this time, the political parties are inclined towards selling their manifestoes that would win them electoral victory. Given the existing lack of awareness among the citizens, it wouldn’t yield substantial fruits for a political party to peg their campaigns around the regional integration in the Community. In Tanzania, this would be challenging for political parties and could cause division within the parties considering its membership in both SADC and EAC. Internal politics, such as Zanzibar’s calls for independence in joining the Community also pose a challenge in integrating regional issues in party politics.

In addition, as noted by Lwaitama, Kasombo & Mkumbo (ibid), the CCM leadership has been branded as a cautious player towards Community’s move towards a political federation. The authors further note that the opposition political parties such as CHADEMA and CUF have however inculcated integration agenda in their manifestos which seek to put Tanzania on the forefront in the integration matters so that Tanzanians can extensively reap the benefits of integration. In Kenya, the Jubilee Party manifesto referred to the integration agenda by asserting support for the move to introduce a single currency in the Community. In addition, the party vowed to “expedite the East African integration process to facilitate free movement of labor, goods and services and accelerate the expansion of the regional market” (The Harmonized Jubilee Coalition Manifesto, 2013). This was however not given much discussion in the campaign rallies leaving many uninformed people with no knowledge about integration efforts. In its place, majority of the politicians while campaigning dwelt on subjects of corruption, economy, agriculture, education, security, infrastructure and health.
In conclusion, the Ibrahim Index for African Governance revealed that the Community’s average score on participation\textsuperscript{87} was at 47.5 between 2011 and 2014 (IIAG, 2014). The lowest scoring indicator was political rights while the highest was free and fair elections. This serves as an indication of the Community being behind in the area of promoting effective citizen participation. Ignorance and apathy among the Community citizens have negatively impacted citizens’ participation in the integration process. As noted by Karega (2009) in the Report on Benefits Experienced by Ordinary Citizens from East African Community (EAC) Regional Integration, the level of awareness of changes taking place due to the integration process differed from one country to another with Uganda recording the highest percentage of awareness (77 percent) and Tanzania the least (45 percent).

Although political parties are considered as avenues of citizen participation, little has been done to encourage this. Neither are the campaigns nor the manifestoes pegged on regional integration. Citizen participation in the Community has been limited by social status, since composition of those engaged in the consultative forums is that of the “informed.” In addition, EACSOF, which is considered to be the representative forum of civil societies, has limited powers given its observer status and limited participation in the Community and Community organs meetings. There is no doubt that a political federation can only be achieved if the “bottom-up” approach is used by EAC in its operation. Ownership of the process by the citizens is the first step towards achieving this. EALA has to be actively involved in this process given its function as a representative organ of the Community. The challenge of ignorance among the citizenry can only be dealt with by the citizens themselves. They need to be interested in the integration agenda for them to understand the benefits that come with it but at the same time they need to be made aware of what their participation can achieve.
CHAPTER 5: CONCLUSION AND RECOMMENDATION

This Chapter makes the study’s conclusion drawn from findings and the lessons from other chapters.

5.1 Conclusion

The study sought to answer three main questions, namely, i) what are the institutional provisions of the EALA? ii) what procedures has EALA followed in performing its legislative functions and iii) how far have the EAC citizens been involved in law creation through the EALA between 2005 and 2015?

Findings from the study reveal that the Community’s Treaty has failed in providing for ordinary citizens’ participation in the integration efforts through its representative organ- the Assembly. The Treaty, in providing for the functions of the Assembly, has portrayed weaknesses which have affected the service delivery of the Assembly. The Assembly has not been able to effectively represent the EAC citizens due to the limitation in numbers and mode of election as provided in the Treaty. Successes of the Assembly are only pegged on its legislative function where there is creation of legislation. The process of creation the legislation has little or no involvement of the ordinary citizens raising questions on the legitimacy of the legislation.

With regards to constitutions of member states and their role in regional integration, there are only few provisions made by member states to promote regional integration. The electoral processes followed by member states in electing EALA representatives differ from one member state to another and have continually been affected by the level of democracy in the different states. Although the Treaty provides for a number of avenues through which the citizens can participate in Community affairs, the participation is very limited. The EACSOF and EABC
provide very good platforms for participation of the citizens but their observer status limit the extent of their input in matters concerning integration within the EAC.

As noted by Oluoch, the challenge on Treaty’s failure in providing for citizens’ participation can be traced back to the time of reviving the current Community (2009). The process involved in the revival saw a lot of involvement of government officers and less of ordinary citizens. This then supports the historical institutional theory approach that holds that choices made at the inception of an institution have a persistent effect over its performance for the remainder of its existence. The choice not to involve citizens in the revival of the Community has negatively affected its performance leading to failure in realizing a political federation in 2015.

The treaty has also failed in empowering EALA with an active mandate in creation and passing of legislation thereby limiting its service delivery. Instead, the Treaty gives the Summit, including the directive to or not to assent to a bill. The fact that legislation can be considered null following a decline to assent by either of the heads of state leaves the institution as an elitist-led institution as opposed to a people-centered institution it purports to be as indicated in the Treaty’s preamble. The legislative organ has therefore been reduced to a rubber-stamping institution which then discourages active citizen engagement whether at the interest groups or individual levels. The treaty has bestowed so much power on the Summit leaving the other institutions of the Community dependent on the decisions upheld by the Summit. The same case applies with the Secretary General who has the power to either invite or not to invite the groups in the various meetings.

With regards to women participation in the Assembly, the Treaty has not been strong enough to promote this through affirmative action. The prerogative has been left to the individual
partner states leaving some with the freedom to not nominate and/or elect women. Even in the provisions of women engagement in other integration efforts, the Treaty has not been clear in offering the modalities of this engagement. The youth have also been left out in the integration efforts yet they consist of the largest part of the population in all the partner states.

The democratic deficit in the Community is evident through the examination of the Partner States electoral processes and their constitution. This explains the cases before the EACJ on nomination of Assembly representatives. There seems to be no peer review at the Summit level that would help deal with failure to adhere to the rule of law. This only serves to encourage impunity and instills fear in the citizens of partner states with better governance record who fear that a political federation will relegate their record of governance.

5.2 Recommendations

According to the EACSOF, the Consultative Dialogue Forums (CDF) organized by the Secretary General of the Community should have attendance of both EALA and EACJ representatives. Representation of EALA is vital considering its representative role. EALA needs the forum to interact with the people’s representatives, in form of the CSOs, in order to know how they are faring and what additional measures needed to be put in place to bring the Community to the citizens and to promote the citizens’ opinion at the Community level. Engaging with the EACSOF at the CDF will also give EALA an opportunity to work with the CSOs in their outreach programs. However, the Assembly should be cautious enough not to allow the monopoly of these already organized groups at the expense of the participation of the ordinary citizens whose views and actions can benefit the Community. This indeed calls for a balance in their engagement on the part of the Assembly. In the same vein, outreach programs
should not be limited to the border areas and the institutions of higher learning. The Assembly should work towards incorporating the entire spectrum of the population in its activities.

Important in legitimizing the Assembly is the role of the Treaty. As noted in the study, although the preamble of the Treaty provides for a people-centered operation of the Community, the avenues of people’s participation is limited. The observer status of the CSOs and the limited participation of the Business Community in law creation and overall integration agenda need to be reviewed. Furthermore, timely invitations and presentation of various materials need to be improved to allow for active and meaningful participation of the groups in the meetings. The participation of the groups has also been limited by the mandate given to the Secretary General who decides on whether or not to invite the groups. This can be addressed through enacting a provision that permits the participation of the different groups with interest in the different areas of discussion.

Live broadcasting by the media houses on Assembly proceedings could help to raise awareness of the Assembly and the role it plays. The media, including print media could also help increase assembly’s visibility by reporting on the outreach activities if the citizens are to get to know more about the Assembly. The media could also be used to encourage citizens’ participation by helping them (citizens) see what issues are at stake and what impact their participation could achieve. Politicians could also use the media to discuss Community-related issues whether during the campaigns or their normal duties. This is because they enjoy quite a following that if influenced by its leaders towards embracing the political federation will help enhance citizens’ interest and participation. The Assembly can also work towards having their meetings outside parliament which can give many more people an opportunity to be part of the meetings even if it’s for the purpose of observing.
Civic education, from a level as low as primary schools, can also be used in creating awareness. This could be used alongside EAC Clubs in all levels of education institutions to help the younger generation get the missive on integration. In addition, a review of the curriculum taught in schools to include issues on integration could also serve the same purpose. Burundi could also introduce Swahili as an official language in order for it to be the integration language. This will make the process of trade easier as citizens are able to communicate with each other. It will also instill and East African identity which is necessary in the political federation anticipated.

To instill an East African identity that would be useful in the political federation, the study would recommend that both member states and the Assembly incorporate laws or conduct activities which would help curb ethno-nationalism. The current outreach activities done by the Assembly could be tailored in such a way that they address the ethno-nationalism which has the potential to frustrate the integration efforts. Exchange programs at various levels can also be used in tacking the issue.

Member states also have an opportunity to use their existing structures to propagate the integration agenda and encourage participation of more individuals in law creation. Kenya can use the County Assemblies to discuss matters pertaining Community legislation and overall integration issues. The CSOs in the partner states can also be use such structures to promote their views on the integration agenda. Nonetheless, the Assembly ought to be a true representation of the people and not the partner states’ parliaments.

Direct universal adult suffrage has been recommended by other writers as a possible instrument in enhancing Assembly’s legitimacy and encouraging ownership of the Community among the ordinary citizens. This will also provide an avenue for accountability as the Assembly
representatives account to the people who elected them. The elections could be conducted at the same time as the general elections after zoning the partner states. In addition, the number of current representatives is smaller considering the growing population and the critical role of the Assembly. This calls for the Treaty to be amendment to accommodate this.

Finally, political will among the leaders will determine how far the integration will go. Unlike in the previous Community, the political will in this Community should involve advocating for and creating an environment suitable for a bottom-up approach where ordinary people are the main stakeholders. The veto powers held by the Heads of State should be regulated so that community interests are above the individual ones. Respect for the Treaty should be upheld and amendments of the same made in the right way in order to promote the practice of good governance that is enshrined in the Treaty. Tanzania and Uganda have not domesticated the Double Taxation Protocol thereby posing a challenge to the overall implementation of the Treaty. The Treaty should broaden the mandate of the Assembly mandate in the area of fiscal and policy making and Treaty amendment. Additionally, the rule of law in the member states should also be observed and a peer review done to encourage the same especially in the area of extending presidential term limits. Lastly, measures to ensure effective implementation of the Treaty do require political will. Therefore, the leaders should promote that.
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NOTES

1 The AU came into being after the collapse of the Organization of African Unity (OAU). The Constitutive Act of the AU was signed at the Lomé Summit, Togo, in July 2000 (Adeji, 2001, p.3). July 8, 2002, marked the official supplanting of the OAU by the AU which brought about a shift in expressing priorities of African states from state-based to people-centered interests (Sore, 2010)


3 Some of the shared similarities include colonial history, language and culture, geographical proximity, among others.

4 Tanganyika was initially a German colony but later on put under British administration by the United Nations


7 EAC 1 Refers to the East African Co-operation body which was established in 1967 and disintegrated in 1977 due to a number of reasons cited by scholars including {Ogola et al (2015:336), Adar (2011:)}

8 This observation was made by Ambassador Mwapachu in the same report as noted in note 3.


10 Article 48 (1) of Chapter 9 of the 1999 Treaty that established EAC provides guidelines on the number of EALA representatives. It states that there shall be 32 members of the Assembly - 27 of these are elected members (9 from each member state) and 5 who are ex-officio members. The 5 ex-officio members are 3 Ministers responsible for regional cooperation (1 from each member state), the Secretary General and the Counsel to the Community. These numbers have since changed due to the admission of Rwanda and Burundi into the community in 2006

11 This is according to South African History Online accessed at http://www.sahistory.org.za/article/africanunion-and-regional-economic-integration#sthash.1q5meqxf.dpuf

12 Kwame Nkrumah, Julius Nyerere, and Haile Selassie were the main founding fathers if African regional integration


15 Selassie Address, supra note 9, at 2–3 (emphasizing an agreement that unites Africa without actually focusing on one approach to integration). For some, African Unity was a Negro superiority project that sought to achieve and maintain African equality with Europe:

16 An organization which mainly spearheaded the liberation struggles for African states which were under colonial rule.

Faten Aggad worked in the European Center for Development Management (ECDPM) in Maastricht, and conducts research on the AU’s democracy instruments. He made this statement during a personal interview with Sore

Takawira Musavengana has research interests in parliamentary democracy, elections, democratic control of the security sector, and governance in general who has previously worked with SADC PF in research and programme management capacities


They include Article 7 (1d) on multilevel participation, Article 121 on women participation, Article 127 (1b) on entrepreneurs participation, and Article 127 (3) on participation of the Civil Society Organizations (CSOs)

According to Keohane (ibid, p. 3) Input legitimacy refers to the processes by which decisions are reached and whether those processes have certain attributes regarded by the audience as important. More information on this categorization can be found in Fritz Scharpf, (1999) Governing in Europe: Effective and Democratic? Oxford: Oxford University Press

Former Secretary General of the East African Community


The Treaty in Article 1 defines civil society” as "a realm of organized social life that is voluntary, self-generating, self-supporting, autonomous from the state, and bound by a legal set of shared rules."

Use of the term current is deliberate in order to distinguish EALA under EAC 1 and EALA under EAC 2

http://www.eala.org/assembly/the-east-african-legislative-assembly


36 These Committees may be established by the Assembly in accordance with Article 49 (2) (e) which states that the Assembly “may for purposes of carrying out its functions, establish any committee or committees for such purposes as it deems necessary”

37 This is also provided in article 49 (2) (f) which states that the Assembly shall recommend to the Council the appointment of the Clerk and other officers of the Assembly.

38 As defined by Stavridis (2002) quoted in Manda (2008) are defined as activities of regional parliamentary institutions aimed at promoting good relations between states by bringing about tolerance, pluralism and mutual understanding and which provide a channel for advocating, negotiating and ultimately articulating the interests of the peoples of the region

39 This is in accordance with Rule 79 under Assembly’s Rules of Procedures


42 EALA member from Kenya who served in the Second Assembly between 2007 and 2012

43 As noted by Oluoch (2009) in Legitimacy of the East African Community, pp. 198-199


48 Bob Odiko is the current Senior Public Relations Officer at EALA

49 Available at http://www.eac.int/about/overview

50 Dan Wandera Ogalo has been an advocate of the Courts of Judicature in Uganda since 1982. He served in the Second Assembly as a member representing Uganda.


53 Available at https://www.constituteproject.org/constitution/Rwanda_2010.pdf

54 Rwanda’s cabinet is made up of Prime Minister, Ministers, Ministers of State and other members who may be determined, if necessary, by the President of the Republic (Article 116)

55 According to Keohane (2006) Output legitimacy refers to the achievement of the substantive purposes of an organization

56 The numbers could go higher in the event ethnic and gender representation is not achieved. The additional seats are appointed by a National Independent Electoral Commission

57 Inter-parliamentary Union is an organization of parliaments that offers focal point for world-wide parliamentary dialogue and works for peace and co-operation among peoples and for the firm establishment of representative democracy.

58 Eva Palmans did a substantive field research from 2005 till 2008 in Burundi to prepare her PhD with the title: “Media and politics in contexts of crisis: case-study Burundi”. Additionally, she worked in Burundi from 2008 till 2010 for different organizations in the area of electoral assistance and observation.

59 Prime Minister Of The United Republic Of Tanzania while giving an address on the State of the EAC to the 5th Meeting of the 4th Session of the Third East African Legislative Assembly

60 The Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2001 (LN 154/2001)

61 They include Law Society of Kenya (LSK), the National Council of Women of Kenya (NCWK), the Federation of Kenya Women Lawyers (FIDA-K), Safina Party, the mainstream media, the Institute for Education in Democracy (IED), the Coalition on Violence Against Women (COVAW) and ABANTU for Development

62 Anyang’ Nyong’o & 10 others v Attorney-General & others EACJ Reference No 1 of 2006


64 http://www.rw.undp.org/content/rwanda/en/home/ourwork/democraticgovernance/overview.html

65 Christopher Mtikila vs. AG of Tanzania & others EACJ Ref No 2 of 2007


Constitutional Petition No 28 of 2006, Jacob Oulanyah Vs The Attorney General

Dr Ndahiro represents the Disabled Rwandese in EALA

Defined by Okon in *Constitutionalism and Society in Africa* as the principle that the exercise of political power shall be bound by rules, which determine the validity of legislative and executive action by prescribing the procedure according to which it must be performed or by delimiting its permissible content.

The Treaty in Article 1 defines civil society” as "a realm of organized social life that is voluntary, self-generating, self-supporting, autonomous from the state, and bound by a legal set of shared rules.”

As of 2010, the population stood at 145.5 Million (http://www.eac.int/statistics/). According to the World Bank, South Sudan’s population as of 2014 stood at 11.91. South Sudan’s National Bureau of Statistics’ website had 8.26 million as the population since it relied on the 2008 Census.

This study was conducted by Regina G. Mwatha Karega (PhD) for the East African Community with the help of the German government.


Available at http://eacsof.net/EACSOF%20Brief%202015.pdf

Qvortrup, (2002) notes that referendums are based on the principle of majority rule to legitimize a political agenda.


Available at http://eacsof.net/upload/press%20release/EACSOF%20Appeals%20for%20Immediate%20Rescue%20to%20Victims%20of%20Karagwe%20Evictions%2018%2008%2013.pdf

This was a culmination of a series of five meetings held by the forum of Chief Executives.

As stated by Andrew Luzze Kaggwa, EABC’s Executive Director during a meeting in Arusha, Tanzania with former EALA Speaker – Hon. Zziwa and representatives from Eastern Africa National Networks of AIDS Services Organizations (EANNASO), East Africa Law Society (EALS) and EACSOF.

The former Speaker of the Parliament of Uganda.

Available at http://www.eabc.info/policy/category/overview

The lawyers represented have to be members of their national bar associations.

According to IIAG, indicators of participation include political rights, political participation, free and fair elections, free and fair executive elections, and effective power to govern.