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DISCUSSION

The struggle for legislative powers

The need for reform in the East African Community

KENNEDY GASTORN — 4 June, 2015



A power struggle is ongoing in the East African Community – a struggle for legislative power. In the most recent edition of “Law and Politics in Asia, Africa, and Latin America”, I examine the ongoing tensions on the power to initiate bills in East Africa’s regional integration mechanism. Legislative power is shared between the East African Legislative Assembly (EALA), the legislative organ of the East African Community (EAC), and the EAC Council of ministers (the Council), the policy organ of the EAC. The Treaty for the Establishment of the East African Community of 1999 gives both the EALA and the Council powers to initiate bills for EAC legislation. The tension between these two organs

primarily occurred because the EALA initiated bills on matters under negotiation or already opposed or agreed upon by the Council, hence reopening the concluded negotiations or legislating on matters the Council deems outside the scope of the Treaty. I argue that the cordial and effective working relationship between the Council and EALA is paramount for their better performance in the interest of the EAC. Short of this, tension will affect the timely attainment of a prosperous, competitive, secure stable and politically united EAC.

Currently, the Treaty is being considered for amendments to address this tension by allowing the Council to first approve private members' bills before being submitted to the assembly. On the other hand, it is also proposed that the amendment is not necessary as it will interfere with the principle of separation of powers. Instead it is proposed that the existing dormant provisions of the Treaty, particularly Articles 49(2) and 65 on relations between EALA and national assemblies as well as Article 63 on withholding assent by Heads of State on the controversial bills should be used.

Rare legislative powers

Coincidentally, as far as legislative function is concerned, EALA stands out in sharp – and admirable – contrast most other regional parliamentary bodies in Africa and the world, which rarely have legislative functions. In this context, the only real yardstick to measure EALA is the European Parliament despite various differences between the two. Bills under EALA are initiated either by the Council sending a motion to the house or through private bills by individual members or the committee of the house. Article 59(1) of the Treaty allows any member of EALA to propose any motion or

introduce any bill in the house. Rule 64 of the *East African Legislative Assembly Rules of Procedure of 2001* adds that every committee of the house within its area of competence and every member of EALA has a right to move a private members' bill. From its existence to date, EALA has passed 47 legislations, the majority of which originated from private members' bills. Under the European Union, the legislative process involves several institutions including the European Commission, the Council of the European Union, the European Parliament, the Committee of the Regions, and the Economic and Social Committee.

Empowering the Council to approve bills?

I submit that the proposed amendment to the Treaty to empower the Council to approve private members' bills does neither delete nor destroy the stature, validity, legitimacy or effectiveness of the private members' bills or EALA. Enabling the Council to jointly approve together with EALA private motions is a sound move and should not be seen as giving the Council tyrannical decisive legislative functions at the expense of EALA. It is clear from the experience of the European Union, that this will ensure smooth coordination between the two organs of the community, and will not violate the foundational ideals of the principle of separation of powers enshrined in the Treaty, to wit, avoid autocracy. It is also an inconvenient truth that EALA does not enjoy a presumptive legitimacy of a representative democracy in strict sense because its members are not popularly elected. They are elected by national parliaments or assemblies, outside of its members, representing as much as feasible the various political parties represented in parliament, shades of opinion, gender and special interest groups in that partner

state, and in accordance with such procedure as each national assembly may determine.

Moreover, since EAC is not a state, the doctrine of separation of powers is of limited use, more so, to a state-centric intergovernmental organization like the EAC. The doctrine was primarily not invented to promote efficiency that is central in regional integration projects. Instead, the concept of institutional balance of power among the EAC institutions through a specific conferment of powers is more ideal for the evolution and the efficiency of the EAC. Withholding assent by Heads of State on the controversial bills will in the long run create more problems than solving the current problem. At best, the power of assent can prevent the operationalization of a bill but cannot save resources used in passing the said bill and squabbles associated with such a withhold.

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