

DRC Admission To The EAC: A Welcome Awaits:

Key considerations before
admission to the EAC

By Edwin Tabaro and Timothy Kajja

The initial EA integration was largely between Uganda, a British protectorate and Kenya, a British colony. After the end of the First World War, the then Tanganyika, was put under British Administration as a League of Nations mandate.

The British intensified integration across the three territories. A postal union was established and later a customs union.¹ The region also set-up institutions such as the East Africa Court of Appeal, East African Posts and Telegraphs, East African Currency Board, and the East African Meteorological Department.² The bodies served the three territories under British administration.

1948, EA integration structures were consolidated under the East African High Commission (EAHC). The EAHC was headed by governors from the three countries. The EAHC operated until Tanganyika got her independence in 1961. The EAHC was replaced by the East African Common Services Organization (EACSO), 1961. In 1967, the three independent EA countries formed the first East African Community.

The initial EAC collapsed in 1977. The current EAC was created in 1999. The primary legal instrument creating the REC is the Treaty for Establishment for the East African Community, 1999 (EAC Treaty).

The founding Partner States of the EAC are Uganda, Tanzania. The founding States were joined by Rwanda and Burundi in 2007. This was eight years after the creation of the EAC. Almost a decade later, South Sudan joined the EAC in 2016. This brings the total number of Partner States in the EAC to six.

The EAC Council of Ministers recommended the DRC for admission to the EAC³, a recommendation that was warmly and unanimously received by the EAC Heads of State. Admission of the DRC to the EAC was key on the agenda in the 18th Extra-Ordinary Summit of the EAC heads of State. The EAC Summit has since directed the EAC Council of Ministers to expeditiously commence and conclude negotiations with the DRC on the admission of the DRC into the EAC⁴. The Council of Ministers is expected to report back to the Summit on the subject this year, 2022.

Comparatively, the European Union (EU) had six founding member States in 1957. These were; Germany,

1 Khoti C. Kamanga, "Some Constitutional Dimensions of the East African Co-operation," In Constitutional Development in East Africa for Year 2001, Kituo Cha Katiba Series, 2003, pp. 118- 142, p. 120

2 Protas, P., and Romward T., "Reflection on the People Centered Principle in the East African Community: the Current legal Controversy", in Eastern Africa Law Review, Vol. 42, No. 2, December, 2015, p. 2.

3 During the 44th Extra-Ordinary Meeting held on the 22nd/11/2021.

4 During the 18th Extra-Ordinary Summit of the EAC Heads of State held on the 22nd/12/2021.

Italy, France and three Benelux States of Netherlands, Belgium and Luxemburg. It took about 16 years before the EU was joined by three other member in 1973, to wit, Ireland, the United Kingdom and Denmark. Today the EU has grown strong to 26 Member States.



Any growth of in the number of countries in a REC is a positive indicator of development the REC⁵. Thus the steady growth in EAC membership is something worth celebrating for all East Africans and integrationist world over. But admission of any State to a REC is not a ceremonial event. It's a process populated by multiple safety valves to ensure that the admission of any Member State is not detrimental to the REC.

The EAC Treaty empowers Partner States to negotiate and grant membership to Third Party States. Before being admission is granted, the Third Party State⁶ ought to pass the tests set-out in the EAC Treaty.⁷ These tests are as briefly discussed below.

Firstly, acceptance of the Community as set out in this Treaty. Any State seeking admission to the EAC ought to conform to the current legal status of the EAC. EAC Ministers visited the DRC between the 26th of June 2021 and the 5th of July, 2021 to assess DRC's levels of conformity to the EAC Treaty.⁸ Having recommended that the DRC be admitted to the EAC, it is logical to conclude that the Ministers found the DRC to be in conformity with the EAC Treaty.

The second test is adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice. This is an averagely a wide test not free of ambiguity. This is because the "acceptable" standards are relative and debatable. Proper assessment of the test may also be hampered by the principle of non-interference into internal affairs of other States that is embedded in the Organisation of African Union (OAU) Charter.⁹ An instruments that all EAC States in these circumstances are party to. It is a test that attracted allot debate during the admission of South Sudan to the EAC.

5 Prof. Kamanga, K., C., An Inquiry into the Achievements and Challenges of East African Regional Integration, in Dovelung, J., et al, Harmonization of Laws in the East African Community, Law Africa, 2018, p. 69.

6 Article 3(2), EAC Treaty.

7 Article 3(3), EAC Treaty.

8 Mutambo, A., DR Congo faces extra hurdle in quest for EAC admission, The East African, 23rd/12/2021, available at www.theeastafrican.co.ke/tea/news/east-africa/dr-congo-faces-hurdle-in-questfor-eac-admission-3661494 (Accessed on 6th/01/2022).

9 Article 3(2), OAU Treaty, 1963.

The DRC has had its share of challenges, especially in terms of good governance and observance of human rights. Especially in Eastern DRC. This is largely attributed to pockets of armed groups in the Eastern DRC forests and DRC government's omissions and limitations as opposed to deliberate government actions. There are about 120 armed groups in the DRC, including the Allied Democratic Forces ADF that are accused for launching terrorist attacks in Uganda.¹⁰

The third test is the potential of the Applicant State to contribute to the strengthening of integration within the EAC. This is easily a pass for the DRC. The DRC has a population of about 90 million people. Kinshasa alone is a mega city with a population of about 17 million people. Admission to the EAC will make it the most populous States in the REC. And will widen the EAC market to about 300 million people, with a largely youthful workforce.

The DRC has an advantageous geographical location. Joining the DRC to the EAC will open a maiden trade corridor joining the Indian Ocean to the Atlantic Ocean through the heart of Africa thus boasting the economic potential of the EAC. The DRC also opens up opportunities for mega projects such as a railway connecting Mombasa to Kinshasa.

The EAC is considering the addition of French as the third official language of the REC. The admission of the DRC, a largely French and Swahili speaking nation, will catalyse the proliferation French language in the EAC. Many global opportunities that the majority EAC youth could take up require knowledge of more than just one international business language. The now common languages are English, French, Spanish, Italian, German, Chinese and Arabic. Many East Africans know either just English or French. Proliferation of French in East Africa, in addition to Swahili and English will make East African more inter-lingual flexible and thus more competitive on the international job market.

Of particular interest to Uganda, the DRC will create an alternative market avenue to South Sudan. A Partner State whose market accessibility has been volatile since its admission in 2016, largely due to insecurity and political instability the world's youngest nation.

The fourth test is geographical proximity to and inter-dependence between it and the Partner States. The DRC shares borders with all EAC Partner States but Kenya. The DRC continues to relate with all the EAC countries that act as transit countries, market countries and sources of various goods that are used

¹⁰ Biryabarema, E., "Three suicide bombers kill three, wound dozens in Ugandan capital", Reuters, 16th/November/2021, <https://www.reuters.com/world/africa/explosion-uganda-capital-kills-least-two-local-tv-2021-11-16/>, (Accessed on 31st/02/2022).

by the people of the DRC.

The final tests are establishment and maintenance of a market driven economy and the Applicant State having social and economic policies that are compatible with those of the EAC. These are flexible tests that States can adjust to. All that is required is the political will to so. Currently, the DRC is demonstrating such will to adjust to the EAC thresholds.

The other consideration is people centeredness. People centeredness is one of the operational principles of the EAC.¹¹ The operational principles of the EAC are tailored to guide the EAC in all its operations so as to enable the REC to efficiently meet its objectives.¹² The admission of South Sudan to the EAC is criticised for inter alia not involving people of the East Africa in the process.¹³ This is a flaw that is seemingly being repeated by the EAC. The people ought to be involved in the admission process. This may be achieved through massive community consultative drives. With the current COVID 19 related restrictions, the internet and mass communication lines such as radio and television stations may come in handy.

At the end of the day, the admission of the DRC ought to be in conformity EAC Procedures for Admission of new Members. Short of that, any provable flaws create strong grounds for challenging the admission before the East African Court of Justice (EACJ).

In *Patrick Ntege Walusumbi and two others v. the Attorney General of the Republic of Uganda and five others*,¹⁴ a group of Ugandan traders tried to challenge the admission of South Sudan to the EAC. The EACJ held that the admission process is handled by the executive. The judicial arm of the EAC may only come in after the completion of the admission. That is in case any person with locus standi petitions the EACJ in regard to the propriety of the admission procedure. Any petition before the conclusion of the admission procedure is regards as pre-mature.

There is already an application lodged before the East African Court of Justice by *Adam Kyomuhendo*

11 Article 7 (1) (a), EAC Treaty.

12 Prof. Kamanga, K., C., and Possi, A., "General Principles Governing EAC Integration," In Emmanuel Ugirashebuja, John Eudes Ruhangisa, Tom Ottervanger Armin Cuyvers (eds.), East African Community Law: Institutional, Substantive and Comparative EU Aspects, Boston: Brill Nijhof, 2017, pp. 202-216, p. 205.

13 Protas, P., and Romward T., "Reflection on the People Centered Principle in the East African Community: the Current legal Controversy", in Eastern Africa Law Review, Vol. 42, No. 2, December, 2015, p. 17.

14 Reference No. 8 of 2013, [EACJ].

against the Secretary General of the EAC and six others (Reference No.11 of 2020) seeking a Court order to permanently halt the admission of the DRC to the EAC. The application is based on the allegation that DRC is illegally holding more than 35 Uganda activists including a one Samuel William Mugumya. Though there is a clear precedent on this, it will be interesting to see if the Court upholds or changes the current position of the law.

The other key consideration is geo-politics. It is important to have all Partner States in political agreement towards the admission of an applicant State. When Sudan began demonstrating its intentions of applying to join the EAC, South Sudan threatened to leave the EAC if Sudan was admitted. So geo-political issues in a REC should never be taken lightly. Currently in the EAC, there is the Uganda-Rwanda impasse. Fortunately, both Presidents of Rwanda and Uganda unanimously agreed to the admission of the DRC.

The EAC will also have to extend the presence of its institutions into the DRC. This practice was started after the admission of the Burundi and Rwanda. It has since become precedent in the REC. This practice is informed by history of the fall of the first EAC. Kenya was accused of having extra benefits from the EAC since it hosted majority of the EAC assets and institutions. Shortly before announcing the collapse of the EAC in 1997, the Kenyan authorities waited for all the East African Airways Corporation aircrafts to land inside Kenya. Currently, all EAC Partner States host different EAC institutions or agencies. With the admission of the DRC, some EAC institutions or agencies may have to be relocated to the DRC. Or newly created agencies will have to be stationed in the DRC.

Even before the full admission of the DRC, the EAC still has several bottlenecks that are yet to be permanently ironed out. These include the random blockage of goods from one Partner State into another. The border restrictions between Rwanda and Uganda, the uneven extra charges on the movement of people and workers in the region, defaulting in REC contributions by member States et cetera. These ought to be fixed when the number of Partner States is still manageable. Lest the new Partners States inherit these challenges, and graduating the challenges to chronic leakages that led to the fall of the first East African Community in 1977.

In spite of the highlighted flaws, the admission of the DRC to the EAC presents several positives for the region, Africa and international trade as a whole. It builds onto the Nkrumah ideology of joining Africa into a single market through the expansion and merger of regional blocks. We at KTA Advocates are glad to play service regional economic communities by offering innovative services that nurture relationships and impact lives.

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