

Processes for Elections to
The East African
Legislative Assembly

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Foreword

The signing and ratification of the East African Community (EAC) treaty were great milestones in the efforts of the three East African countries to form a strong federation. The organs created for the Community were constituted when the treaty came into force in 2000. The community has three organs, the executive, the legislature and the judiciary.

The East African Legislative Assembly (EALA), has 27 selected members, 9 from each of the partner states. This publication describes the process by which each of the countries selected their representatives to the Assembly. The comparison reveals that the rules for the three countries were almost identical. However some deviations occurred in practice. The greatest controversy was in Kenya, which ignored gender concerns by failing to nominate at least three women as stipulated in the rules. However, the bigger problem was the glaring lack of civil society involvement in the election process in each of the three countries. This is even more critical when looked against the reality that ordinary citizens of East Africa were also not involved in the election process. As the EAC integration efforts deepen, the East African states will have to grapple with and resolve this issue. The process of regional integration will only be meaningful if done with the full involvement of all citizens.

Despite the problems witnessed in the election process of EALA members, the journey towards full integration is well underway. The lessons from the first elections should be used to ensure that the subsequent ones are completely fair and fully involve the people of East Africa.

We hope that this publication will be useful in enlightening people on the process of elections for EALA members and hopefully create more interest in the election process during the next elections. Further we hope that the three countries will critically reflect on the rules and final mechanisms of dealing with any weaknesses to ensure that the election process for EALA members is not only truly free and fair but is also participatory. We would like to thank Mugambi Kiai and Donald Deya for their initial contribution to this publication and to Francis Ang'ila Aywa who did the final work and editing to make this publication a reality.

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Nairobi



Abbreviations

CCM	Chama cha Mapinduzi, the ruling party in Tanzania
CUF	Civic United Front, a key opposition party in Tanzania.
COVAW	Coalition on Violence Against Women
DP	Democratic Party
EAC	East Africa Community
EALA	East Africa Legislative Assembly
FIDA-K	Federation of Kenya Women Lawyers
FORD-K	Forum for the Restoration of Democracy-Kenya
ICJ	International Commission of Jurists
ICJ-K	Kenyan Section of the International Commission of Jurists
IED	Institute for Education in Democracy
KANU	Kenya African National Union, the ruling party in Kenya from 1963 to December 2002.
LSK	Law Society of Kenya
NCCR-Mageuzi	National Convention for Construction and Reform, a Tanzanian Opposition Party
NCWK	National Council of Women of Kenya
NDP	National Development Party

1. Introduction

The Treaty for the East African Community was signed on November 30, 1999 and came into force on July 7, 2000 upon ratification by the three member states. It established several organs to ensure its implementation. These include the Summit of the Heads of State and Government, the Council of Ministers, the East African Legislative Assembly, the East African Court of Justice and the Secretariat, among others. EALA is the independent legislative arm of the Community. In addition to providing a democratic forum for debate, it also serves a watchdog function. EALA had its first sitting in Arusha on November 29, 2001 at which the Hon. Abdulrahman Kinana was unanimously elected Speaker.


Stated achievements so far include the adoption of rules of procedure; election of a Speaker; recommendation for appointment of officers of the Assembly; approval of budgets for 2002/3 and 2003/4 financial years; asking the Council of Ministers 19 Questions which were duly answered; adoption of 5 resolutions; holding of seminars on a wide range of issues in relation to their mandate; and passing 6 Bills into law.

With regard to the East African Legislative Assembly (EALA), the Treaty provided that its members shall be

- (a) twenty-seven elected members; and
- (b) five *ex-officio* members (the minister in each of the Partner States responsible for regional cooperation, the Secretary General and the Counsel of the Community)

The Treaty left it to the respective National Assemblies to develop their own legislation and guidelines on how to elect their representatives to the EALA. It is these procedures developed by the respective National Assemblies that are compared and contrasted in this review, in order to establish the commonality or otherwise of the processes engaged in by each country.

In implementing this provision of the Treaty, the member states proceeded at different paces and had processes that were, in certain ways, different from each other. The objective of this study was to review the processes that the three states adopted to arrive at their respective 9 representatives and to draw conclusions from there as well as lessons learned for EALA's institutional strengthening.



This study aims to provide some analysis for a truly cogent, harmonious and unitary federation or community of East African States so that they may continue to search for what is common among them and unite. It also seeks to share information with the relevant authorities, parties and stakeholders of each member state in order that they may learn from neighbouring experiences, helping in turn to strengthen and enrich their own procedures on how to elect representatives to the EALA, and to clearly edify the quality of representation in EALA.

2. Membership of the East African Legislative Assembly


The qualifications for eligibility for election into the EALA are found in paragraph 2 of Article 50, which states that an eligible person shall:

- (i) Be a citizen of the partner state;
- (ii) Be qualified to be elected as a member of the National Assembly of that partner state under its constitution;
- (iii) Not be holding office as a Minister in that partner state;
- (iv) Not be an offer in the service of the Community; and
- (v) Have proven experience or interest in consolidating and furthering East African integration.

In accordance with the provisions of Article 50 of the Treaty, the National Assembly of each of the Partner States was mandated to elect 9 members, who would represent, as much as was feasible, the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in the Partner State, in accordance with such procedure as the National Assembly of each Partner State may determine. Serving members of Parliament in the three Partner States were expressly barred from membership of the EALA.

Although the principle of effective representation was generally adhered to, there were differences in the composition of members elected by these National Assemblies. In sum, the following issues can be discerned from the study:

- (i) The three National Parliaments have, in accordance with Article 8 of the Treaty, enacted domestic legislation to domesticate the Treaty, that is, enabling law. However, the EAC library only has a copy of Uganda's enabling Act.

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- (ii) The National Assemblies passed rules of procedure for the election of Members of the EALA. The East African Community received a copy of Tanzania's rules (made and adopted in early 2001) which were subsequently used as a precedent in Uganda and Kenya. Uganda has published its rules on its parliament's website.
 - (iii) No public advertisements preceded the EALA nominations and elections, although the processes elicited a lot of public attention and comment in the respective countries.
 - (iv) Elections of the nominees/applicants were done on the floor of the Uganda Parliament with each nominee being required to make a presentation and answer questions. In Kenya and Tanzania, the nominations were done through different parties' caucuses followed by election on the floor of parliament.
 - (v) Civil society organizations were involved in observing and monitoring the processes in various ways. Much as the membership shows that some members of the EALA came from civil society organizations, there was dissatisfaction in some quarters. For example, while in Uganda and Tanzania, the representation of gender interests was a critical criteria and its impact was well vindicated in the membership, in Kenya this was not the case, leading to demonstrations by civil society during the inauguration of the EALA on November 21, 2001.
 - (vi) All in all, the small number of seats (justified largely on account of the limited resources) and the fact that elections were not direct on the basis of demarcated constituencies, as earlier recommended by civil society organizations and other East Africans during the negotiations and drafting of the Treaty, remain thorny issues.

3. Summary of the Election Rules

One of the reasons for the differences in the election processes for representatives to the EALA in the three East African countries was the eventual rules promulgated by the respective parliaments regarding the process. Following is a summary of the election rules in the three countries.

Summary of the Election Rules

KENYA	UGANDA	TANZANIA
1. A candidate must be a citizen of the partner state.	A candidate must be a citizen of the partner state.	A candidate must be a citizen of the partner state.
2. A candidate must be constitutionally qualified to be elected to the National Assembly of the partner state.	A candidate must be constitutionally qualified to be elected to the National Assembly of the partner state.	A candidate must be constitutionally qualified to be elected to the National Assembly of the partner state.
3. A candidate shall not be holding the office of minister in partner state.	A candidate shall not be holding the office of minister in partner state.	A candidate shall not be holding the office of minister in the partner state.
4. A candidate shall not be an officer in the service of the East African Community (EAC)	A candidate shall not be an officer in the service of the East African Community (EAC)	A candidate shall not be an officer in the service of the East African Community (EAC)
5. A candidate shall have proven experience or interest in consolidating and further the aims and objectives of the EAC.	A candidate shall have proven experience or interest in consolidating and further the aims and objectives of the EAC.	A candidate shall have proven experience or interest in consolidating and furthering the aims and objectives of the EAC.
6. Nomination of candidates must be by a political party or grouping of parties.	Nomination of candidates was by a voter supported by signatures of at least 50 MPs.	Nomination of candidates must be by a political party or grouping of parties.
7. The number of candidates nominated proportional to number of MPs that a particular political party had in parliament.	Number of candidates dictated strictly by two categories (women candidates and non-gender candidates)	The number of candidates nominated proportional to number of MPs that a particular political party had in parliament.

Summary of the Election Rules

<p>8. Applications for nomination, to be advertised not more than 7 days before date for applications be received.</p>	<p>No similar provision.</p>	<p>No similar provision.</p>
<p>9. Nomination day shall not be more than 7 days after the days set aside for receipt of nominations.</p>	<p>The Returning Officer shall give at least 5 working days' notice of the nomination day.</p>	<p>Nomination day is not more than 14 days after publication of notice for applications for candidature.</p>
<p>10. 3 candidates to be nominated for each seat with at least one being a woman and another being a person with disabilities.</p>	<p>At least three women to be women, with the rest of the seats going to non-gender candidates.</p>	<p>Parties may submit 3 names per vacant seat within the relevant categories.</p>
<p>11. Prescribed nomination form with attachment containing name, address, education and professional qualifications and occupation of candidate, certificate by candidate confirming his qualification and willingness to stand for election; proof of citizenship: signed curriculum vitae of the candidate showing experience in public affairs and interest in promoting aims and objectives of the EAC.</p>	<p>Prescribed nomination paper specifying the name, educational qualifications, address and occupation of the candidate; a statement under oath confirming the candidate's willingness to stand for the elections, is a citizen of Uganda, is of 18 years of age and above, and qualified to be an MP. Every paper to be accompanied by names and signatures of at least 50 MPs, a nomination fee and proof that the candidate is a registered voter.</p>	<p>Prescribed nomination form with attachment containing name, educational qualifications, address and occupation of the candidate; certificate by candidate showing willingness and qualification to stand for election; proof of citizenship: signed, details of biographical information relating to candidate.</p>

Summary of the Election Rules

12. Nomination form to be delivered by 4 o'clock on afternoon of nomination day.	Nomination form to be delivered within the time Prescribed by the Returning Officer.	Nomination Form to be delivered by 4 o'clock on afternoon of nomination day.
13. Non-refundable fee of KSh. 5,000 paid on submission of nomination form.	Non-refundable fee of USh. 200,000 payable to the Parliamentary Commission	Non-Refundable nomination fee of TSh. 50,000 paid on submission of nomination form.
14. Returning Officer can reject nomination form.	Returning Officer can reject nomination form.	Returning Officer can reject nomination form.
15. Election day shall not be more than 7 days and less than 3 days after nomination day.	Election day shall not be earlier than 7 days and later than 10 days after nomination day when National Assembly is sitting in ordinary session.	Election day shall not be more than 7 days after nomination day when National Assembly is sitting in ordinary session.
16. Candidate may withdraw but not later than 4 o'clock of the afternoon of the day after nomination day by writing to returning officer with a copy to nominating party.	Candidate may withdraw nomination at any time before polling day.	Candidate may withdraw but not later than 4 o'clock of the afternoon of the day after nomination day by writing to returning officer with a copy to nominating party.
17. Death of a candidate after 4 o'clock of the afternoon of nomination day but before election day does not affect the election.	Death of a candidate after nomination day but before election day does not affect the election.	Death of a candidate after 4 o'clock of the afternoon of nomination day but before election day does not affect the election.
18. Candidate can campaign before and after nomination day.	Candidate can campaign before and after nomination day.	Candidate can campaign before and after nomination day.

Summary of the Election Rules

19. Candidates shall appear before members of the National Assembly as determined by the Speaker in an extra-ordinary session and speak in either Kiswahili or English.	Candidates shall appear before members of the National Assembly as determined by the Speaker in an extra-ordinary session and language is not prescribed.	Candidate shall appear before members of the National Assembly as determined by the Speaker in an extra-ordinary session and speak only in English.
20. Each ballot paper contains the names of the candidates arranged in alphabetical order in the following groups: Group A: Candidates representing various political parties and shades of opinion. Group B: Candidates representing Gender. Group C: Candidates representing Special Interest Groups.	Each ballot paper contains the names of the candidates arranged in alphabetical order in the following groups: Group A: women candidates. Group B: Non-gender candidates.	Each ballot paper contains names of candidates arranged alphabetically in the following groups:1. Group A: Women candidates.2. Group B: Zareibar candidates.3. Group C: Opposition parties candidates.4. Group D: Mainland candidates.
21. The number of votes to be cast per group is determined by the Speaker.	The number of votes to be cast per MP is determined by the rules.	The number of votes to be cast per group is determined by the Speaker.
22. Spoilt votes can be replaced while voting is in progress.	Spoilt votes can be replaced while voting is in progress.	Spoilt votes can be replaced while voting is in progress.
23. 2 counting agents appointed from each side of the House by the Speaker.	4 counting agents (2 ministers and 2 backbenchers) appointed by the Speaker.	2 counting agents appointed from each side of the House by the Speaker.
24. Votes are counted by the returning officer with the assistance of clerk assistants.	Votes are counted by the returning officer with the assistance of clerk assistants.	Votes are counted by the returning officer with the assistance of clerk assistance.

Summary of the Election Rules


25. Returning Officer required to announce the results of the election with votes cast per candidate and also announce winners of the election to National Assembly.	Returning Officer required to announce the results of the election with votes cast per candidate and also announce winners of the election to the Speaker, who shall in turn announce them to the National Assembly.	Returning Officer required to announce the results of the election with votes cast per candidate and also announce winners of the election to National Assembly.
26. Documents and ballots papers relating to election petitions for National Assembly to be kept safely for 6 months unless ordered otherwise by the High Court.	No similar provision.	Documents and ballot papers relating to these elections to be kept in safe custody for 6 months unless ordered otherwise by High Court.
27. Election petitions filed under law relating to election petitions for National Assembly.	Election petitions filed under law relating to election petitions for National Assembly.	Election petitions filed under law relating to election petitions for National Assembly.
28. Rules for matters not provided for to be determined by speaker in consultation with Departmental Committee on Defence and Foreign relations and guided by practices and procedures followed in similar jurisdictions on parliamentary elections.	Rules for matters not provided for to be determined by speaker guided by practices and procedures followed in similar jurisdictions on parliamentary elections.	Rules for matters not provided for to be determined by speaker guided by practices and procedures followed in similar jurisdictions on parliamentary elections.
29. Amendment of the rules done by resolution of the National Assembly.	Amendment of the rules done by resolution of the National Assembly.	Amendment of the rules done by resolution of the National Assembly.

4. The Election Process in Uganda

The Parliament of Uganda derives its mandate and functions from the Constitution of the Republic of Uganda, 1995 (Laws of Uganda) and its own Rules of Procedure. Article 94(1) of the Constitution empowers Parliament to make its own Rules of Procedure. Pursuant to this power, the Committee on Rules, Privileges and Discipline came up with a draft report on the rules for the election of the Ugandan delegates to the East African Legislative Assembly. The draft report was presented to Parliament for debate on October 10, 2001. The rules contained in it were debated rule by rule and adopted the same day. The Rules of Procedure of the Parliament of Uganda (Election of Members of the Assembly), which appear in the Rules of Procedure for the Parliament of Uganda as Appendix D, were consequently used for the appointment of the Ugandan EALA delegates. In practice, what happened is that Uganda was divided into four regions and each region was allocated two slots, one for a man and the other for a woman. The ninth slot was open to people from any of the regions. Each candidate was expected to have the support of 50 persons. Elections by secret ballot voting took place on November 01, 2001. There was no public advertisement preceding the EALA nominations. The Development Network of Indigenous Voluntary Associations (DENIVA) sent a petition to the Hon. Edward Sekandi, Speaker of the Parliament of Uganda, highlighting civil society concerns in the process. In the end, however, the election was a parliamentary affair with no civil society involvement. The law to domesticate the East African Community Treaty was passed on November 07, 2001.

5. The Election Process in Tanzania

In Tanzania, parliament introduced a new standing order to govern the election of EALA MPs. Under the said standing order the 9 seats were to be divided between the Opposition parties and ruling party in accordance with their ratio in parliament. Consequently, opposition found themselves with one seat and Chama Cha Mapinduzi (CCM) took the rest. It was left entirely to the parties to use their internal mechanisms to select a qualified person(s) who were not subjected to election by the National Assembly. According to Hon. Marando, the NCCR-Mageuzi member, only Tanzania and Uganda have submitted the procedure for election of their EALA MPs before the Speaker of EALA for endorsement by partner states. There was no public advertisement preceding the



EALA nominations. Only the political parties with the representation in parliament were informed of the nomination. Civil society may have observed or monitored the election process but there is no report or statement of such activity.

6. The Election Process in Kenya

On October 13, 2001, debate on the draft rules (laid before parliament the previous week by Trade & Industry Minister Nicholas Biwott) commenced. The Kenyan Parliament enacted *The Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2001 (LN 154/2001)*. Though the seats were to be shared according to the parties' strength in Parliament, the rules required political parties to ensure that at least a third of their nominations to the East African parliament were women. Unfortunately, this aspect of the rules proved inconvenient to the Kenya African National Union (KANU) ethnic/regional based nominations and the party with its partner, the National Development Party (NDP), was able to force through an amendment to the rule with the result that it nominated one instead of two women. On November 22, 2001, a stormy session of the Kenyan parliament ended in disarray after a last minute bid by the government to amend the rule that at least three out of the nine Kenyan EALA representatives must be women. On Monday November 27, 2001, the president ordered the cabinet to ensure parliament approves a motion seeking to reverse a commitment to nominate three women to represent Kenya in the East African Legislative Assembly. On voting day, KANU won the motion to alter the election rules by 89-78 votes in favour of changing the number of women. Some 15 MPs halted a soccer trip in Tanzania to rush home and vote on the controversial motion before parliament.

The other parties (NDP, FORD-K and DP) were not any better; despite the fact they already had mostly male MPs in the Kenyan parliament, they nominated more men to the regional assembly instead of beefing up the participation of women in leadership by nominating them. In the case of DP, it sought to comply with the rules by doing the minimum - nominating one man and one woman. It could easily have nominated two women, if it desired to promote women in leadership.

There was no advertisement in the media for any of the 9 seats. The respective political parties presented names on the basis of their strength in parliament, which were endorsed by parliament.

The House criticised the election rules, with some members saying that the regulations, drafted by the House Business Committee, violated provisions of the Treaty for the establishment of the East African Community. There was a lot of public debate about whether the Kenyan process amounted to an election at all. The rules gave political parties the right to nominate the EALA members, thereby violating Article 50 of the Treaty. Other requirements regarding special interests and gender as spelt out in the Treaty were generally ignored. In the final analysis no such alteration was done, but owing to the urgency of the matter (Kenya risked delaying the inauguration of the EALA) the elections were conducted on the basis of the motion and the names of 9 representatives forwarded to the EAC.

Criticisms came from many quarters in terms of the statements advanced by the KANU government and particularly many took offense to the president's statement. Critics of the last-minute reversal of the rules included the Law Society of Kenya (LSK), the National Council of Women of Kenya (NCWK), the Federation of Kenya Women Lawyers (FIDA-K), Safina Party, the mainstream media, the Institute for Education in Democracy (IED), the Coalition on Violence Against Women (COVAW) and ABANTU for Development.

7. Conclusions and Recommendations

The review of procedures for elections to the EALA between Kenya and Tanzania reveals startling similarities, unearthing an almost carbon-copy likeness. Given that these procedures are fairly rigorous this is necessarily good, given that the quality of representation is then more likely to be similar.

What were the interesting differences? The mathematical formula adopted by Kenya and not Tanzania perhaps reveals a more politically polarised and charged agenda in the former. Another is the fact that in Kenya the candidate can speak in Kiswahili and English while addressing members of the National Assembly in extraordinary session, while in Tanzania, only English is provided for in ordinary session. This is ironical given Tanzania's more extensive use and attachment to



Kiswahili. Uganda's rules state nothing on language. A third difference is the categorisation of candidates on the ballot papers in the respective countries, which reveals the unique political realities in those countries. Uganda's situation is probably explained by the fact that its legislature is "partyless".

When one looks at the Kenyan election process, and the controversy over the amendment of the rules at the last minute to avoid the political complications of electing three women, Kenya stands out as the most gender insensitive. Less than one third of Kenya's representatives are women. This does not compare very well with the gender composition of Kenyan society, and begs the question whether article 50(1) was fully complied with.

The one disheartening similarity is the lack of civil society in particular - and the East African people in general - participation in the election processes of all the three states. The core principle of people-centeredness contained in article 5(3)(d) has thereby been paid short shrift. There is certainly a need to re-think the regulations and the process for the next elections for representatives to the EALA. It is also the key to a true federation that has the full involvement and support of all the people of East Africa.

These differences notwithstanding, the clear stand-out attribute of these rules in Kenya and Tanzania is their significant similarity. Perhaps, after perusal of the differences attendant in the respective countries, the question will arise whether there need be these differences. Only the National Assemblies of the respective partner states can squarely address this issue. But given that the search for the East African Federation is an endeavour to tap into a common root and found a common political state, it is a question that should be addressed sooner rather than later. The EALA should provide the leadership in this process by drawing new regulations for uniform application in all the three East African states. This is feasible even if Uganda retains its current no-party political system, and is the only way that uniformity and faster integration can be achieved.

Appendix

LIST OF EALA MPS

Republic of Uganda

1. Hon. Nanziri Sarah Bagalaaliwo
2. Hon. Richard Baker Ddudu (Capt.)
3. Hon. Sozi Kiwanuka Medi Kaggwa
4. Hon. Yonasani Bankobeza Kanyomozi
5. Hon. Mishambi Sheila Kawamara
6. Hon. Irene Ovonji Odida
7. Hon. Wandera Daniel Ogalo
8. Hon. Mutende Lydia Wanyoto
9. Hon. Muntu G Mugisha (Maj. Gen.)

United Republic of Tanzania

1. Hon. Abdulrahman O Kinana (Speaker of the EALA)
2. Hon. Dr Harrison Mwakyembe
3. Hon. George Francis Nagale
4. Hon. Balozi Isaac Abraham Sepetu
5. Hon. Saidi Bakari Jecha
6. Hon. Mabere Nyauchro Marando
7. Hon. Kate Sylvia Magdalen Kamba
8. Hon. Beatrice Matumbo Shelukindo
9. Hon. Mahfoudha Aley Hamid

Republic of Kenya

1. Hon. Lt. Gen. Abdulahi Aden
2. Hon. Haji Abdulrahim Haithar

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- 
3. Hon. Prof. Margaret Kamar
 4. Hon. Jared Benson Kangwana
 5. Hon. Ochieng Gilbert Mbeo
 6. Hon. Calist Mwatela
 7. Hon. Rose Wairimu Waruhiu
 8. Hon. Mohamed Zubedi
 9. Hon. Maxwell Shamalla

Ex-officio Members

(Ministers of the Coordinating Ministries)

1. Hon. Jakaya Mrisho Kikwete (MP) - *Minister for Foreign Affairs and International Cooperation, Tanzania*
2. Hon. James Wapakhabulo (MP)¹ - *Minister for Foreign Affairs and Regional Cooperation, Uganda*
3. Hon. Kalonzo Musyoka (MP) - *Minister for Foreign Affairs and International Cooperation, Kenya*

Ex-officio Members

(East African Community Secretariat)

1. Hon. Nuwe Amanyu Mushega
Secretary-General
2. Hon. Wilbert T K Kaahwa
Legal Counsel to the Community

Clerk

1. Mr. Justin Bundi

¹Hon. James Wapakhabulo died on March 27, 2004 and was yet to be replaced at the time of publication.

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² Attorney General, United Republic of Tanzania (2000) *The Constitution of the United Republic of Tanzania, 1977*, Dar es Salaam, Tanzania