EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY POSITION PAPER PRESENTED BY THE EAC YOUTH AMBASSADORS PLATFORM

EAC SECRETARIAT

ARUSHA, TANZANIA

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I. Preamble

The East African Community is the regional intergovernmental organisation of the Republics of Burundi, Kenya, Rwanda, the United Republic of Tanzania and the Republic of Uganda. The EAC Treaty, in its Article 6 (d) provides for adherence to the principles of good governance, democracy, constitutionalism, transparency, the rule of law and access to justice. These principles are in consonance with the provisions of national constitutions of the Partner States.

It is acknowledged that the EAC integration is people centered and market driven. The youth of East Africa are an important stakeholder, adding that they constitute substantial part of the entire region’s population. Article 120 (c) of the EAC Treaty provides for adoption of a common approach for involvement of the youth in the integration process through education, training and mainstreaming youth issues into EAC policies, programmes and projects as one of the strategic interventions towards the realization of a fully integrated Community.

It is also acknowledged that good governance is a prerequisite for sustainable integration and development. The EAC Partner States have undertaken to adhere to the principles of good governance, the rule of law, transparency and accountability, access to justice and promotion and protection of human rights.

We note that the place and role of the youth is entrenched and indeed enshrined in various national and international legal instruments including national Constitutions of the various Partner States, the African Youth Charter among others focusing on social, political, cultural and economic development which meets the needs of the present without compromising the ability of future generations to meet their own needs across the entire spectrum.

II. Background

1. EAC attaches great significance to participation of the youth in the integration agenda. Among other initiatives to actualise this principle, EAC undertakes annual University Students’ Debate where the winners become Youth Ambassadors for a period of one year. Further, the EAC Youth Ambassadors Platform was launched in September, 2013, with the aim of facilitating a structured engagement with the youth. The alumni Youth Ambassadors become members of the Platform to ensure sustainable youth engagement. The Platform networks closely with other youth organisations including the national youth councils in all Partner States and interest groups.

2. The invitation by the African Union to the EAC to coordinate youth consultation in contributing to the high level Dialogue on democracy and governance is timely. During the 1st EAC Youth Convention held on 4th – 6th November, 2013 in Kampala, members of the EAC Youth Ambassadors Platform under the theme of “Youth as drivers in leveraging Constitutionalism and Rule of Law in the integration agenda” deliberated on
the status, progress and challenges of upholding constitutionalism and the rule of law in East Africa. The Convention granted the East African youth an opportunity to participate in the regional consultation process and developed an EAC position paper on “Constitutionalism and Rule of Law” for submission to the African Union.

It was also an opportunity for the youth to share experiences from different EAC Partner States from a subregional perspective. The youth had in-depth deliberations on the state of constitutionalism and rule of law in East Africa in relation to the Africa 2063 Agenda.

III. Democracy and Youth Participation in Electoral processes in the region

3. Participation of all stakeholders especially in the electoral processes is important in nurturing leadership and integration skills for the youth in leadership processes. Although there have been efforts in terms of laws and policies in support of youth involvement, the same have not been effectively operationalised. Ministries created specifically for youth empowerment are not sufficiently funded. Funds set aside for youth empowerment are targeted and resources diverted in corruption deals.

4. The youth noted the initiatives undertaken by the EAC Secretariat to bolster democracy in the region. EAC Partner States have upscaled youth participation in decision making processes over the last five years at national levels, where youth have participated both as voters and candidates in electoral processes. At the EAC Secretariat level, youth have also participated as Election Observers to Partner States’ elections. Even though this has enhanced youth participation, in some instances, youth have also been viewed as perpetrators or vehicles for electoral violence.

5. However, challenges in participation were also noted at the Partner States level. These included inadequate civic education, inconsistent voters’ registration, wide scale allegations and reporting of election results rigging and corruption among others. In most cases, high cost of elections also hindered youth participation as candidates.

It is recommended as follows:-

i) Partner States should broaden civic education by incorporating it in school curricula so that democracy becomes a way of life as opposed to being centered around elections.

ii) Partner States must commit to accelerate processes to harmonise electoral and governance systems across the region. In line with that, all Partner States should endeavour to create a synchronised database of national IDs and biometric voters’ registers, for accuracy and ease updating of the voters register as well minimize costs.

IV. Overview of the state of Constitutionalism and Rule of Law in the EAC

6. The EAC region has witnessed constitutional and legal reforms in the recent past that focused on strengthening constitutionalism and the rule of law in the region. A case in point is the over a decade agitation for a new Constitution in Kenya which culminated in the promulgation of a new Constitution in August 2010. The constitutional reform process in Tanzania is ongoing and key among the issues is the inclusion of a Bill of
Rights, an aspect that is considerably weak in the current Constitution. The same agitation is persistent in the other three EAC Partner States of Rwanda, Uganda and Burundi.

7. The deliberations on the state of constitutionalism in the region focused on the democratic principles, which underlined issues of sovereignty of the people, supremacy of the constitution, separation of powers, representative Parliament, independence of the Judiciary, rule of law and respect for human rights. The following sub topics were discussed, emerging issues highlighted and recommendations made.

Sovereignty of the people

8. The youth acknowledged that upholding constitutionalism and the rule of law are the bedrock in widening and deepening the EAC integration. They noted that in the modern democratic society, sovereignty resides in the people and that the State and its organs derive their authority from the people. The Partner States through the EAC Treaty undertake to promulgate laws that are in conformity with human rights standards and norms, facilitate effective system of administration of justice that guarantees social justice, political stability, peace and prevention of conflicts.

9. The reality of holding referenda in promulgating constitutions and carrying out civic education programmes prior to adoption of the mother laws was done in Kenya in 2010 and is currently happening in Tanzania is testimony. A number of challenges were mentioned including lack of information that would help citizens participate in such processes from a point of information.

10. The youth restated the need for the Partner states to up hold the principle of constitutionalism by embracing Constitutions that have been granted legitimacy through consultations and validation by the citizenry where the youth are the majority population. The youth noted that Constitutions are considered supreme laws of the land and express the will of the people. For example in all EAC Partner States, Constitutions are the supreme law of the land and bind all persons and State organs at all levels of government.

They urged the Partner States to ensure that all actions and decisions likely to affect the public shall be in accordance with the national constitutions and the EAC Treaty.

Separation of Powers

11. The youth noted that the principle of separation of powers is key in observing the independence and non interference in the functions of the three arms of government. There is however, need for inter organ collaboration the fact that the three organs belong to one governance system. The Executive, Legislature and Judiciary as organs of the State, also serve to provide checks and balances to deter abuse of power. In the national Constitutions, the three arms of government are well spelt out and functions of each organ clearly delineated. In brief, the legislature enacts laws; the executive enforces laws; and the judiciary interprets laws.
12. The youth noted that the principle of separation of powers is designed to prevent arbitrary or tyrannical rule and to protect the governed. Therefore separation of powers is necessary if political liberty and progressive well-being of all is to be achieved. Separation of powers is the foundation for judicial independence, which is one of the most essential characteristics of a free society.

In the deliberation, the youth noted that the Partner States’ laws are designed in such a way that Parliaments audit and ensure that the executive arm of the government conform with the duties prescribed while the Judiciary safeguards the principle of separation of powers.

13. Challenges were noted in terms of compromising the independence of the judiciary by the executive. For example, in cases of corruption and/or election petitions if they involve senior government officials, its common to find attempts to influence the outcome of Court cases. If the judiciary is to function without fear, favour, or affection, it must be truly independent and outside the control of the other branches.

Representative Parliament

14. The youth noted that it is necessary within a functioning democracy that those who rule on behalf of the people must be representatives of the people. Furthermore, the people must have the power to remove their representatives when they feel that they no longer represent their interests. Conducting periodic elections is meant to satisfy this condition. In the EAC Partner States, the legislature is usually elected and the system of elections has various forms. All in all, the universal suffrage that is one person one vote applies in the Partner States.

15. Among the challenges, the problem of recalling members of parliament in the event that they change their missions to satisfy personal interests as opposed to those of the electorate has not been developed and tested in all EAC Partner States.

Further, it was observed that during the election period, the financially strong political parties and their candidates give out petty cash to the voters who in this case are the less privileged. They vote in representatives who does not represent their interest and the welfare of the community.

There are cases where election candidates use ethnicity and hate speech that divide the people. Victims of this scenario are the youth who miss out on opportunities due to nepotism, favouritism and/or tribalism. For example, the 2010 Kenyan Constitution together with regulatory commissions drastically reduced intances of hate speech but while ethnicity still persists.

It is recommended that:-

   i) The Anti-corruption authorities should strengthen and develop mechanisms for monitoring bribery during elections. The mechanism should also monitor
political parties/candidates who provide petty cash to voters and to the youth who get bribed to cause violence.

ii) Partner States should enact laws that prohibit the use of hate speech during the election period so as to promote peace, security and political stability during electoral process.

Independence of the Judiciary and the Rule of Law

14. The youth acknowledged that the Judiciary should be facilitated to enhance confidence among the people and have legitimacy, in order to carry out their functions without fear or favour and be seen to be impartial. It was further noted that rule of law means the exercise of political power in accordance with rules and laws and not according to personal whims or desires of leaders. Institutions that exercises authority or public power have to justify in reference to law.

15. In order to enhance the rule of law in the region, political or public power should be exercised in accordance with the law. The law should be made by a representative body as appropriate. The law should be just and fair, the law should treat all human beings equally regardless of their class or socio-economic standing. Lastly, the law should adhere to basic human rights.

16. The youth noted that access to the formal justice remains costly, and a preserve of the wealthy. Further, the judicial system is perceived to be tarnished by bribery and corruption. To this end, Partner States should consider broadening the scope of justice mechanisms to include informal/indigenous justice systems. This will enhance access to justice for the majority, given the very high cost of maintaining formal justice structures. The Rwandan Gacaca courts was cited as a best practice contributing as an informal justice system.

17. Further, it was noted that there is need for the Partner States to harmonise strategies, policies and programmes for promotion of respect for the rule of law and ensure eradication of the culture of impunity.

It is recommended that:-

i) The youth that are lawyers/advocates by profession or civic educators should be empowered to provide proborno services to the poorest, marginalized and vulnerable groups in society to enhance effective and equitable service delivery.

ii) The Partner States should ensure that their legal frameworks include basic principles of open government such as access to information, disclosures related to public officials, accountability and public engagement in policy and decision making to promote accountable and transparent delivery.

Respect for Human Rights

18. The youth noted that the EAC has an explicit human rights mandate drawn from the Community’s constituent Treaty. According to Article 6 (d) of the EAC Treaty, promotion and protection of human rights is one of the fundamental principles that
governs the achievement of the objectives of the Community. The responsibility for the promotion and protection of human rights, first and foremost, rests on the national governments.

19. It was further noted that all the EAC Partner States have Bills of Rights in their Constitutions which guarantee most of the traditional civil and political rights enumerated under major international and regional human rights instruments. However, with exception of Kenya, the other Partner States have socio-economic rights enshrined under non-justiciable national objectives and directive principles of the respective state policies.

20. It was further observed that EAC Partner States seem to be willing to promote and protect human rights as deduced from their adoption and ratification of various international human rights treaties. With the exception of Burundi, all the other Partner States have atleast ratified seven out of the nine core international human rights treaties.

21. The youth observed that the independence of the National Human Rights Institutions (NHRIs) is a factor that most clearly underpins a national institution’s legitimacy and credibility, and hence its effectiveness. As a good example for replication in the region, the Kenya National Commission for Human Rights (KNCHR) has liberally interpreted its mandate to cover election observation and corruption. Moreover, in practice, KNCHR and Uganda Human Rights Commission (UHRC) have enjoyed wide latitude of independence.

The following were observed:-

i) In Rwanda and Tanzania, the independence of the national institutions are undermined by a number of factors. In Rwanda, a commissioner may be removed from office by the organ that appointed him/her. The procedure of such removal is not specified in law. The independence of the commissioners is further undermined by the fact that their benefits are determined by a Presidential Order.

ii) In Tanzania, the President may direct or order the Commission for Human Rights and Good Governance (CHRAGG) not to conduct investigation in respect to any matter or person. Moreover, although the salaries of the Commissioners are charged on the consolidated fund, it is the President who determines such salaries.

It is recommended that:

i) The Partner States should ensure that they guarantee the promotion and protection of socio-economic rights as it is for civil and political rights

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1 Law No 30/2007, art 17 (3)
2 Law No 30/2007, art 15
3 Constitution of Tanzania, art 130 (4)
4 CHRAGG, sec 8 (3)
ii) The Partner States apart from Tanzania should make a declaration in terms of Article 34 (6) of the African Court Protocol allowing individuals to directly access the African Court.

iii) The NHRIs in the region should liberally interpret their mandate to cover all human rights and governance issues within their respective spheres of geographical competence.

iv) The EAC Partner States should ensure the independence of their respective National Human Rights Institutions to enhance effectiveness in the promotion and protection of human rights.

V. CONCLUSION

As African countries celebrate the 50th Anniversary of the OAU/AU on the theme “Pan Africanism and African Renaissance” it is imperative to reflect on the next fifty years and acknowledge the role of the youth as the new drivers of social, economic and political transformations for a better future. Therefore, it is crucial for the youth to recognise that they have a responsibility to take the East African region in particular and Africa in general to the next level.

5. Article 34 (6) of the African Court Protocol “At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.”