

## The EAC wants to become a “Political Confederation”. What could this mean?

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The media recently reported that the process of transforming the EAC into a political confederation “is in progress”.<sup>1</sup> Certain recommendations have already been made by a “Committee of Experts” tasked with drafting a model constitution for the EAC confederation.<sup>2</sup> This Confederation will apparently have its own institutions, officials, and funds. It would deal directly with Partner States rather than EAC citizens. The Confederal authority will, however, have the right to suspend or expel a member state that violates the confederal constitution.”<sup>3</sup>

These matters require careful negotiations about demarcating powers between the member states and confederal authorities. Specific legal instruments will have to be drafted, be ratified by the Partner States, and gradually implemented. They will have to be aligned to existing EAC institutions, such as the Legislative Assembly and the East African Court of Justice. This will take time and cautious statecraft; African States treasure their sovereignty.

A special committee led by former Ugandan Chief Justice Benjamin Odoki is conducting stakeholder discussions before it drafts the required constitution. It is said that the Partner States will “largely retain their national sovereignty”. However, certain officials (not national politicians) have expressed the view that this initiative “is just a bridge to eventually transition to the EAC Political Federation”.<sup>4</sup> Very complex and sensitive issues must be clarified; the views expressed in the media should not be understood to reflect official positions.

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<sup>1</sup> EAC PS: Process of transforming EAC into a political confederation underway, *The Standard*, 27 February 2024 <https://www.standardmedia.co.ke/national/article/2001490578/eac-ps-process-of-transforming-eac-into-a-political-confederation-underway>

<sup>2</sup> EAC political confederation taking shape, *The East African*, 6 May 2021 <https://www.theeastafrican.co.ke/tea/news/east-africa/eac-political-confederation-3390304>

<sup>3</sup> Ibid.

<sup>4</sup> EAC Secretary General Peter Mathuki has been reported to hold this view.

Important questions will have to be answered: What is a confederation, what are the differences between a confederation and a federation, what are the implications for regional integration in the EAC and the African Continental Free Trade Area (AfCFTA)?

The EAC is an African Regional Economic Community (REC) recognized by the African Union (AU) as one of the building blocks of the AfCFTA. It is said to be the most integrated REC, having adopted legal instruments for a Customs Union and a Common Market, allowing, in principle, for the free movement of goods, services and capital among all Partner States. However, the EAC legal instruments also allow for derogations and internal border controls. Kenya has recently raised the ire of some Partner States unilaterally concluding trade agreements with the United Arab Emirates and the European Union.

The EAC has 8 Partner States: **The Republic of Burundi**, **the Democratic Republic of Congo** (which joined the EAC on 11 July 2022), the **Republic of Kenya**, the **Republic of Rwanda**, the **Republic of South Sudan**, the **Republic of Uganda**, the **United Republic of Tanzania**, and **Somalia**, which joined the EAC on 24 November 2023. It also has a long history of regional integration, going back as far as the Customs Union between Kenya and Uganda of 1917, which the then Tanganyika joined in 1927.<sup>5</sup> Internal tensions resulted in this arrangement being dissolved in 1977.

Negotiations resumed and on 7 July 2000 the Treaty for the Establishment of the East African Community entered into force, creating a new regional organisation, the East African Community.<sup>6</sup> A Legislative Assembly and the East African Court of Justice followed.

What lies behind the confederation initiative? In May 2017, the EAC Heads of State summit decided that a political confederation is the preferred model towards closer cooperation. Justice Odoki said the confederation was “a slight change of policy” by the Community due to constitutional differences among Partner States, different levels of economic development, and mixed progress in the implementation of the Customs Union, Common Market and Monetary Union.<sup>7</sup>

The EAC initiative should be discussed in its context, as a step in the life of an existing regional trade and integration arrangement among sovereign states at very different levels of economic development. Among some of them (e.g. between the DRC and Rwanda) there are serious political tensions. These

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<sup>5</sup> See details on the EAC website: <https://www.eac.int/eac-history>

<sup>6</sup> Ibid.

<sup>7</sup> See The East African, 6 May 2021

factors make the plan to move towards closer unity very complex and unlikely to lead to closer ties and unitary powers any time soon.

Confederations usually come about in a specific political and historical context. The distinction between confederation and federation comes from the United States. Until 1789 the U.S. was a confederation; then a federal republic was formed to create a closer union. A confederation thus means a union of sovereign states in which the autonomy of members is recognized, while a federation implies a union of states in which the supremacy of the common government is the foundation.<sup>8</sup>

A confederation is not a federation. The latter constitutes a single state with a constitutional formula about the sharing of certain executive, legislative or fiscal powers between the federal (central) authority and the constituent provinces or *Laender*, as they are called in Germany. Canada and Germany are modern examples of federal states. For the purposes of international relations and acceding to international agreements a federation counts as one sovereign state.

A confederation is a loose governance arrangement among sovereign states united for purposes of common action. It is usually created by a treaty. Confederations of states tend to be established for dealing with specific issues, such as defence, foreign relations, internal trade etc, with the central government being required to provide support to all its members.<sup>9</sup>

Since the member states of a confederation retain their sovereignty, they have an implicit right of secession. Under a confederation, compared to a federal state, the central authority is relatively weak. Decisions made by the confederal government require subsequent implementation by the member states to take effect; they are not laws directly applicable in the member states, but rather interstate agreements. Decisions are normally taken by consensus.

Only when a draft EAC confederal constitution is available, will a proper analysis of the issues mentioned here be possible. Certain statements have been reported suggesting that a confederation is a necessary further step in the life of the EAC and that the Political Federation is the ultimate pillar in the EAC integration process, being preceded by the Customs Union, Common Market and Monetary Union. It will “allow businesses and operations across the region to run smoothly, without delays and building... further trust across the region, thus strengthening the community”.<sup>10</sup>

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<sup>8</sup> Britannica, ‘Confederation’ <https://www.britannica.com/topic/confederation-politics>

<sup>9</sup> Wikipedia, ‘Confederation’ <https://en.wikipedia.org/wiki/Confederation>

<sup>10</sup> See *The Standard*, 27 February 2024

This is not guaranteed. It rather confirms that there are serious tensions within the EAC. More than experiments in legal terminology will be required to solve them. It is extremely unlikely that the EAC Partner States would denude themselves of their sovereignty and form a single federation. And who will reap the benefits of the minerals mined in the DRC?

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