

**NATIONAL CONSULTATIVE WORKSHOP ON THE EAST AFRICAN  
LEGISLATIVE ASSEMBLY ELECTIONS ACT, 2006**



**“Draft Report”**

During the above-named workshop, representatives of various agencies discussed the Bill on 20<sup>th</sup> July 2006 and made the following general observations:

- I. A comparative study of the legislation in place during the existence of the former East African Community and electoral laws of Kenya would be useful in considering the current Bill.
- II. It would have been useful to have East African Community Secretariat representatives present to explain the genesis of the Bill, the policy behind it, the intention of the originator and the purpose it is intended to serve.
- III. Members of the East African Legislative Assembly should also have been invited to participate in the forum.
- IV. The Bill should be fine tuned by drafting experts from the State Law Office to ensure that it confines to drafting principles and to ensure that provision of the Treaty are not repeated.
- V. The extent to which members are bound by ethical standards in each of their countries (e.g. under the Public Officer Ethics Act, 2003 and the Kenya Anti-Corruption and Economic Crimes Act) need to be explored further.

The following are comments and proposal are made on the basis that provisions of The Treaty Establishing the East African Community overrides any section of the Bill that is in conflict with it.

SECTION	COMMENTS
Title of the Bill pages 1 and 4	The title should be changed to reflect that this is a “Bill” and not yet an “Act”.
<b>PART I PRELIMINARY</b>	
<b>2. Interpretation</b>	The word “constituency” should be clarified in view of <b>Article 50</b> and the expansion plans of the Community.

	Other Definitions to be considered by the drafters.
3. Composition of the Assembly	<p>It is a cardinal drafting convention not to repeat provisions therefore since this section repeats <b>Article. 48</b> of the Treaty, it should be deleted.</p> <p>Without prejudice to the foregoing, sub sections (c) and (d) should be re-numbered (i) and (ii).</p>
4. Term of the Assembly	<p><b>4(1)</b> There is need for clarity on the commencement date of the five year term of the Assembly the following suggestions were made:</p> <p>(a) Since the term of the current Members of EALA commenced upon inauguration (November 2001), it may be useful to use that date as a guide to the commencement of future terms of the Assembly.</p> <p>(b) Alternatively the five-year term could start running from the time of Gazettement of Members in the East Africa Gazette and in the official Gazettes of Partner states. This would work best if the partner states hold their elections simultaneously.</p>
5. Right to vote for members of the Assembly	<p><b>Section 5(1)</b> contravenes the Constitution of Kenya by allowing <i>ex-officio</i> members to vote.</p> <p><b>Article.50 (1)</b> of the Treaty is adequate as the Constitution and procedures of the National Assembly of each Partner State determine the right to vote thus it need not be repeated.</p> <p>Sections <b>5(1) &amp; 5(2)</b> should be deleted.</p>
6. Constituencies	<p>The rationale for the introduction of this section needs elaboration as it repeats <b>Article 50(1)</b>, which already provides for the representation of nine members from partner states.</p> <p>The section should be carefully re-examined as it raises additional issues than those in the Treaty.</p>
<b>PART II</b>	
7. Nomination of candidates	<p>The treaty does not provide for nominations (only for elections) thus the section needs clarification as each State elects members according to its own procedures and regulations. <b>(Article 50(1))</b>.</p> <p>The terms "transparency" and "democracy" to be defined. For instance will this include inviting nominees via newspapers, candidates from both</p>

	<p>genders, one third of the candidates should be women?</p> <p>Replace the word "nomination" with "election" and this section should be merged with section 8.</p>
8. Election of members of the Assembly	<p><b>8(1)</b> The precise date of expiry of the term of the Assembly needs to be specified, as a guideline refer to proposal in <b>section 4</b> above.</p> <p>Elaborate what is to happen if the National parliament is dissolved prorogued or in recess when elections should take place.</p> <p><b>8(3)</b> the word "person" should be changed to "member" in compliance with <b>Article 48</b>.</p>
9. By-elections	<p>Re-number sub-section (e) as (c). This sub section should be redrafted to cover what should happen if Parliament is not in session within the twenty-one day notification period of a vacancy.</p> <p><b>Article 51(3)</b> does not make provision for By-elections.</p> <p><b>9(2)</b> In Kenya By- elections cannot be held within four months before the national elections, a similar time is proposed.</p>
<b>PART III</b>	
10. Qualification for election	<p><b>Article .50(2) (b)</b> - should comply with the constitutions of partner states on qualification for elections.</p> <p>As <b>Article 50</b> adequately covers the election of members <b>section 10</b> should be deleted.</p>
11. Tenure of office of members of Assembly.	<p>Section 1(a) creates gaps yet these issues have been covered in <b>Article 51(3)</b>.</p> <p>For instance <b>Article 51(3) (c)</b> provides that vacation of a seat happens upon nomination as a member of a National Assembly of a partner State while section <b>11(2)</b> provides that a member who seeks to participate in the elections of a Partner State as a candidate shall upon nomination resign their office in the Assembly. This is a new addition as the Treaty does not bar participation.</p> <p>If this subsection is included, then <b>Article 53</b> of the Treaty has to be amended.</p>

PART IV Election petitions	<p><b>Article. 52(1)</b> covers petitions providing that questions on election shall be determined by the institutions of the Partner State that determines questions of the election of members of the National Assembly (the High Court).</p> <p>This part should be deleted as a whole.</p>
PART V Miscellaneous	
18. Session of the Assembly	<p><b>Subsection (4)</b> should be amended to 6 months so that members are working and citizens in all partner states get value for money expended on their representatives</p>
19. Dissolution of the Assembly	<p>The date of expiry of term should be similar to <b>section 4 and 9.</b></p>