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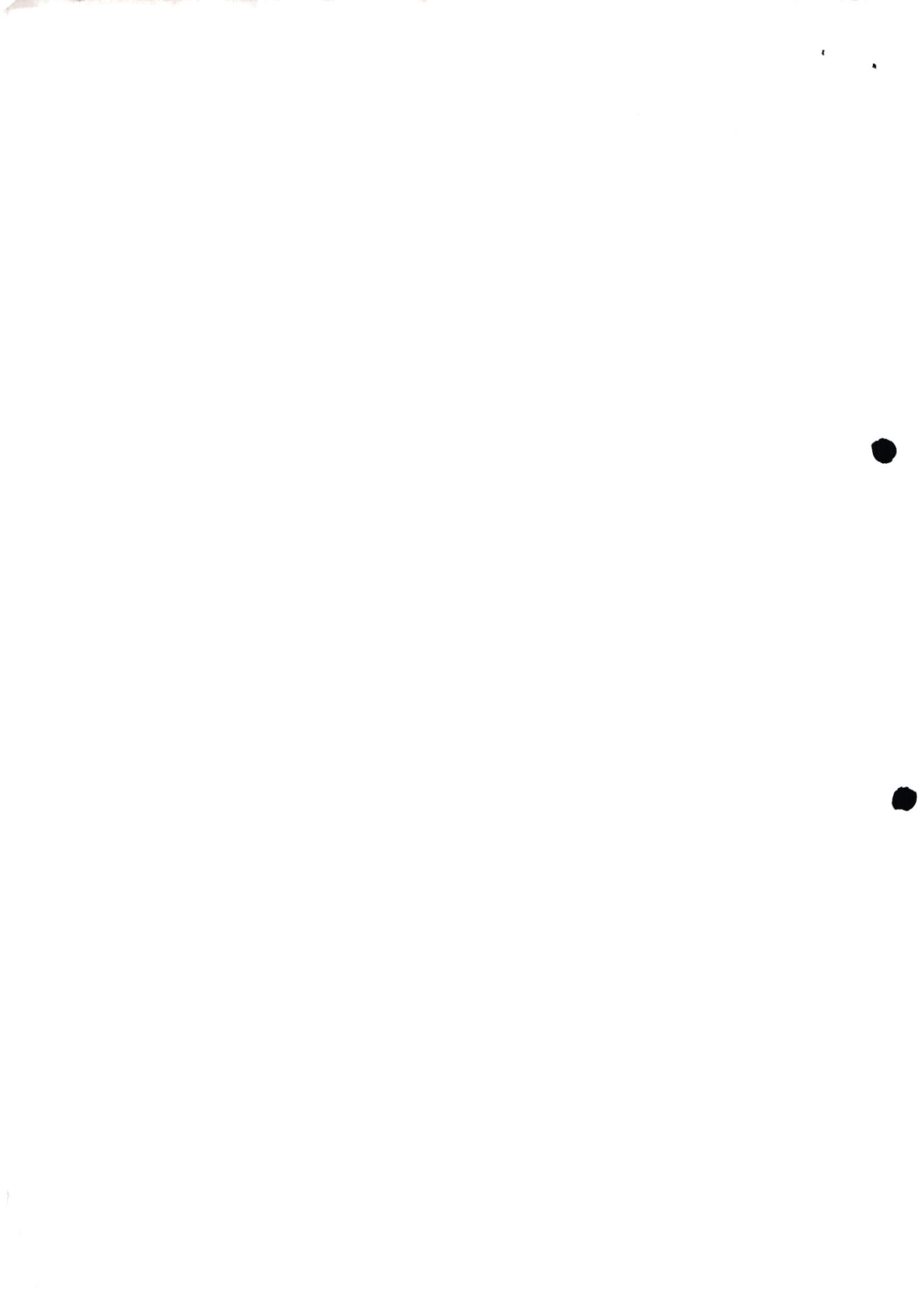


**EAST AFRICAN COMMUNITY  
EAST AFRICAN LEGISLATIVE ASSEMBLY**

**MEMORANDUM TO THE COMMITTEE OF EMINENT  
PERSONS ON FAST TRACKING EAST AFRICAN  
FEDERATION**

Clerk's Chambers  
5<sup>th</sup> floor Ngorongoro Wing,  
AICC Complex, Arusha.

October 21, 2004.



## 1. BACKGROUND

The Summit of the Heads of State of the East African Community met in Nairobi, Kenya from August 27 – 29, 2004. At the end of the three day Summit, they issued a communiqué which informed us that they had undertaken a broad review of the status of the East African Community integration process, and examined further ways and means of deepening and accelerating the process. Critical focus was paid on Article 5 (2) of the Treaty establishing the East African Community.

Concerned about the tardiness in implementation of Article 5 (2), the Summit resolved to expedite and compress the process so that the ultimate goal of a Political Federation is achieved through a fast track mechanism. To this end, a Committee of Eminent Persons was appointed to examine how the fast track mechanism can be achieved. The appointment of the Committee of Eminent Persons on how the Political Federation could be fast tracked is fully welcome.

The Assembly would like to reiterate its support to the Heads of State for their commitment to a quick attainment of an East African Political Federation, to which the Assembly is fully committed. This document consists of some insight of what the Assembly has done so far in this direction.

*& Proposals*

At its very first Sitting held in Kampala in January, 2002, the Assembly debated and adopted a Motion that resolved to urge the Summit, the Council of Ministers and all other organs of the Community to spare no effort in working with and mobilizing East Africans towards the realization of the terms and goals of the process of co-operation as enshrined in the Treaty.

Further, the Assembly referred the matter to its Committee on Regional Affairs and Conflict Resolution with the mandate to:

- (i) Study and review the processes and stages of integration within the East African Community; and
- (ii) Gauge the views and opinions of East Africans on a Political Federation through a referendum.

The Committee on Regional Affairs and Conflict Resolution submitted its preliminary report in June, 2002 and was poised to continue with this assignment to a logical conclusion, which would have been to propose a framework and a realistic time frame within which a referendum could have been conducted.

However, during the same time (June, 2002), the Assembly met the President of the Republic of Kenya, H.E Daniel arap Moi who informed them that the three Governments had decided to set up a Committee of Eminent Persons to work on the question of a Political Federation. The Assembly therefore abandoned the initiative on the understating that the matter had now been taken up at the level of Heads of State.

Unfortunately, this did not happen. Be that as it may, the Assembly commends the Presidents for actualizing what had been promised two years ago. All hopes now rest on this new process.

#### **Tours of Partner States:**

The Assembly has also had the privilege to conduct annual tours around East Africa since 2002. During these tours, the Assembly managed to talk to the Heads of State, members of the public, interacted with various Civil Society Organizations, Business Communities and Government and other Political Leaders.

In this period, the Assembly met four Heads of State and all of them agreed on the necessity to fast track the process with due emphasis on the removal of barriers that hinder cross border trade and free movement of persons.

Similarly, the general public especially those living along the common borders of Busia, Mutukula, Lunga Lunga etc had a common call for the removal of barriers as a way to ease trade and movement of persons across the borders; common services like railways, education, health and research.

Through Public Hearings conducted in three capital cities by the Committee responsible for Trade Issues, the private sector also expressed their frustrations at the current state of affairs. They called upon everybody to change their mindset and think East

African. Specific emphasis was on the need to quicken the establishment of the Customs Union; the dismantling of barriers to regional trade such as protectionism; a Regional Master Plan on regional investments; and the harmonization of Private Sector Initiatives with other regional bloc initiatives.

### **The East African Federation:**

A federation can loosely be defined as a form of Government or country where there is territorial distribution of power between one central or a common government and subordinate or lower Governments. The elements of a federation therefore include shared powers and responsibilities defined by law and practice. It therefore goes without saying that in order to federate, federating units should be prepared to cede certain powers to one common centre. This perhaps is the most important of all pre-requisites for a successful federation to take place.

The question of federation in East Africa is not a new concept. The Legislative Assembly of the first East African Community through a Select Committee produced a report commonly known as the 'Munanka Report' in 1975.

The Munanka Select Committee was set up to "further study the proposal for the East African Federation now, commend it to the public, assess the public support thereof and recommend procedures and organs for practical discussion and implementation".

This Committee did a comprehensive and indepth study and made a number of recommendations. The major recommendation was for East Africa to become a Federal State and therefore, this would entail certain modifications to the Treaty that would reflect and provide the necessary growth to an East African Statehood.

The Committee further proposed that Executive Authority would then be comprised of an East African Authority Chairman, the East African Authority, the East African Council of Ministers and East African Community Headquarters Secretariat. The then Legislative Assembly was to be the nucleus in developing a Federal Legislative Assembly with enhanced Membership and increased activities.

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actually a lot  
drawn.*

Political upheavals in the region at that time however, halted the process that had been set in Motion.

The Assembly's position and conviction is that the Political Federation can now be achieved concurrently with the other stages of integration now under way.

What is critical for a successful integration is a positive environment characterized by among other factors, a strong political will and commitment and the existence of viable regional structures. Basic factors favourable to a federation exist in the three Partner States; geographically contiguous, populations, socially and culturally interrelated; have hitherto enjoyed economic integration and joint common services such as railways, harbours, posts and telecommunications, common customs and income tax services et cetera.

Minimum and fundamental pillars, such as common currency, common identity, common defence and security arrangements, common foreign policy and free movement of persons therefore need to be established as the first step to the attainment of the Political Federation. Some of these aspects already exist as Protocols acceded to by the three States. These Protocols need to be ratified quickly if the process is to move forward.

This Memorandum, based on the Assembly's experiences in the last two and half years, highlights issues that the Assembly deems critical if the federation is to be fast tracked.

## 2. WHAT IS THE STATUS QUO?

Formal tripartite arrangements aimed at the revival of the East African Community began in earnest in 1996 with the establishment of the Tripartite Commission. Since then, major achievements have been scored. The Treaty was signed in 1999, and by November, 2002, all organs of the Community had been established and were fully operational.

These organs have variously or collectively made significant decisions as required of them by the Treaty. The Protocol on

Customs Union was signed almost in time, and efforts are continuing for its operationalization.

However, all these efforts are overshadowed by the fact that the process is seemingly <sup>^</sup>slow. The common people do not know much about these achievements; the progress is only known by the technocrats. Most of the efforts have also been directed at integration and not federation. There is apparent fear and lack of interest in the process exhibited by parochial national interests. *indeed.*

Due to these negative factors and mindset, not much vigor has been exhibited in the direction of a federation, where in fact the benefits are so obvious. The efforts so far directed at the integration process should now be shifted without hesitation to the fundamental pillars that will lead to a federation.

### 3. CURRENT DECISION MAKING PROCESS

#### (a) **Summit of Heads of State:**

Article 11 of the Treaty gives the Summit the function to give general directions and impetus as to the development and achievement of the objectives of the Community. In glaring contradiction of the above function, the Summit meets only once every year. This has resulted into the Summit not paying the due attention to the affairs of the Community.

The Assembly commends the Heads of State for having taken a bold step to appoint the Committee of eminent persons. In this regard, the Assembly recommends that the Summit should continue to issue specific and definite directives on affairs of the Community. To be able to achieve the above, the Summit should strive to meet at least every six months rather than the current practice of once every year.

#### (b) **Council of Ministers:**

The Council of Ministers is the main policy organ of the Community. Throughout the Treaty, major responsibilities are placed in the council, yet they meet only twice in a year and in

some cases have failed to meet at all. The time dedicated by the Council to this huge mandate is clearly and regrettably negligible.

The Council of Ministers is dominated by Ministers responsible for Foreign Affairs in Partner States. These Ministers, who are also Ex-Officio Members of the Assembly, are invariably out of East Africa on other national duties. When in East Africa, they have to attend to their Parliamentary and Constituency roles.

Because of this divided attention in terms of work, they have not been able to fully attend to the matters of the East African Community. They are frequently absent from the Community affairs including inability to attend Assembly Sessions. They have, therefore, inadvertently delegated their authority to the Coordination Committee and the Sectoral Committees; Committees comprised of civil servants who have no real authority to arrive at far reaching decisions.

Lack of Executive authority in Arusha has therefore been responsible for lack of progress in the integration process. The Assembly therefore strongly recommends that the Summit should immediately appoint Cabinet Ministers resident in Arusha solely responsible for East African Community Affairs and with the authority to make decisions. Resident Ministers would also be able to attend to the Sessions of the Assembly. A sectoral division of the East African Community should be established so that each Minister is assigned specific portfolios within EAC. This will make liaison and coordination with line ministries in Partner States easier. Further, this will ensure that there is executive authority in Arusha who shall continuously initiate policies and give directions as to the implementation of the process.

(c) **Coordination and Sectoral Committees:**

It is the considered view of the Assembly that it was wrong to include administrative structures such as the Coordination Committee and other Sectoral Committees in the Treaty. This has led to usurpation of power. The Community agenda is now set and run by bureaucrats and not the policy makers. The result has been the exhibited tardiness in the entire process as a lot of time is spent on articulation of interests of Partner States and not



Community interests. Moreover, the Treaty requires that all decisions among Community organs should be by consensus.

The Assembly therefore, recommends that:

- (i) administrative structures such as the Coordination and Sectoral Committees should be deleted from the Treaty; and
- (ii) the current practice that requires decisions to be arrived at by consensus should be changed to majority votes cast as it is done in the Assembly.

#### 4. THE TREATY

The current Treaty was clearly meant for a tripartite arrangement that emphasized gradual integration in the economic aspects and much less in the political arena. This cautious approach was most likely due to the political history of the region that is still fresh in the minds of many people.

There is therefore need to put in place another legal instrument that lays down minimum pillars that are clearly geared and oriented towards a political federation and to give the current Community some form of Statehood.

In this regard, the Assembly recommends that the Committee interests itself in Chapter Six of the Munanka Report; and the Provisions of the Original Draft of the Treaty for the establishment of this new Community.

Furthermore, since the Community is meant to be people centered, the Assembly recommends that the question of Political Federation should put to the people of East Africa to make the final decision through a referendum.

#### 5. THE EAST AFRICAN LEGISLATIVE ASSEMBLY

Since its inauguration in November 2001, the Assembly embarked on its mandate with the required vigour and commitment.

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As a legislative body, the Assembly has so far enacted seven pieces of legislation, the majority of which were Private Member's Bills. Many more laws could have been enacted if the Council of Ministers had played its part and sponsored Bills. The Assembly is determined to continue to enact laws sponsored by Private Members, if the Council does not bring Bills as required of them. In fact four more Private Member's Bills have been introduced in the House and will be debated at the next Meeting of the Assembly.

As representatives of the people, the Assembly made a firm decision to "take the Assembly to the people" through country tours.

A great number of people now know the existence of the Assembly and indeed the entire Community. At the same time, the Assembly has been able to familiarize itself with the living conditions and the aspirations of the people of East Africa. This has laid firm foundations on which legislations can be enacted that are geared towards the needs of the common people.

On its oversight role, the Assembly has asked the Council of Ministers a total of twenty five questions, on the integration process, six of which are yet to be answered. Five Resolutions were also adopted that required the Council to take certain actions in the interest of the Community. The council has so far not responded as to what action they took. But due to the existing arrangements in terms of balance of power, the Assembly has little else to do since it has no powers to sanction the Council of Ministers.

To fast track the process, the Assembly recommends that organs of the Community should have separate and distinct powers with a clear demarcation in the functions and powers of the Assembly, the Council, the Secretariat and the Court of Justice on the basis of the doctrine of separation of powers.

The Assembly further recommends that Article 49 of the Treaty be amended to provide for an independent Assembly with powers over:

- (i) The Executive arm of the Community;
- (ii) Its own resources as a self-accounting organ with its own Financial Rules and Regulations;
- (iii) Its own programmes, priorities; and
- (iv) Appointment and discipline of its own staff.

Thirdly, the current tripartite arrangement that requires cooperation through Protocols and Memoranda of Understanding should be abolished. All issues of a legislative nature should be brought to the Assembly for legislation.

*emphasis*

Fourthly, the Assembly also recommends that the present equal representation of members in the Assembly should be maintained until such a time as the electoral system will have to be changed to fit into a federal arrangement. Further, it is recommended that the international practice of reserving a minimum of 30% of the seats to women should be adopted.

The Assembly further recommends that there should be a more functional relationship between the Assembly and the Summit. The Summit is responsible for giving general directions and impetus as to the development and achievement of the Community objectives while the Assembly is required to translate all major policy issues into law. To this end, the Assembly recommends that the chairperson of the Summit should, as it is done in many jurisdictions, address the Assembly annually on the state of the Community and outline the expected general policy issues and directives of the year.

## **6. ADMINISTRATIVE ISSUES**

### **(a) Appointment of the Secretary General and Deputies:**

The current practice of appointment of Secretary General and Deputy Secretaries General without recourse to their qualifications has proved inadequate. East African Community is mainly an economic project for the Partner States and therefore, the top echelon in the management of this project, should have the

necessary essential skills. The appointment of these officials should be left to Partner States on the current rotational basis, but due regard should be put on a direct relationship between the work to be done and the individual's qualifications as is with the case of other jobs in the Community. The Assembly therefore recommends each Partner State should ensure that these posts are open to competition before appointments are effected.

**(b) Terms and Conditions of Service**

Since 1997, a number of studies have been commissioned to try and establish appropriate structures and terms and conditions of service for the staff and other officials of the Community. The primary aim of these studies was to try and improve on the efficiency, effectiveness and relevance of the organization. No decision has so far been made on the implementation of the recommendations of the experts who undertook the study. The latest study was that done by a Committee of eminent persons appointed by the Council last year. The committee presented their report which in a nutshell recommended that the staff of EAC are under paid compared to their counterparts in sister regional bodies like SADC and COMESA to which the Partner States belong.

The expectation was that the Council of Ministers would order for the immediate implementation of these latest recommendations. Instead, the Council referred the report to the Sectoral Committee on Finance and Administration to determine the "administrative and financial implications" of those recommendations. It has come to the attention of the Assembly that the Finance and Administration Committee has made its own recommendations different from those made by the Eminent Persons. Why then did the Council appoint the 'Committee of Eminent Persons' in the first instance?

This apparent lack of commitment in the welfare of the staff of the Community does not only affect the morale of the employees, but it in fact makes EAC an unattractive and a less competitive organization as an employer. With the growing mandate of the Community, it goes without saying that every effort should be made to make EAC competitive so as to attract and retain the best brains in the region.

The Assembly therefore requests that the recommendations made by the Committee of Eminent Persons should be implemented in whole with effect from the next financial year.

## **7. BUDGET OF EAST AFRICAN COMMUNITY**

The Assembly has noted with concern the manner in which the budget of EAC is arrived at. The Council does not have any indicative programme on which the budget is drawn. The size and level of funding of the Community has proved to be inadequate. The level of funding is based on the practice of Partner States to use ceilings, which seem to have no relation to annual plans of the Community. The Partner States are also invariably in arrears in paying up the annual equal proportional contribution to the Community Budget.

The Assembly therefore, recommends that the following measures be instituted:

### **(a) The Council:**

- (i) Needs to produce a plan or programme containing the forward plan, on the basis of which the annual programme of activities is to be funded.
- (ii) Should be able to relate the estimates to the Partner States before the ceiling is set.
- (iii) Should prepare an indicative programme on which the budget must be drawn.
- (iv) Should at all times relate the annual programme to the strategic plan.

### **(b) The Assembly:**

- (i) Should effectively participate in the pre-budget process together with the other relevant organs of EAC.
- (ii) Should discuss the annual plan and estimates submitted by

the Council of Ministers. This would also include details on budget performance in the previous year.

**(c) The Secretariat:**

- (i) Should set a timetable of the budget cycle and adhere to it for pre-budgeting purposes. The calendar should recognize the current practice to have the EAC budget read in May. The estimates should be ready by November.

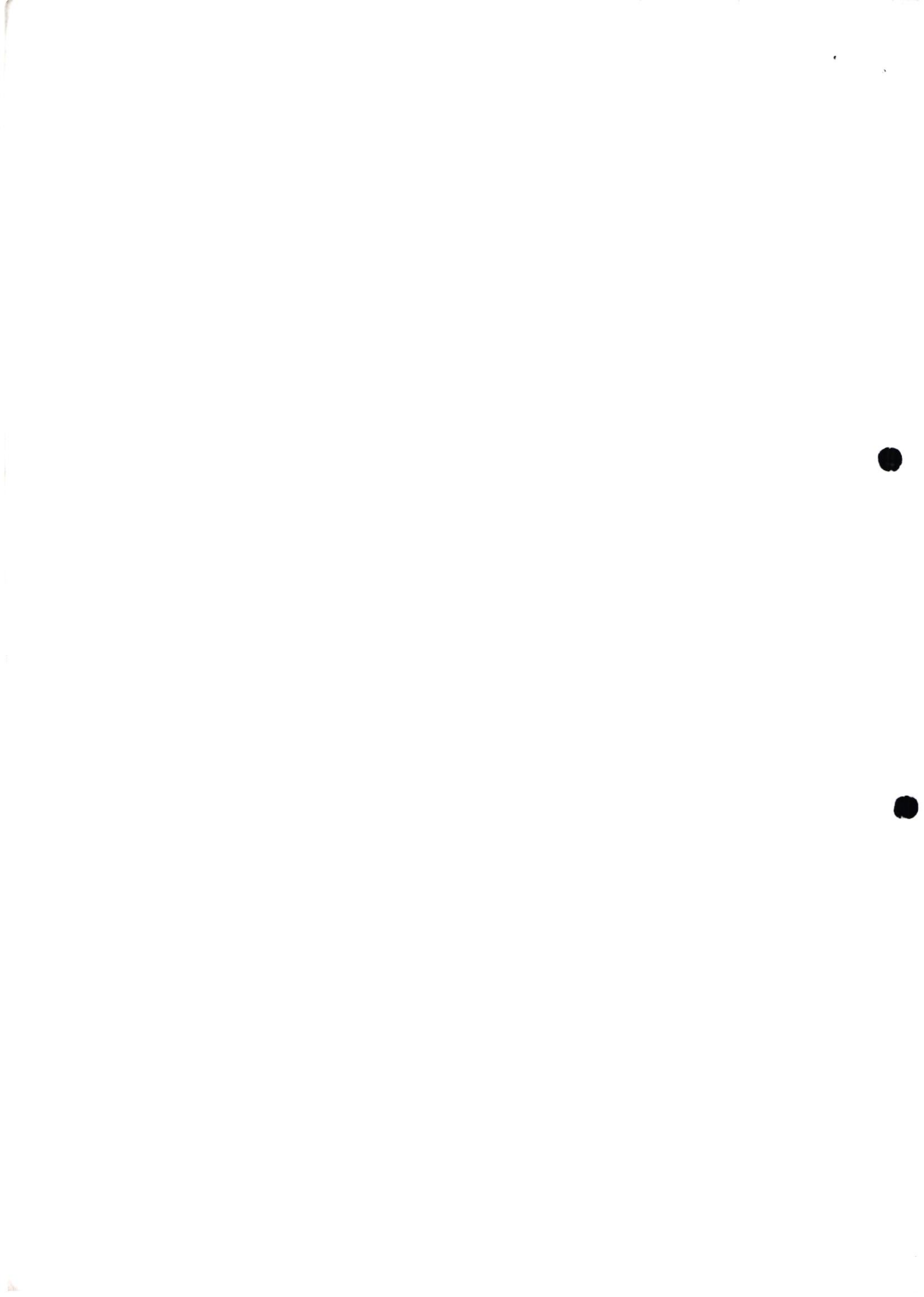
**(d) The Partner States:**

- (i) Need to pay up promptly as a show of commitment and priority they accord to EAC.
- (ii) Need to re-examine the current formula of contributions in equal proportions which does not take into account the question of affordability. At the same time, the formula also restricts any Partner State with more resources to make any additional contributions. More flexible options should be explored. Possibilities which could be looked at include, direct centralized collections from customs percentage of GDP like it is done with ECOWAS, or percentage of revenue. This will help to entrench dependable sources of revenue to the Community.
- (iii) Need to examine other options with regard to future 'federal' funding, including the right to levy other taxes.

**8. JURISDICTION OF THE EAST AFRICAN COURT OF JUSTICE**

Article 27 (2) of the Treaty empowers the Council of Ministers to determine other original, appellate, human rights and other jurisdiction of the Court at a suitable subsequent date. The Assembly recommends that the jurisdiction of EACJ should be extended immediately to cover the following issues:-

- (a) Customs Appellate Jurisdiction;



- (b) To be the Supreme Court of East Africa to which aggrieved parties in the Courts of Appeal in Tanzania and Kenya as well as in the Supreme Court in Uganda may appeal to;
- (c) Human Rights; and
- (d) Cases arising out of electoral disputes.

The EACJ is the only Court well placed to be above any form of real or perceived political manipulation. If its jurisdiction is extended to cover the above issues at an appellate level, then it would be a clear indication that the National Governments are indeed ready to cede their powers to regional organs.

## **9. OFFICIAL LANGUAGE OF EAC**

The Assembly observed that Kiswahili could also help in fast tracking the federation. To that end, the Assembly recommends that Kiswahili should be immediately introduced where it is not the case as a compulsory subject in schools.

The Assembly also recommends that simultaneous translation of the two languages, English and Kiswahili be introduced in all the organs of the Community.

The Assembly further recommends that the Inter – University Council be entrusted with development of Kiswahili as a *lingua franca*.

## **10. FREE MOVEMENT OF PERSONS**

Free movement of persons, labour and right of establishment within the three Partner States is one of the fundamental pillars of the integration process and should therefore be ranked high on the agenda. In fact the Council made some decisions to this effect as way back as September, 2002 although not much has been achieved yet. If people begin to move freely, a sense of belonging will be inculcated in them. As a matter of priority, therefore, the necessary legal instruments with regard to employment and residence should be enacted immediately.





The Assembly further recommends that the East African Passport should be internationalized as a matter of urgency so that it can replace the National Passports.

In the meantime, whatever identity cards are acceptable in each country should be recognized at the common borders to allow free movement of people without hindrance. Other administrative measures that should also be undertaken include:

- (a) To establish Clearing Channels at all border crossings specifically for East Africans citizens; and
- (b) To establish Single Immigration Offices at common ~~border~~s.

## **11. COOPERATION IN POLITICAL MATTERS**

Under the Protocol on cooperation on foreign policy, Partner States are required to consult each other on major foreign policy decisions. Unfortunately, this is not the case. *being done.*

Further, it is noted that the Partner States belong to different economic groupings i.e COMESA and SADC. This dual membership to different organizations has the negative effect of pulling the Partner States apart and therefore, probably affecting the pace of the integration process.

The Assembly therefore, recommends that:

- (i) The provisions of the Protocol on Common Foreign Policy should be adhered to at all times;
- (ii) A firm decision to resolve the question of dual membership to different economic groupings should be made as a matter of priority; and
- (iii) Where only one of the countries has an Embassy abroad, that Embassy should represent other EAC States.

## **12. GENERAL POLICY ISSUES**

The current process of integration envisages that East Africa will be one single investment area which will require a Single Investment Authority.

For purposes of cooperation in Standardization, Quality Assurance, Metrology and Testing, monetary and financial as well as infrastructure services, the Assembly proposes that the current tripartite arrangements should be replaced with a common arrangement. To this end, the Assembly recommends the establishment of single Regulatory Authorities for standards, monetary affairs, civil aviation, capital markets, and infrastructure etcetera.

The Assembly also expects that harmonization in issues of health, education curriculum, tourism et cetera will continue but at a pace faster than at present.

### **CONCLUSION**

The Assembly is convinced that the different stages of the integration process as envisaged in the Treaty i.e Customs Union, Common Market, Monetary Union and Political Federation can be compressed and embarked on simultaneously. What is important is to quicken the current decision making process.

This is a summary of the issues which the Assembly through its various Committees earmarked as the most critical if we are to fast track the mechanism.

The Assembly is of the opinion that other issues in the Treaty and the existing Development Strategy should be critically looked at with a view to examining why they have not been done as envisaged.

A new Strategic Plan should therefore be developed as a matter of priority which is clearly focused on the critical elements that should be undertaken that will lead to a faster attainment of a Political Federation.

