



OCCASIONAL PAPER SERIES
No. 1

WHO OWNS THE EAST AFRICAN COMMUNITY?

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The Human Rights and Peace Centre (HURIPEC) was established at Makerere University in 1993, and was designed among others to:-

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NOTE ON OCCASIONAL PAPER AND AUTHOR

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You cannot in measurable terms go into each household and say this is the benefit from the community. The community offers an opportunity. Those who take advantage of the community benefit from it.... Those who decide to sleep, whether you are in a region, you will gain nothing. When you create a larger market called East Africa, then your opportunities to benefit are much greater.

Amanya Mushega, Secretary General of the East African Community¹

I. INTRODUCTION

At the end of last year I took a short trip around East Africa. The intention of my visit was to explore what the people of Utake (Uganda, Tanzania and Kenya) thought about the issue of citizenship. My findings revealed two main things. The first was that there are considerable similarities between the three countries of Utake that do not require re-statement. Suffice it to say that those similarities sufficiently warrant taking measures to have a single unifying geographic and political entity. This is particularly the case given the historical, cultural, economic and political affiliations that we share. Moreover, the artificiality of the borders dividing us is something that makes no sense to virtually everybody, especially those in towns such as Busia, Mutukula, Katuna or Namanga.

Among the youth in particular, the sense of *EastAfricaness* is particularly strong. This is witnessed not only by the increased exchange of students between the three countries, but also in the development of common East African icons, such as East African TV and Radio and the ubiquitous Jose Chameleon who is claimed by all three countries. Thus, it is safe to conclude that most Utakeans (the peoples of East Africa) feel a close affinity for their brothers and sisters across the border. They follow the ups and downs of their

neighbours; they share in their successes, and lament their losses; there is sometimes also a little bit of protectiveness. In other words, East Africa today experiences all the normal joys and pains of brother/sisterhood.

My second conclusion was that despite this closeness, very few of the people I talked to—young and old—could concretely relate to the idea of the East African Community, let alone to the idea that we could one day all be citizens of an entity larger than our present countries. There was embarrassingly little knowledge about the revived community. Most of them scoffed at the idea of East African Federation—whether by the year 2011, or even by the year 2050—despite the optimism of our political leadership that federation in under a decade is indeed a feasible idea. All these issues raised a central paradox for me. How come the people of East Africa feel very much like East Africans, but at the same time, they do not feel like they belong to the East African Community?

This is why I have entitled this presentation: *who owns the East African Community*. Why is ownership important? Just think of the difference between a Landlord (*nannyini ttaka*) and a squatter (*omusenze*). The landlord has all the rights, while the squatter has none. Ownership is important because it confers rights or entitlements, just as much as it confers obligations and duties. Ownership is crucial because it gives one a say in the methods and means by which one is governed. Ownership confers upon one a sense of bearing and inclusiveness. Most importantly, ownership gives one a sense of belonging, or to put it another way; it confers upon one a right of citizenship. In my view the problem with our revived Community is essentially one of ownership: does it belong to the governed or does it belong to the governors? For the purposes of the present analysis, I am particularly concerned about the following: how much is the revived East African Community (EAC II) a creature of popular will? What kinds of claims

¹ 'Uganda Needs to Swim in Big Pond,' *The Weekly Observer*, October 27-November 2, 2005 at p.19.

can the broad masses of the citizens of Utake actually make on this entity? Is EAC II sufficiently insulated from the dangers and pressures that led to the collapse of EAC I? How can our voices be heard? I repeat; *who really owns the East African Community?*

II. A SHORT POINT ON OUR COLLECTIVE HISTORY

Against the preceding background, it is important to begin our dialogue by recalling that the East African Community we are talking about today is not an entirely new animal. Historians will recall that the first East African Community (EAC I) dates back to the late 19th century. It began with the construction of the Uganda/Kenya railway in 1897, followed by the governor's conference (1900-1947), which became the East African High Commission (1947-1960), and was followed by the East African Common Services Organisation, (1961-1967), that eventually led to the Treaty of East African Co-operation (from 1967 until the break-up in 1977). Indeed, it is sad testimony to what we lost that the European Economic Community (EEC), (now the European Union—EU) was in many ways modelled on the EAC.

Most cooperation and success under EAC I was registered in the economic fields, with progress in the political, legal and socio-cultural field being minimal. The near-exclusive emphasis on economic cooperation was illogical and indeed inimical to the growth of a formidable union of the three countries. The lack of the legal basis upon which any cooperation could be based (including on the economic front) meant that differences of opinion on the actions and misdeeds of the members could not be properly sorted out. This perhaps explains why the structure collapsed when internal pressure increased.

EAC I collapsed (or more appropriately was destroyed) in 1977. The reasons for that destruction were quite clear: political differences between the leadership of the body; perceived and real inequalities in the benefits each country was deriving from the

association; the influence of particular prominent political actors (Idi Amin in Uganda, Julius Nyerere in Tanzania and Charles Njonjo, then Attorney General of Kenya), and also the weakness of the foundation on which the organization was built.² Thus, the present Community (EAC II) is in effect a second marriage. Have the three countries of East Africa resolved all those issues which led to the first divorce and break-up of EAC I?

EAC II has been with us for several years, and dates back to the establishment of the Tripartite Commission for Cooperation on November 13, 1993. The Treaty for the East African Community came into force on July 7th 2000, with the revised institution being officially launched on January 15th 2001, meaning that EAC II is still a toddler of only five years of age. Despite the relative infancy of the institution, we can still ask ourselves a number of questions about where it has come from and about the direction in which it may be heading.

III. FROM THE TRIPARTITE COMMISSION TO EAC II

To fully answer the many questions we have posed, it is important to recall the basic foundation on which EAC II was constructed. Article 5 of the treaty clearly demonstrates that the new body was designed to pay attention to much more than its predecessor, which had mainly focused on matters of an economic nature. The eight objectives of the Community are to:

- (i) improve the standard of living and quality of life of the people of East Africa;
- (ii) ensure balanced, orderly, consistent and fair development in East Africa;
- (iii) ensure reasonable and proper use of natural resources taking into account safety and sustainability of the environment;
- (iv) promote the active participation and benefit of the people in development;
- (v) enable the business community and the general public to play a leading role;

² See Kamanga, 126-130.

- (vi) strengthen and improve the role of women in development;
- (vii) promote peace, security and stability in East Africa, and
- (viii) promote other activities aimed at a successful community.

While many of these objectives were present with respect to EAC I, there are several new ones that were added in. For the purposes of the present analysis, Objectives (iv), (v), (vi) and (vii) are particularly important. In the first instance, these address some of the key issues of sustainable development, peace, security and stability that have been of central concern to the peoples of the region since the collapse of EAC I. Secondly, they also point to the place of the people in the organization (ranging from the business community, to women to civil society). This second point is taken further in the Treaty provisions governing the operational principles of the Community (Article 7). In particular, the first principle is that of *people-centred cooperation*. Principle No.4 concerns the creation of a conducive environment, which encompasses ensuring law and order, providing good policies and putting in place a good infrastructure. To what extent have these principles, particularly the one of people-centred development, been at the foundation of the operation and development of EAC II?

Those who were around will recall that the draft treaty was put to public debate from May 1998 to April 1999. The response was lackluster and indeed the involvement of the broader masses of the populace was marginal. One wonders why this was the case and indeed there are several explanations including the following:

- ♣ the non-involvement of civil society and other non-state actors in the conception, formulation and final packaging of the treaty;
- ♣ the lack of publicity and information surrounding the process;
- ♣ the inability to see what real benefits would be gained from the treaty,
- ♣ the emphasis mainly on macro-economic (and rather abstract) issues, and
- ♣ the methodologies and approaches were top-down.

Indeed, there was hardly any attempt to involve the people in the process from its very beginning. At best, only the urban-based elite of the three countries were involved. No attempts were made to get the masses of women, peasant, business, worker or youth groups that are present in all the East African countries engaged in and feeling part of what should have been regarded as a monumental development in the history of the region. Rather, as was the case at inception, the process was largely elite, top-down and driven by the political and bureaucratic leadership of the three countries. Although presented as the main beneficiary of the process of cooperation, the same governments have conceptualized the people as passive recipients of their policies. How much has the actual functioning of EAC II moved away from the features that destroyed EAC I? How much does reality reflect the rhetoric contained in the treaty? I will focus here first of all on the East African Legislative Assembly (EALA) because the idea of effective representation lies at the centre of any concept of people-centred cooperation. Then I will turn to the East African Court of Justice (EACJ) because the notion of justice is crucial to the idea that aggrieved people can find a remedy. I then move on to an examination of the proposals for the creation of an East African Federation by the year 2010, and conclude by asking the question: *what role is there for regional civil society?* Or to put it another way, how can we capture ownership of our community?

IV. ON THE QUESTION OF REPRESENTATION: COMMENTS ON THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

There is no doubt that the most critical issue in ensuring genuine *people-centredness* is the question of representation. How are the people of East Africa represented in EAC II? The main representative body of EAC II is the East African Legislative Assembly (EALA), which is governed by Articles 48 through to 65 of the treaty. Of particular concern to our inquiry is the way in which elections for this body are conducted, i.e. its composition. EALA members are elected by our individual National Parliaments. There were several problems with this methodology. In the first instance it was indirect. While indirect elections are not necessarily unrepresentative, they nevertheless reflect a limited franchise.

Secondly, in each instance the ruling parties/movements in the three parliaments manipulated the elections in order to secure their interests in the regional body, which essentially produced mainly NRM, CCM or KANU representatives to the regional assembly.³ It is obvious that the presumption on which these elections were based was that the interests of the ruling parties were the same as those of the peoples of the three countries. Indeed, one criticism of EALA is that most members are more interested in preserving and protecting national interests and sovereignty than in pursuing a regional vision for the Community. Thirdly, there are many questions about the inclusion of minorities, and about gender balancing (or the lack thereof) among those who were selected to be our representatives—which was the result of the lack of uniform approaches to the electoral process in each country, and of the broad and general manner in which the provisions of the treaty on the EALA election were formulated (See Art.50). Indeed, at the time of the election the Kenyan women's movement staged a demonstration against

the manifestly sexist exclusion of women representatives by the Moi government.

But there are even more serious issues when you turn to the question of *substantive* as opposed to *formal* representation; are the members of EALA *effective* representatives of the people of the region? Here, several issues emerge. The first relates to the power that EALA members have, which in terms of Art.49 appears quite limited. Secondly, there is an issue about the extent of consultation that these members engage in with their constituents (whether conceived of as the general populace or as the National Assemblies of the three countries). Thirdly, there is the issue of their effectiveness, whether in articulating the interests of the people of the region, or in influencing the heads of state. There are also the gendered dimensions of operating within an overtly gender-biased institution which leads to minimizing the role and status of the female representatives. We need to take into account questions such as the resources the EALA has, the substantive matters on which they have power to deliberate, and the binding force of their decisions. To crown it all, each individual head of state effectively exercises a veto power over the implementation of a law that has been passed by the EALA (Articles 62 and 63), effectively representing a negation of the idea of people-centred development. It is difficult not to come to the conclusion that the EALA is simply a paper-tiger—a fact demonstrated by their failure even to achieve meaningful concessions regarding the passing of the budget for the institution.

V. A NOTE ON THE EAST AFRICAN COURT OF JUSTICE

The East African Court of Justice (EACJ) is governed by the provisions of Article 23 of the treaty. Essentially, the principal function of the court is to interpret the provisions of the treaty in order to ensure compliance by member states. However, Article 27 limits the court's jurisdiction only to the interpretation and

³ Tanzania has 8 CCM representatives and only one who was deemed to be the representative of the four opposition parties, while in Uganda Yona Kanyomozi (who was the only non-NRM candidate) 'sneaked' through the barriers which had been put in place to stop opposition candidates from being elected.

application of the treaty. Provision is made for the extension of this jurisdiction to include either original, appellate or human rights matters by way of an additional protocol (Art. 27.2), but that is yet to be done. The court also serves other functions, including:

- ♣ as an industrial court (on disputes between the community and its employees arising out of the terms and conditions of employment of the community or the application and interpretation of the staff rules and regulations and terms and conditions of service of the community (Art.31);
- ♣ as an arbitrator if so named;
- ♣ over matters referred by any court or tribunal of a partner state concerning the interpretation the treaty, and
- ♣ to give advisory opinions on a question of law arising from the treaty which affects the Community upon the request of the Summit, the Council or a partner state (Art.36).

The treaty specifies in what instances and which bodies can make references to the Court, but these are confined to a partner state, the Secretary General or any person (both legal and natural) resident in a partner state. Any resident of a Partner State may challenge the legality of any Act, regulation, directive, decision or action of a partner state or an institution of the community, but only in relation to interpretation of the treaty provisions. In sum, the Court has no jurisdiction where infringements that occur relate for example to the human or other individual rights of the residents.

What do the above provisions reflect? First, that there was a concern, right from the start that the court should not be allowed too much freedom of action to significantly affect the political and legal institutions of partner states, such as the Executive or other issues of democratic governance. Secondly, the provisions on the appointment of judges also reflect the need to control the institution by the Heads of State in Summit.

By deciding who to nominate and then appoint as judges the Summit members exercise an extension of their national powers.

The Summit not only exercises control over the mode of appointment but also in the subsequent composition of the court, by retaining the power to appoint the President and Vice President of the Court from among those already appointed. The procedure for removal—which can only be affected upon the recommendation of an ad hoc tribunal—likewise vests with the Summit (Art.26). While the creation of this tribunal is made on the basis of a complaint over misconduct or inability to perform the functions of the respective office, it is not clear who is to initiate the process leading up to appointment of the tribunal or even how the process is to be set off. The lack of clarity coupled with the fact that it is generally the Summit to initiate the process means that the East African heads of state enjoy wide control over powers of the removal of judges as well. It seems therefore that other persons are not in a position to seek redress in the event of a complaint against a member of the bench.

From the above survey it is clear that there are clear limitations imposed by the treaty on the independence, effective functioning and quality of the court. Indeed, one could say that the judges of the EACJ are the most underemployed public servants in the region. To make matters worse, they add to the traditional distance that courts normally have towards the public through having an extremely limited jurisdiction and almost no power to actually affect the daily lives of the peoples of the region.

The limitation of the court's jurisdiction only to the interpretation of the treaty provisions was clearly designed to keep the level of scrutiny over the actions of the individual executives of each country to a minimum, and to limit the extent to which questions could be raised over the extent to which human and peoples rights were being observed in individual member states. That is not to mention other issues of

good governance that could arise. It is of no surprise that since its establishment, the EACJ has yet to decide a substantive case.

VI. TOWARDS AN EAST AFRICAN FEDERATION: THE ULTIMATE IN OWNERSHIP?

From the preceding analysis it is quite clear that EAC II is much more top-down than people-driven, but even the top manifests some degree of hesitation when action needs to match words. For example, my trip through the region coincided with that of the Committee on the Fast-Tracking of East African Federation, headed by Kenya's Attorney General Amos Wako. In his report to the Summit, Wako stated as follows:

In our visits, the people wanted the movement of the people of East Africa within East Africa to be eased if not made free. This to them will be an indicator or the litmus test to show that we are now serious in moving towards the Federation.

Wako went on to state that,

The Committee is of the opinion that it is within the administrative capacities of the Partner States to immediately effect the following in January 2005.

- ♣ *The holders of East African Passports should be exempted from immigration requirements when traveling within East Africa.*
- ♣ *The Partner States should publish their identification documents acceptable to them, which will be recognized at common borders to allow or facilitate free movement of the citizens of the Partner States.*
- ♣ *The administrative structures to be in place to enable the citizens living along the common borders of the three Member States of EAC to move freely across the common borders.*

- ♣ *Establish clearing channels at entry points for citizens of the Member States of the EAC.*
- ♣ *The fishing in Lake Victoria should take place without undue restriction to national boundaries but should take into account the environment and sustainability of the Lake and its Eco-system.*
- ♣ *By July 2005, harmonised procedures on the issuance of Entry/Work Permits to citizens of the Partner States should be in place.*
- ♣ *By August 2005, East Africa should be a single air space. This should result in reduction of air fares and travel time within East Africa.*

Wako further pointed out that "The major obstacle to free movement of East Africans in East Africa is lack of Identity Cards. To fundamentally ease the travel of the people of East Africa within East Africa, it is strongly recommended, that on a priority basis, the Partner States should take steps to ensure that East African Identity Cards identifying the citizen of the Partner States should be issued by December 2006."

I am unaware of how many (if any) of the above stipulations have been met, and I would be glad to be advised if they indeed have. What is however clear is that all are critical elements in the transfer of ownership of the EAC II from the bureaucrats to the people. Moreover, these are all actions to be taken from the top, and would more or less be greatly welcomed by those of us on the bottom.

There are a litany of other issues that the EAC could immediately take up which would ease the progress towards a Pan-East African federation and more inclusive citizenship. For example, East Africans moving across the borders should not be regarded as visitors or migrants, but simply as transferees between states that exist in a quasi-federal relationship. The East African passport today serves as little more than an identity card, since it confers no additional rights in

comparison to national documents. Ideally, possession of a passport or a recognized East African ID should be the precursor to the status of East African citizenship, enabling persons who hold such documents to exercise a variety of rights wheresoever they may wish to within the region. Restrictions over the exercise of property rights should be removed such that Utake citizens are treated preferentially in comparison to other foreigners. Much more needs to be done in the way of sensitization given that in all three countries the xenophobia about citizens of the neighbouring countries 'taking away' and benefiting from the bounties of the host country, abound: sometimes we are more hostile to our neighbours than to foreigners who come from thousands of miles away.

At the same time, the acceptance of new policies or measures should not be simply assumed. This point was dramatically illustrated with respect to the near-abortion of the proposed Customs Union. Anybody who knows anything about regional integration will appreciate that a unified Customs framework is an essential element in the process of increased regional cooperation. Indeed, "...it marks the entry point to the aspired regional integration."⁴ However, the coming into force of the protocol on the Customs Union early this year produced a highly negative reaction. In Kampala, you will all recall the traders strike in mid-April this year, and to date, it is not clear whether the Protocol has in fact been fully implemented.

On this issue Secretary General Amanywa Mushega describes the discomfort of the Uganda Manufacturers Association (UMA) over the Protocol as the 'fear of the unknown.' When told that sensitization was insufficient he retorted that business people failed to take the arrival of the union seriously. But, this begs the question; if indeed consultations were undertaken, then why was the reaction so negative? Either the consultants did not take the objections seriously enough or they simply did not listen to them. In any event, the fact that the Community had to go back to the drawing

board graphically demonstrates that there was need for a better model of consultation and information dissemination. Thus, even if we may all want (and dream about) political federation, it is an entirely different thing when the matter has actually germinated. Indeed, the debacle over the Customs Union demonstrated that the method is as important as the message: form and substance are intimately linked.

If political federation is going to amount to more than a pipe-dream, the Community needs to first deal with all those petty bureaucratic obstacles that stand in the way of closer cooperation and consolidation.⁵ Under the vision presented by the Wako Committee, political federation will represent the ultimate in ownership of the EAC. This is of course a debatable question as the rejection of the European Constitution earlier this year demonstrated that the people of Europe felt that they would actually lose ownership as a result of closer federation. Even without extending the debate as far as federation, it is possible to conclude that Wako's list of proposed things to be done above is one that would be acceptable to any EastAfrican. But more importantly, the question of federation imports the issue of the political will necessary to move away from the constraints of the nation-states as they currently exist and to consider the question of whether or not they are in a position to surrender their sovereignty to a larger entity. This is the issue to which I would now like to turn.

VI. REVISITING THE ISSUE OF POLITICAL GOOD WILL AND REGIONAL CITIZENSHIP

Secretary General Amanywa Mushega scoffs at the idea that the success of EAC II was dependent on the political goodwill of the three Presidents. Mushega contrasts the situation today with the time of the collapse of EAC I in 1977 and argues that the foundations on which EAC II is built are stronger than its predecessor. However, the other finding of

⁴ Ruhangisa, (n.d.).

⁵ For a telling account of the bureaucratic hurdles of crossing borders in East Africa, see Ona Ekomoloi, 'Face to Face with ugly East African borders,' *New Vision*, November 19, 2004 at 12.

my travels in the region was that the state of politics, democracy and social welfare in all the countries of Utake is in bad shape. Indeed, the state of national citizenship in each of these countries is in a dire condition. The people of the individual countries of East Africa feel that their voices are not heard; they feel that the state, the bureaucracy, and their representatives in Parliament are insensitive to their plight. They feel that our leaders are mostly interested in securing and holding power for power's sake, and that the plight of the common man and woman on the street is of minimal concern. Each of the countries are plagued by corruption scandals of mind-boggling scale. In Kenya just say 'Anglo-Leasing'; in Tanzania the processes of privatization and investment have been hit by numerous scandals, while of course here in Uganda we have the graft-riddled Global Fund.

Indeed, if we were to survey just the events of the last month in East Africa we would see that things in our individual countries are far from ideal. Tanzania is often referred to as a 'successful democracy' but you can hardly describe it as a functioning multi-party democracy. The real election for President took place when the ruling CCM nominated Jakaya Kikwete as its presidential candidate; the postponed election in December will be a mere formality. But the real problem of Tanzania lies on the islands of Zanzibar—Pemba and Unguja. Although the election last month was less violent than the one 5 years ago, or than that in 1995, it nevertheless demonstrated that those islands are still extremely troubled and divided. If Zanzibaris feel isolated from their union which includes only mainland Tanzania, how much more marginalized will they feel in a federation that extends to Kenya and Uganda?

Kenya has just peacefully concluded a landmark referendum on the adoption of a new constitution. Needless to say, the run-up to polling day was marred by violence and even killing—in stark comparison to

the election in 2002. Furthermore, the split in the country is extremely troubling. Superficially it may appear like an ethnic divide, but more fundamentally it represents a critical difference of opinion over how the Kenyan state should be governed; how the national cake should be divided, and how the rights of citizens should be best protected. Indeed, it would be naïve to see the referendum as the end of the troubles in Kenya; we have simply entered another phase of them.

Finally, we come to our bonny land—the 'pearl' of Africa. What is the state of play here? In his statement of acceptance at last week's NRM-O delegates conference, it is notable that President Museveni placed the issue of East African Federation at the top of his list of seven points that will have to be dealt with once he wins the election in March next year. But I ask myself, how can we federate with others when we have even failed to cooperate among ourselves? How can we speak about a democratic and prosperous East African federation when we are pushing our country even deeper into political stagnation? What about the culture of constitutional manipulation and alteration in order to cater to our personal whims, rather than the interests of the broader population? How can we even imagine that we can have a peaceful, free and fair election for the President of East Africa when all our elections to date are marred by violence, vote rigging and intimidation? Is this what we want to export across our borders?

To compound it all, none of the leaders of the Utake countries feel there is anything fundamentally wrong with the governance patterns in our region. Unlike when President Julius Nyerere refused to sit on the same table as Idi Amin because of what he was doing to the Ugandan people, the current crop of East African presidents simply turn a blind eye to the infidelities of their partners. How can that be the foundation for political federation? Given that our individual countries are plagued by the vice of political monopoly, how sure are we that the first President of

the East African Federation will not refuse to hand over power and instead change the ‘Peoples’ Federal Constitution’ in order to secure another *kisania*? It is important to recall that EAC I collapsed because it was built on a shaky foundation. If the foundation of malgovernance that we have created today is even less stable, how can we hope that EAC II will prove a more resilient institution? This is the point to which I now turn by way of conclusion.

VIII. WHAT CAN WE SAY ABOUT THE ROLE OF OUR CIVIL SOCIETIES? WORKING FROM TOP-DOWN TO BOTTOM-UP

It has become something of a cliché to state that civil society in Utake needs to do more in order to ensure that the ideals of regional cooperation are eventually realized; that has been the song and the story since EAC II came into existence. However, it is a cliché that necessitates repeating. Under Art.127 of the EAC Treaty, partner states are to promote, “an enabling environment for the participation of civil society in the development of activities within the community.” The question that then needs to be asked is to what degree have civil society actors asserted their rights of ownership over EAC II? Quite clearly much remains to be done.

The few groups that have focused on the Community (such as the East African Law Society, Kituo cha Katiba, and the East African Business Council), must be commended for having devoted some effort to addressing this area over the years. All these groups have observer status at the Community which enables them to engage with the Secretariat and to make their input. However, it is a long-standing complaint that the rules governing the grant of observer status are cumbersome; one must be registered in all three member states. This effectively excludes nationally-based groups who may nevertheless have a significant contribution to make to Community activities. There

is an additional problem in that the headquarters of the Community are located in a city (Arusha) where access is rather limited to national actors. This implies the need for such groups to organize themselves and either link up with the groups that do have representation at Arusha or for satellite groups to be established in the individual states to focus on Community activities. This means that there is a need to develop closer scrutiny mechanisms over the process of integration. For example, there is currently a process of consultation about the review of the treaty that is underway.⁶ Civil society needs to get more involved in that process.

Given what we have said about the state of governance in each of the Community’s member countries, to what extent has civil society asserted its claim over *national* citizenship? Where are the voices of civil society on the sorry state of affairs affecting our individual countries? Furthermore, to what extent are civil society actors in one country (e.g. Uganda) speaking out and raising issues of concern relating to the mode of governance in our neighbours? How many Ugandan groups, for example, provided observers for the election in Zanzibar? How many Tanzanian or Kenyan activists have spoken out on the recent negative developments on the state of governance in Uganda?

What the above implies is that there is a great need for a focus on the state of governance within the individual countries that make up the Community. Civil society actors in each of the East African member states need to pay special attention to those groups that are particularly marginalized by historic, economic or cultural reasons, such as minorities, including the Batwa, the Benet, the Ogiek and the numerous other marginalized groups around the region. There are many reasons why minorities feel that the basic rights of national and regional citizenship elude them. Many of them are invisible either in the arenas of public service, in education or in economic affairs. They suffer from stereotypical portrayals of their cultures, and identities

⁶ The review is being headed by the chairperson of the Legal, Rules and Privileges Committee, Med Kagwa, who also happens to be one of the Ugandan members of the EALA.

as well as deliberate discrimination. They lack effective representation at all levels and find difficulty in securing employment. Obviously, this means that they do not enjoy the full benefits of citizenship, which they are denied principally on account of their identity.

In a nutshell, there is still a great deal to be done in both conceptualizing who minorities are, and the best ways of ensuring that their fundamental rights are given increased protection. My conclusion is that civil society needs to adopt more proactive measures in order to check the excesses of the state and also to ensure that EAC II adopts more pro-people measures in its operations: Utake may belong to us; but we still need to do a lot more in order to secure full ownership of the East African Community.

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