



Drafting the Constitution for the EAC Political Confederation

**Information Pack for Public
Consultations**

November 2019

A decorative graphic consisting of several triangles in white and yellow, arranged in a pattern that suggests movement or a stylized map.

EAC Secretariat
Arusha, Tanzania
www.eac.int



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1.0 Who we are

1.1 The East African Community: Establishment and Membership

The East African Community (EAC), is the regional **inter-governmental organization** of the Republics of Burundi, Kenya, Rwanda, Uganda, the United Republic of Tanzania and the Republic of South Sudan, with its headquarters in Arusha, Tanzania.

The Community was established through the Treaty for the Establishment of the East African Community (the Treaty) that was signed on 30th November, 1999 by the **founding Partner States**, namely; the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda, and came into force on 7th July, 2000.

The Republics of Burundi and Rwanda acceded to the Treaty on 18th June, 2007 and became full Members of the Community on 1st July, 2007. The Partner State membership of the EAC recently grew further to **six (6)** upon the Republic of South Sudan joining the Community following its admission on 3rd March, 2016 and its subsequent formal accession to the Treaty.

The Republic of Somalia and the Democratic Republic of Congo have also expressed their intention to join the EAC.

1.2 Our Regional Integration History

The people of East African Region have enjoyed close historical, commercial, industrial, cultural and other ties for many years, as underscored by H.E Mwalimu Julius Kambarage Nyerere.

"For despite all our differences, the people of our nations have much in common historically, culturally and economically and, in particular, we are all aiming at one thing: that is, the greater development and the greater prosperity of our people." [1]

During the pre-colonial period, many African tribes, in their diversity, migrated and **settled together in this region** due to various internal and external socio-economic and political factors, ranging from drought and famine, overgrazing, the Arab expansion of trade and commerce, the spread of Islam and slavery[2].

However, colonial masters established artificial frontiers (in total disregard of the familial, socio-economic and political ties that were already established among the various tribes) and introduced different languages, socio economic and cultural influences in the territories that they controlled.

[1] East African Legislative Assembly, Report of Select Committee on East African Federation (chaired by Hon.I.M BHOKE MUNANKA), Op.Cit, p.127.

[2] Yohannes Gebresellasie, "International Migration in Africa: An overview", in Refuge, Vol.12, No.8 (March 1993), p.2.

On the one hand, the present-day Burundi, Rwanda, and the mainland part of Tanzania, were part of the German East Africa (GEA) from late 1880s up to the end of first World War (in 1919), while, on the other hand, the present-day Kenya, Uganda, South Sudan and Zanzibar were under the British administration.

After the first World War (in 1919), Burundi and Rwanda were granted to Belgium as protectorate under the League of Nations and Belgium administered Burundi and Rwanda as one single territory (Territoire du Rwanda-Urundi) up to their respective independence on 1st July 1962.

Tanzania mainland was put under the British administration (firstly under the League of Nations and later on as a United Nations Trust Territory) along with Kenya, Uganda and Zanzibar until its independence in 1961.

In each colonial block (British and Belgium), the people of East Africa kept their historical ties. Under the British administration, economic and social integration of the people commenced with, among other things:

- the Construction of the Kenya Uganda Railway 1897 - 1901,
- the Establishment of the Customs Collection Centre 1900,
- the East African Currency Board 1905,
- the Postal Union 1905,
- the Court of Appeal for Eastern Africa 1909,
- the Customs Union 1919,
- the East African Governors Conference 1926,
- the East African Income Tax Board 1940,
- the Joint Economic Council 1940,
- the East Africa (High Commission) 1947 - 1961, and
- the East African Common Services Organisation 1961 - 1966.

At the time of Independence (in 1961 for Tanganyika, 1962 for Uganda, 1963 for Kenya) and unification of Tanganyika with Zanzibar to form the United Republic of Tanzania (in 1964), the three young nations strongly articulated their desire to establish a **Political Federation**.

When the political federation failed to materialize in 1963, a compromise was successfully negotiated to set up an institutionalized Common Market, known as the **East African Community**, established by the Treaty for East African Cooperation signed in Kampala on 6th June 1967 which entered into force on 1st December of the same year.

The then East African Community lasted 10 years (1967-1977) before its collapsed mainly due to the lack of strong political will, lack of strong participation of the private sector and civil society in the co-operation activities, the continued disproportionate sharing of benefits of the Community among the Partner States due to their differences in their levels of development and lack of adequate policies to address this situation.

The EAC was revived in 1999 through the Treaty for the Establishment of the East African Community signed on 30th November.

Unlike the previous Treaty, cooperation in political matters with the ultimate goal of establishing a **political federation** is enshrined in the new EAC Treaty (Article 5.2).

1.3 Vision, Mission and Objectives

Vision

The Vision of the Community is: *"to be a Prosperous, Competitive, Secure, Stable and **Politically United East Africa**".*

Mission

The Mission of the Community is: *"to widen and deepen economic, **political**, social and cultural integration, in order to improve the quality of life of the people of East Africa through increased competitiveness, value added production, trade and investments".*

Objectives of the Community

The **overarching objective** of the Community, as stipulated in Article 5.1 of the Treaty, is to develop policies and programs aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields; research and technology; defense; as well as security, legal and judicial affairs for their mutual benefit.

Integration Stages

The Partner States specifically undertook to establish:



01

STAGE

CUSTOMS UNION

Enabling the EAC Partner States to enjoy economies of scale, with a view to supporting the process of economic development through the establishment of a Single Customs Territory.



02

STAGE

COMMON MARKET

Accelerating economic growth and development while maintaining a liberal stance towards the five Freedoms of movement for all the factors of production and two Rights in the region.



03

STAGE

MONETARY UNION

Laying the groundwork within a 10-year span, while allowing the EAC Partner States to progressively converge their currencies into a single currency in the Community.



04

STAGE

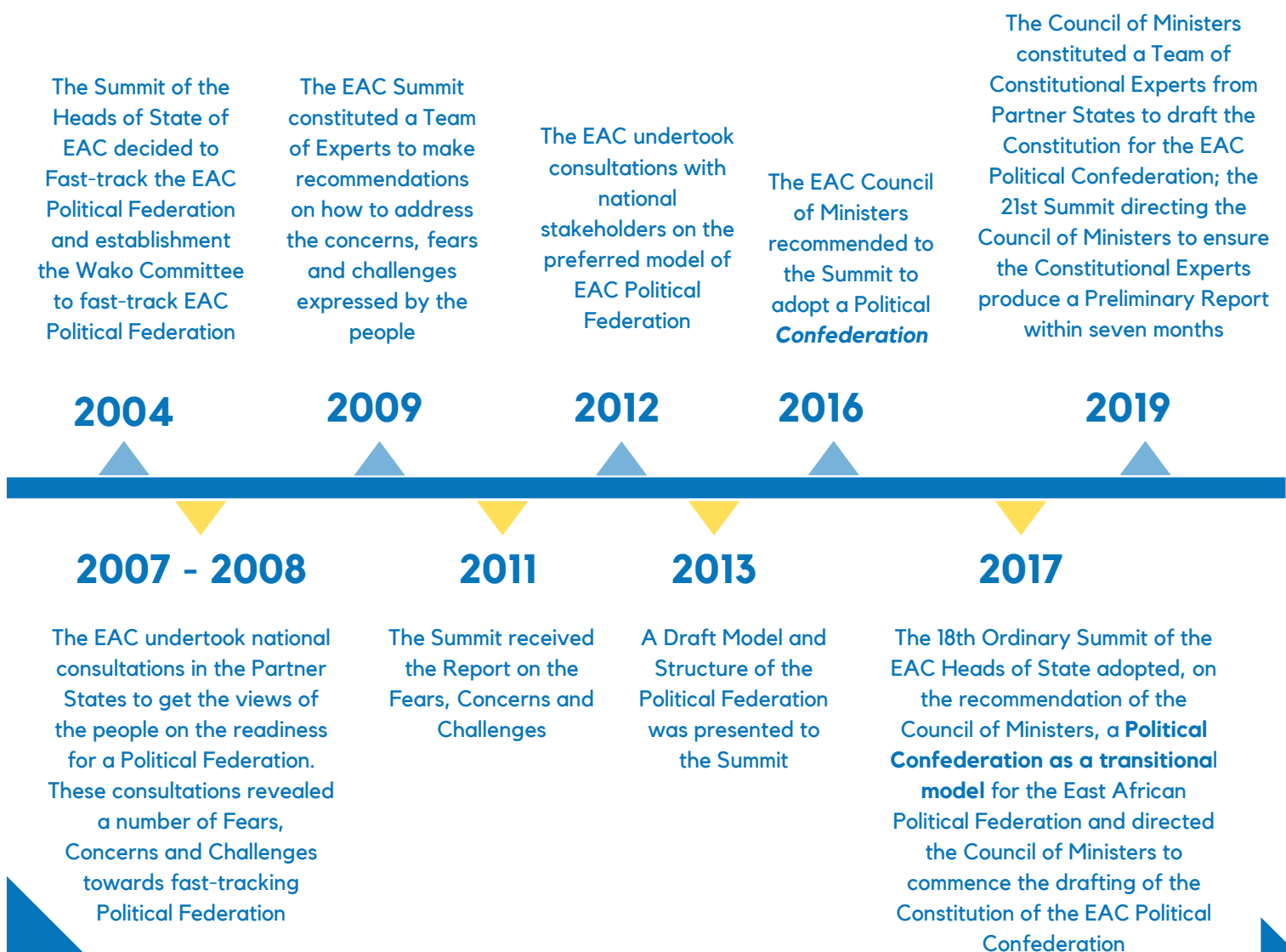
POLITICAL FEDERATION

Putting in place initiatives to fast-track political integration. In May 2017 EAC Heads of State adopted the **Political Confederation** as a transitional model of the East African Political Federation.

From Fast tracking Political Federation to introduction of a Transitional stage of a Confederation

Under Article 5(2) of the Treaty, Political Federation is the ultimate stage of EAC integration. Article 123 (6) of the Treaty provides that "The Summit shall initiate the process towards the establishment of a Political Federation of the Partner States by directing the Council to undertake the process". Various steps have been accordingly taken by the Summit to establish a Political Federation of East Africa. These efforts gained momentum in 2004 but it was realised that not all the EAC Partner States were yet ready for that stage of integration. As result the Partner States agreed on a transitional stage - a **Confederation**, as decided by the **18th Ordinary Summit of Heads of State in 2017**.

The followings can explain the quest for a Political Federation of EAC:



1.4 Nomination of Constitutional Experts and their Terms of Reference

Further to the above- mentioned directive of the 18th Ordinary Summit of the EAC Heads of State, the 19th Ordinary Summit held in February 2018, directed **Partner States to nominate Constitutional Experts** to commence the drafting of the Constitution of the EAC Political Confederation.

The Partner States have nominated, **each two Constitutional Experts and a Legislative Draftsperson** to constitute the team of Constitutional Experts.

The Experts are assisted by an Administration/Coordination team comprised of officers from the Partner States Ministries in charge of EAC Affairs and the EAC Secretariat.

The 20th Ordinary Summit of EAC Heads of State, held in February 2019, directed the Council of Ministers to ensure the Constitutional Experts produce a Preliminary Report within seven months.

The 20th Summit further decided that H.E President Yoweri Kaguta Museveni (of the Republic of Uganda) shall provide political guidance to the Constitution drafting exercise.

The Constitutional Experts have been assigned to:

- 1** Study and critically analyse various models of Confederations (existing and failed ones) for purposes of informing and proposing a model of EAC Political Confederation;
- 2** Study and critically analyse the EAC Treaty and its Protocols, other EAC laws, reports on Political Federation and other relevant documents for purposes of informing and proposing a model of EAC Political Confederation
- 3** Undertake the collection of public opinion and examine and analyse the ideas, views, information and recommendations from the public for purposes of informing and proposing a model of EAC Political Confederation, and
- 4** Based on the agreed model, develop a draft Constitution for EAC Political Confederation.

The Constitutional Experts started their work in September 2018 and have since undertaken a situational analysis – both internal and external to EAC with a view to understand the context for the EAC Political Confederation and propose a model for the adoption of the Summit.

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2.0 What a Political Confederation is

From historical experience, a Political Confederation is characterized by the followings:

1

The entities participating in the Confederation (Partner States) retain their sovereignty.

2

The Confederal government does not directly relate to the citizens of the participating entities; it only acts on them through the political institutions of the constituent states.

3

The constituent states are guaranteed of the freedom to join and withdraw from the Confederation.

4

The Confederation has the right to suspend and/or expel a constituent state that violate specified aspects of the Confederal constitution.

5

The operations of the Confederal government depend greatly on the good will of the constituent state governments.

6

The decision-making at the Confederal level is based on consensus and or unanimity.

3.0 What a Political Confederation is not

It is worth noting that the establishment of a Political Confederation does not entail:

i: **The loss of sovereignty of the individual Partner States.**
The individual Partner States retain their sovereignty as independent nations. At the national level, the Partner States individually exercise their sovereignty in areas other than the areas of cooperation under the Confederation. At the regional level, the Partner States jointly exercise their sovereignty to advance their agenda of regional integration in specified areas of cooperation under the confederation.

ii: **The creation of a new East African State.**
The establishment of a Political Confederation does not necessitate the creation of new state, in replacement of the individual sovereign Partner States, as subjects of the international community.

4.0 What are currently the main features of the EAC

Under the current institutional arrangement, the EAC has the following key features as an intergovernmental organization:

i: The six Partner States have retained their national sovereignty

ii: The EAC governance structure put in place has three components, namely the **Executive** (Summit of Heads of State, Council of Ministers, Coordination Committee, Sectoral Committees, EAC Secretariat), the **Legislature** (the East African Legislative Assembly-EALA) and the **Judiciary** (the East African Court of Justice-ECJ). There are also Institutions of the Community that implement various projects and programmes in their areas of specialization.

iii: The three arms of governance at regional level are competent only in matters of cooperation agreed on by the Partner States under the Treaty and its Protocols.

iv: The Summit of Heads of State provides political direction to the Community, the Council of Ministers is the policy-making Organ of the Community assisted by the Coordination Committee and Sectoral Committees, and the EAC Secretariat coordinates the development of policy and implementation of projects and programmes of the Community.

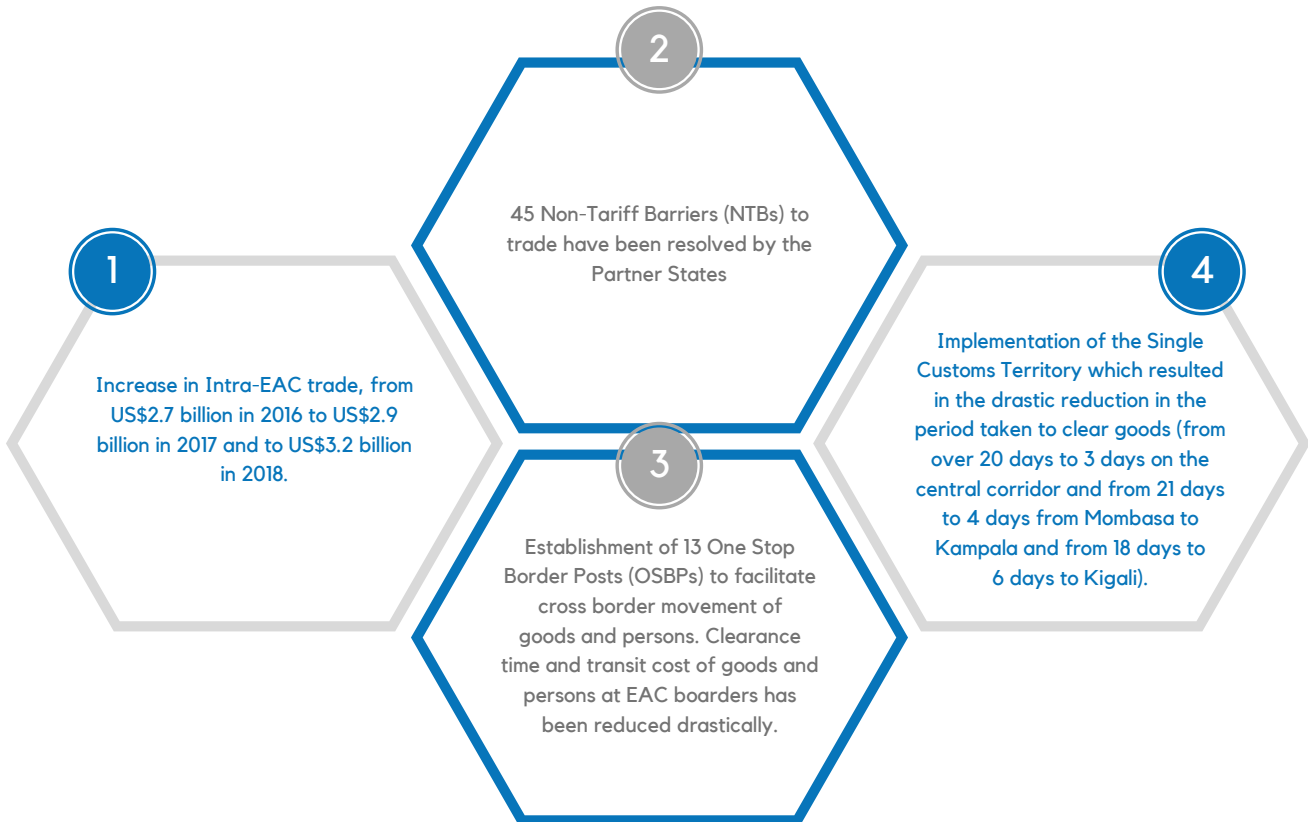
v: The East African Legislative Assembly enacts regional Acts that facilitate integration and provides oversight role in the running of the Community. However, the legislative powers of EALA are shared with the Heads of State in community affairs. Community Bills passed by EALA need to get assent by each Head of State to become Acts of the Community. The Heads of State have the final say in enactment of community Acts. Once assented to, the Acts of the Community take precedence over similar laws of the Partner States in matters of regional integration, except the National Constitutions.

vi: The East African Court of Justice, as a judicial body, ensures the adherence to law in the interpretation and application of and compliance with the Treaty. Resident persons (legal or natural) of any Partner State can directly access to the EACJ **without the requirement of exhaustion of local remedies (Article 30 of the Treaty)**. **The judgments of the Court are binding on the parties (including a Partner State or the Council of Ministers)** when an order for execution have been appended to the relevant judgement (combined reading of Articles 38 (3) and 44 of the Treaty).

vii: Decision -making at the Community level is based on consensus in all Executive arms and qualified majority for the Assembly and the Court.

5.0 What has the EAC achieved so far?

5.1 Under the Customs Union



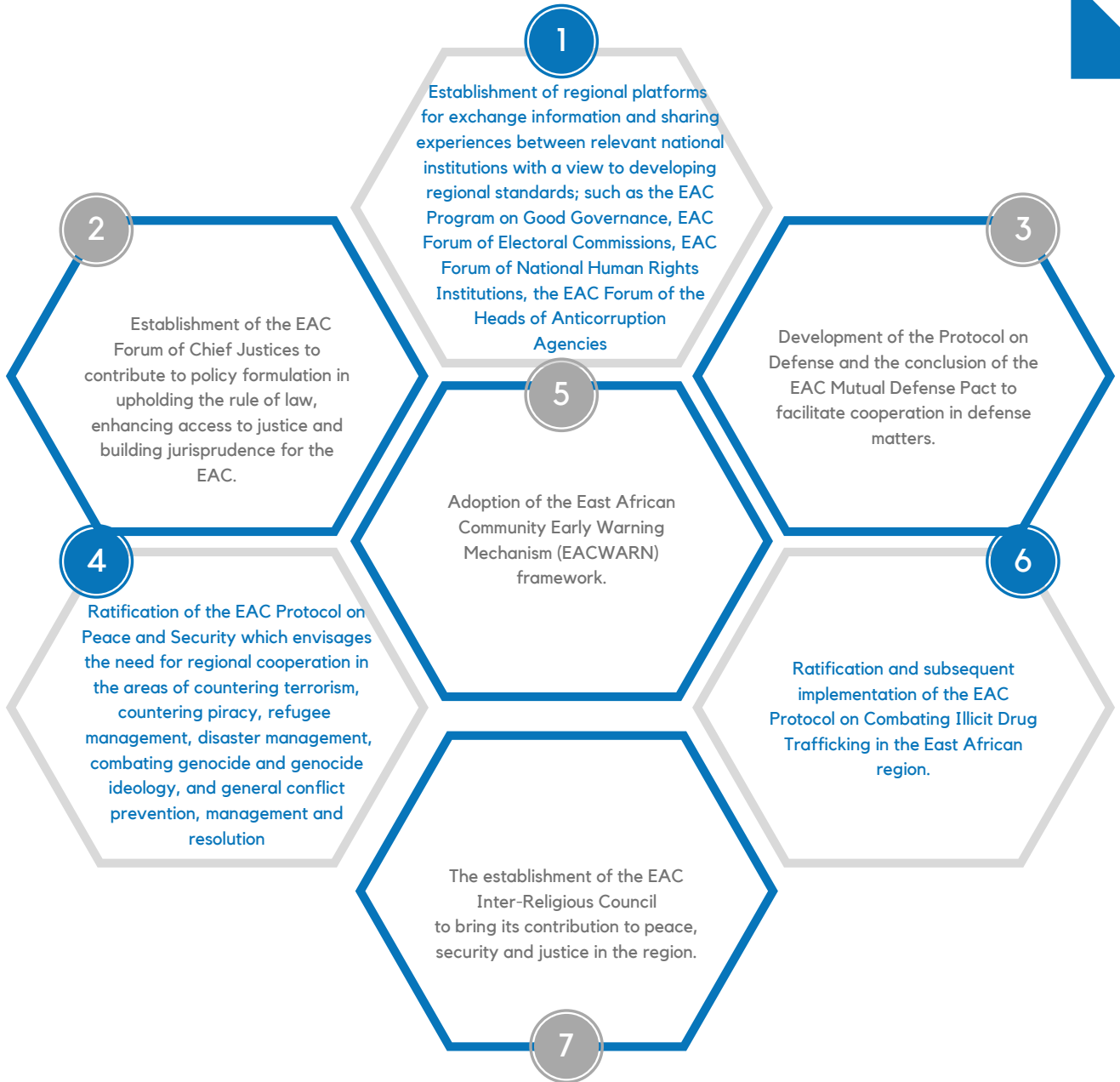
5.2 Under the Common Market



5.3 Under the Monetary Union

*The Partner States are in the process of harmonizing critical policies and establishing required institutions to attain a **single currency by 2024**.*

5.4 Under the Political Federation



6.0 Why Public Consultations?

By undertaking regional integration, the EAC Partner States strongly desire to foster and promote greater awareness of the shared interests of their people. Article 5 (3) (d) of the Treaty further underscores the importance of ensuring that the EAC integration is people -centered :” the Community shall ensure the strengthening and consolidation of the long standing political, economic, social, cultural and traditional ties and associations between the peoples of the Partner States so as to promote a **people-centered** mutual development of these ties and associations”.

The constitution-making process for a Confederation of East Africa provides a unique opportunity to build consensus, a shared sense of EAC identity, values, purpose, and to address the concerns of the people.

Participation of the people of East Africa is therefore of utmost importance to ensure that the Constitution of the Political Confederation of East Africa is well aligned with their choices/views on constitutional issues.

7.0 Objectives of the Public Consultations on the EAC Political Confederation?

The objectives of the stakeholders consultations are to:

1

Enhance awareness on the ongoing Constitutional making process for transforming the EAC into a Political Confederation.

2

Obtain stakeholders' views on their interest and key issues to inform the drafting of a model Confederation and subsequently a Confederal Constitution in line with the principle of people-centered regional community.

3

Prepare the public in general to give their inputs into the draft Constitution once it will be drafted.

8.0 What are the Issues for Public Consultations?

The Constitutional Experts would like to get the views of the public and stakeholders on the following matters and issues;



What should be the areas of cooperation under the Political Confederation?



How should the governing structure of the Political Confederation be?



What should be the modes of decision-making by the Confederal authority?



What should be the governance principles of the Confederation?



How should the National States relate to the Confederal authority?



How should the operations of the Confederal authority be funded?








How should the Constitution establishing the Political Confederation be adopted?



Any other issues proposed by stakeholders to be addressed in the Constitution of the EAC Political Confederation

9.0 How can the Public Participate in the Consultations?

For national level stakeholders, the Consultations will take place in the partner States and at regional level, the consultations will be conducted in Arusha, Tanzania for regional stakeholders.

-  The Ministry of EAC Affairs in Partner State is coordinating the consultation process and information on the ongoing processes are also available on the EAC website
-  There will be private and public consultations in the Partner States Capitals and a few selected regional centres. The Ministries of EAC Affairs will invite stakeholders to the public hearing where stakeholders present their views before the Team of Constitutions Experts
-  Stakeholders who may not be invited to public hearing will be able to submit their proposals or petitions through specially provided online portal on EAC website.
-  The public may also air out their views and get updates through specified EAC twitter handles, and Facebook accounts.
-  The public is encouraged to pay attention to mass media and the press for more information and updates on the process of the Consultations.

10.0 What Happens of the Stakeholders Consultations?

The Constitutional Experts will take into account the contribution (views) of the stakeholders and the people in drafting a model confederation for East Africa. The draft model will be circulated for comment by the people before its subsequent amendment and submission to the Summit.

Likewise, the views expressed by the people through these public consultations will be given due consideration in the constitutional drafting. The draft constitution will also be circulated for public inputs before its consideration by the Summit.



You are Called to Participate!



#EAConfederation



DRAFTING THE CONSTITUTION FOR THE EAC POLITICAL CONFEDERATION

Information Pack for Public Consultations

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