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Preface and Acknowledgements

This report was commissioned by the Norwegian Ministry of Foreign Affairs. However the analysis and the views expressed are those of the authors and should not be construed to reflect the views or policies of the Norwegian government, the East African Community (EAC) or any of the East African partner governments.

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Thomas Nzioki Kibua - Nairobi, Kenya and Arne Tostensen –Bergen, Norway

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Acronyms and Abbreviations

AU	African Union
CET	Common External Tariff
CMI	Chr. Michelsen Institute
COMESA	Common Market of Eastern and Southern Africa
EAC	East African Community
EACJ	East African Court of Justice
EADB	East African Development Bank
EALA	East African Legislative Assembly
EC	European Commission
ECOWAS	Economic Community of West African States
ESAMI	Eastern and Southern African Management Institute
EU	European Union
GDP	Gross Domestic Product
GNP	Gross National Product
IGAD	Inter Governmental Authority on Development
IMF	International Monetary Fund
IPAR	Institute of Policy Analysis and Research
IUCEA	Inter-University Council of East Africa
KANU	Kenya African National Union
NARC	National Rainbow Coalition (Kenya)
NEPAD	New Partnership for Africa's Development
NTB	Non-tariff Barriers
SADC	Southern African Development Community
Sida	Swedish International Development Co-operation Agency

Executive Summary

1. This report was commissioned by the Norwegian Ministry of Foreign Affairs, to whom most of the recommendations are addressed. The analysis and the views expressed are those of the authors and should not be construed to reflect the views or policies of the Norwegian government, the EAC or any of the East African partner governments.
2. The long history of collaboration between the three East African states with its ups and downs has left a legacy -– of good and bad. This legacy has a bearing on the contemporary dynamics of collaboration in several respects. The processes and experiences leading up to the collapse of the Community in 1977 still linger in the minds of politicians and civil servants. On the negative side a certain amount of scepticism remains on the part of Tanzania and Uganda vis-à-vis Kenya on account of the widespread perception that Kenya benefited disproportionately from regional co-operation at the expense of the other partners.
3. Although there is no denying that a historical legacy exists, the current situation is fundamentally different from that obtaining nearly 30 years ago. The thrust of the new Treaty assumes an entirely different orientation, largely reflecting the changing trends of political and economic reform in the past two decades. Governance issues have moved higher up on the agenda. In the economic sphere the role of the state has been reduced and changed in nature. The state is currently seen rather as a facilitator through the creation of an enabling environment conducive to economic growth. The private sector is given a greater role in production and distribution without undue interference by the state.
4. The regional integration project has progressed considerably. The major achievement is the conclusion of a customs union protocol, which entered into force at the beginning of 2005. In other fields the rate of progress has also been impressive, albeit variable.
5. Notwithstanding notable progress in a range of fields, the Heads of State of the three partner countries have expressed concern that the rate of progress was too slow. Consequently, they appointed a committee to look into the possibility of fast-tracking the integration process. The committee's report was submitted on 26 November 2004. The present report assesses the realism and feasibility of the recommendations and time schedule suggested by the fast-track committee. Our findings are based on perusal of documents and personal interviews with 63 respondents representing a varity of stakeholders.
6. Essentially, there are two approaches to regional integration. One is associated with the late president of Ghana, Kwame Nkrumah, who considered paramount political institutions as useful vehicles for bringing about integration in other spheres. At the other extreme is the functionalist approach whereby regional integration is promoted piecemeal through gradual steps to building a web of functional relations in trade, investment, infrastructure, culture, etc. In this building-block approach the political superstructure, such as a political federation, would be considered the logical culmination of the integration process from below. Both of these differing strands of thinking appear to be alive in East Africa today, although the faith in building blocks takes the upper hand.
7. A federation is defined as a compound polity combining constituent units (currently Kenya, Tanzania and Uganda in the case of East Africa, and later possibly also including Rwanda and Burundi) and a general government, each possessing powers delegated to it by its people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens.
8. The major reason why federal arrangements fail to produce stability and prosperity can be found in the distribution of costs and benefits among the constituent units. Sovereign territorial states enter into co-operative arrangements and have expectations of gain. Over time these expectations must be fulfilled, at least in part. Although short-term losses are weighed against long-term benefits, the net long-term benefits must be positive. Otherwise a co-operative venture would surely die or soon become moribund.
9. The fast-track committee recommended its own second, middle-of-the-road option: overlapping and parallel processes of integration. It discarded the compression of the stages of integration and shied away from immediately establishing the 'political kingdom' in the form of a political federation. The first preparatory phase would address the institutional framework and financial inputs required to move to the next phase. The second transitional phase (2006–2009) would comprise the implementation of the customs union, the common market and the monetary union – the substance of economic integration. A

measure of success in these substantive elements in the economic sphere was in turn regarded as the foundation of a political federation. Other substantive components include progress in infrastructure, science and technology, constitutional and financial issues. The launching date for the political federation was set for 1 January 2010, at which time a federal president is expected to be sworn in.

10. The committee's review of the situation highlighted both achievements and challenges in a remarkably frank and self-critical fashion. It noted and lamented the lack of a politically accountable authority at the regional level; the lack of clearly defined roles for the East African Legislative Assembly (EALA) and the East African Court of Justice (EACJ) in contributing to the integration endeavour; the practice that EAC secretariat staff prepare EAC budgets on the basis of ministerial ceilings in national budgets; the tardiness of some partner states in remitting their contributions; the unduly complex and time-consuming procurement procedures; the lack of sanctions mechanism when commitments are not honoured, implementation is slow due resistance by high-level bureaucrats, and when partners states backtrack on decisions taken, etc.
11. It also cited as a source of concern that currently donors contribute 27 per cent of the EAC secretariat's budget. Given that the secretariat is overstretched and poised to expand in the future to handle an increasing number of tasks, it is mandatory that better financing arrangements be instituted to avoid even greater donor dependency.
12. The three partner countries ratified the customs union protocol on 30 November, 2004 which is to be implemented over a five-year term which started in January 2005. The objectives spelled out in the protocol include the liberalisation of the intra-regional trade regime on the basis of mutual benefit, promotion of efficiency in production within the Community, and the promotion of economic development and industrial diversification. The protocol provides for the establishment of a common external tariff (CET), trade remedies and the prevention, investigation and suppression of custom offences, and collection of customs duty by adopting a uniform standard valuation of goods.
13. The initial implementation period of the customs union, has encountered several problems:
    (a) Non-tariff barriers such as customs, immigration, administrative procedures and regulations and licenses, have not been fully eliminated and negatively impact on trade and co-operation;
    (b) The protocol does not encompass the private sector in the process of implementation;
    (c) The issue of dynamic gains/losses from trade liberalisation has not been clear since the inception of the customs union;
    (d) The protocol does not incorporate the impact of imperfect competition;
    (e) Key issues such as protection of manufacturing sectors, disharmony in tax subsidies and unstable macro-economic environments remain unresolved;
    (f) The exemption regime under the East Africa Community Customs Management Act 2004 seems to have created controversy relating to the CET structure on grains such as wheat, barley, non-governmental organisations, agricultural and horticultural inputs;
    (g) The CET structure is not consistent with the tax structures in the individual partner countries; and
    (h) Membership in multiple regional trading blocs has yet to be resolved. As long as these problems remain unresolved, it is difficult to adhere strictly to the implementation time-scale.
14. After the customs union, the partner states are expected to progress to a common market, which entails improved macro-economic policy synchronisation and co-ordination, especially the fiscal regimes. Furthermore, a pre-requisite for achieving common market status is the easing of border-crossing by citizens of the partner states and the harmonisation and maintenance of uniform employment/labour policies, programmes and legislation. The fast-track report highlighted that there were delayed negotiations on the protocol on free movement of persons, the structure of legal and administrative of partners varied considerably, and there is currently no framework that can facilitate labour migration or movement of persons, goods, and services. It is therefore prudent to conclude that given the dynamics and the complexity of achieving a common market, the 2007 deadline is over-ambitious.
15. The views expressed by various stakeholders unambiguously lead to the conclusion that: (i) A customs union and a common market are definitely beneficial for the region and hence a common market goal should be supported, enhanced and nurtured over a much longer time than prescribed in the fast-track report;

(ii) A lot of commendable progress has been made, especially with regard to the customs union protocol but the time frame is definitely not realistic;
(iii) There exists asymmetry in both the political and economic realms of the three countries;
(iv) There is need to take time and deliberately work on economic policy convergence modalities as well as building a common institutional framework to facilitate and co-ordinate market integration;
(v) There are transitional elements, issues and perceptions associated with a faster integration process, which need to be identified and addressed;
(vi) Discussion about the implementation of the customs union and the protocols for the common market are left to government bureaucrats who do not have authority to make actual decisions;
(vii) There is lack of well researched and analysed empirical evidence on key issues to inform decisions, leaving critical decisions to be made on the basis of perceptions; and (viii) a longer time frame is necessary, say 20-25 years, to achieve a functional and sustainable common market with the full realisation of a customs union in 15-20 years; and;
(ix) There are transitional issues, e.g. differences in the pace of implementation of agreed activities, which must be solved.

16. A monetary union has the following characteristics:
    (i) A single or several currencies fully convertible at immutably fixed exchange rates;
    (ii) An arrangement whereby monetary policy is determined at the union level, allowing no national autonomy in monetary policy; and
    (iii) A single exchange rate policy with a common pool of external reserves of the members. In essence, it is situation whereby a single monetary policy prevails and inside which a single currency or currencies are perfect substitutes. Our interviews with stakeholders revealed that, although some progress has been made, there still exist practical legal and institutional challenges and impediments that would require a much longer time to resolve. It is not feasible, therefore, to achieve a monetary union by 2009.
17. A political federation entails a given division of responsibility between the components or tiers of government. Its precise nature is a matter of constitutional design resulting from negotiation between stakeholders. The very design of a federation may be critical for its survival, particularly how it addresses the distribution of cost and benefits in the short and long run.
18. All stakeholders acknowledged the lack of popular ownership of the process towards a political federation. Second, in the immediate future the forthcoming elections in Tanzania and Uganda are likely to slow down the regional process because the political systems of the partner countries remain orientated towards domestic constituencies and issues. Third, a view that is often voiced is that all partner countries have – to varying degrees – democratic deficits or internal security problems. The recent decision to adopt a multi-party system in Uganda is offset against the constitutional amendment to allow the incumbent president to stand for yet another term. The ongoing constitutional wrangling in Kenya is a source of concern. In Tanzania, the Zanzibar issue continues to mar the political struggle. Northern Uganda is still a war zone and ethnic skirmishes have erupted in Karamoja and Marsabit in Kenya. Against this backdrop, most respondents see the establishment of a political superstructure in the form of a federation as premature. Rather, each partner country is called upon to put its own house in order before creating a superstructure, which would be resting on a shaky foundation.
19. Our interviews revealed with great clarity that hardly anybody saw the 1 January 2010 target date for a political federation as a feasible proposition. At one extreme a respondent indicated 2050 as a more likely date, others considered 2025 as a reasonable time frame, and some just added five or ten years to the fast-track committee's target date.
20. Almost without exception the interviewees subscribed to the gradual building block approach and favoured starting with measures that would build legitimacy from below by removing existing impediments to regional interaction and thus improving the lives of East African citizens. In their view, only then would the integration project gain the necessary credibility. They saw the demonstration of tangible benefits for various constituencies as the litmus test of success, not a political superstructure remote from the grassroots.
21. The EAC secretariat is small but effective, although at times it gets bogged down in meetings and administrative tasks that divert attention from priority tasks. Capacity is overstretched, dangerously

close to overloading. It is clear that whatever its staff complement, the secretariat must be fundable by the partner states.

22. The newest development in the interface between the EAC and the donor community is the planned EAC Development Fund. The basic idea is to pool resources provided by the EAC partner states and the development partners in order to finance programmes and projects. On a smaller scale a consultancy fund existed previously. The intention now is to increase the volume of the fund and broaden it scope. Apart from increasing the pool of resources available for developing the EAC, the Fund is also intended to forestall the inconsistencies, overlaps, and even incompatibilities, of projects and programmes with the EAC's overall agenda. As such the proposed Fund could become a much needed vehicle for better co-ordination of donor support and better alignment with the priorities established by the EAC, which would entail enhanced dialogue between the two parties. There is little doubt that the administrative transaction costs could also be brought down through this mechanism.
23. Draft rules and regulations have been worked out for the Fund. They provide for a committee to oversee the management of the Fund, consisting of one representative of the EAC appointed by the Secretary-General; one representative of each of the EAC partner states; and one representative from each development partner who has contributed to the Fund. The committee is to take decisions by consensus. Contributions are to be made as grants. The draft regulations also provide for rules governing procurement, accounting and auditing, which would serve to allay most donor concerns about possible misuse. The Fund is an excellent initiative and we recommend donors to make contributions for its capitalisation. However, the danger of donor dependency must be addressed.
24. Donor support is not only about the provision of money. Equally important is institutional development to enable the EAC to handle the increasing inflow of funds in a planned, transparent and accountable manner. As the process of integration evolves the commensurate institutional needs will continue to grow.