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# The East African Community's Panel of Eminent Persons

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## **Introduction**

Under the Treaty of the East African Community (EAC) (1999) (as amended) (hereafter EAC Treaty), peace and security are recognised as the cornerstones of the ultimate achievement of the objectives of the EAC.<sup>1</sup> In accordance with the EAC Treaty, partner states agree to pursue the objectives of the EAC by peaceful resolution of disputes and conflicts between and within themselves.<sup>2</sup> The EAC Protocol on Peace and Security (2013) (hereafter Protocol) further expounds on this by providing that partner states undertake to develop a Conflict Prevention, Management, and Resolution (CPMR) mechanism to manage and seek to resolve any dispute or conflict within and between two or more partner states or with foreign countries by peaceful means.<sup>3</sup>

In 2011, in fulfilment of the provisions of the EAC Treaty, then EAC Deputy Secretary General (in charge of the Political Federation) Beatrice Kiraso, announced that the organisation was “planning to establish a panel of eminent persons who would help in resolving political misunderstandings [within and between Partner States]” (Times Reporter, 2011). She added that it would help the region to “avoid foreign mediation in times of conflict resolution” (Times Reporter, 2011). In 2012, the EAC Conflict Management Act was enacted under which the Panel of Eminent Persons (PEP) was established.<sup>4</sup> In 2014, the Modality for the Establishment and Functioning of the EAC Panel of Eminent Persons and for the Appointment and Deployment of Special Envoys/Representatives (hereafter Modality) was adopted by the Council of Ministers.

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<sup>1</sup> Article 123.

<sup>2</sup> Article 123(4)(d).

<sup>3</sup> Article 4(1).

<sup>4</sup> See Article 4(1).

This chapter discusses the establishment and workings of the PEP and notes that while it intervened (somewhat unsuccessfully) in the Burundi political crisis in 2015, it has largely been absent in terms of reducing tensions that continue to rise between the partner states. The PEP's ineffectiveness can be partly explained by the fact that members are appointed on a case-by-case basis and the partner states determine the situations in which it intervenes. Moreover, there is no dedicated budget for the PEP, and therefore it appears that it is just another moribund tool of conflict prevention, management, and resolution in the EAC region. However, the PEP can be made to function by (1) appointing the members in accordance with the law, and (2) providing a committed budget.

### **Conceptual context**

Panels are institutionalised and universal modes of diplomatic practice (Van Wyk, 2016:59). Typically, they are diplomatic instruments consisting of internationally recognised experts appointed in their personal capacity rather than as representatives of a government or organisation and are convened to address a particular issue of international concern independently and with varying levels of operational and normative success (Evans, 2013:278). The term “[Panel of] Eminent Persons” denotes a group of distinguished and impartial mediators in conflict management, especially in international conflicts (Klucka, 2022:285). Such a group is usually established on an ad hoc basis by the decision of an international organisation or its member states, and they also determine their main task (Klucka, 2022:285). Therefore, panels inter alia raise awareness of a particular issue; find new ways to address and solve a particular issue; set a credible policy agenda to address and resolve a particular issue; reduce tension or conflict about a particular issue; and contribute to governance (Van Wyk, 2016:59).

The collection, production and communication of information or knowledge are important elements of diplomacy. Besides this, the most significant contribution of diplomacy in general, and the diplomacy of High-level Panels/Panels of Eminent Persons in particular, is the ability to generate new insights and approaches to an unresolved issue; the so-called ‘game-

changing ideas' that can prevent the violent eruption or escalation of an issue (Evans, 2013). The PEP is supposed to provide the EAC policy-makers with ideas on how to promote peace, security and stability in the region. The idea of a panel is modelled on the old African traditional practice of calling on the elders to mediate conflicts in society. In traditional African societies, elders are revered 'wise' members of the community. As Van Wyk and Akuffo have observed respectively:

various African communities and cultures venerate elders or certain individuals as wise and influential decision-makers. This traditional African approach to leadership is recognised, institutionalised and operationalised as an instrument to, amongst others, prevent, mediate and resolve conflicts on the continent (Van Wyk, 2020:102).

in [many] African cultures ... 'eldership' is revered as the epitome of wisdom and the embodiment of knowledge and experience. Eldership provides the means to find amicable solutions during conflicts. That is, elders are held in high esteem as key brokers of peace' (Akuffo, 2016).

The concept of 'wise' refers to "how age and experience relate to the ingredients of wisdom and counselling ... [with] wise connot[ing] a high sense of maturity often attributed to the elderly" (Porto and Ngandu, 2014). Specifically, according to Porto and Ngandu (2014), "the wise council of leaders within the typical traditional African community was vital in intervening, resolving and sustaining peace." Therefore, Panels of the Wise in Africa (including the PEP) are a contemporary rendition of the traditional institution of the Council of Elders (Murithi and Mwaura, 2010:79).

In playing their role, panels can "facilitate the establishment of channels of communication between the policy and decision makers on the one hand, and parties engaged in a dispute on the other hand, in order to prevent such dispute from escalating into conflict" (Porto and Ngandu, 2014). Members of the panel can carry out fact-finding missions and conduct shuttle diplomacy between parties to a conflict in cases where parties are not ready to engage in formal talks. The encouragement of political dialogue between parties, the adoption of confidence-building measures and undertaking reconciliation processes are also part of the panel's modalities of action. In post-conflict situations, a panel can also "assist and advise parties on

how to resolve disputes related to the implementation of peace agreements” and encourage parties to “carry out reconciliation processes” (Porto and Ngandu, 2014).

The panels’ conflict prevention mandate requires some level of ability to anticipate and identify new conflict situations requiring attention. In this regard, panel members are supposed to undertake ‘horizon scanning,’ in which they monitor, reflect and pronounce themselves on key current and future peace and security issues, bringing them to the attention of the policy-/decision-makers (Porto and Ngandu, 2014:187).

The normative and legal foundation for the establishment of panels in Africa includes the Protocol relating to the establishment of the African Union (AU) Peace and Security Council (2002) (hereafter the PSC Protocol), which considers the Regional Economic Communities (RECs) (such as the EAC) as part of the overall architecture of the AU. In this context, the modalities stipulate that the AU and RECs “shall, where appropriate and within the framework of their conflict prevention strategies, establish structures similar to the [AU] Panel of the Wise,<sup>5</sup> as provided for by Article 11 of the PSC Protocol” (AU, 2008:Article iv). Also, the 2007 Protocol on Relations between the AU and RECs *inter alia* calls for the cooperation and coordination of the policies and programmes of the RECs with those of the AU (AU, 2007). In this regard, several RECs have established panels, including: the Economic Community of West African States (ECOWAS) Council of the Wise, created in 1999; the Common Market of East and Southern Africa (COMESA) Committee of Elders, established in 2008; the Southern Africa Development Community (SADC) Panel of Elders, established in 2010; and the Intergovernmental Authority on Development (IGAD) Mediation Support Unit, established in 2012. It must be emphasised that, legally, African panels have a permanent character and their members

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<sup>5</sup> The AU’s Panel of the Wise (PoW) is one of the structures that make up the African Peace and Security Architecture (APSA). It was inaugurated in 2007 and comprises five highly respected African personalities from various segments of society who have made outstanding contribution(s) to the cause of peace, security and development in Africa. The main role of the PoW is to advise the Peace and Security Council of the AU and the Chairperson of the AU Commission on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa.

have fixed mandates that they carry out within fixed periods (Klucka, 2022:298). The PEP was conceived and established in this context, but differs from the other panels because in practice members are chosen on a case-by-case basis.

### **The EAC's peace and security normative and legal architecture**

The EAC is an inter-governmental organisation comprising Burundi, the Democratic Republic of the Congo (DRC), Kenya, Rwanda, Somalia, South Sudan, Tanzania and Uganda and was established to spearhead the economic, social and political agenda in the EAC region. The engagement of the EAC in matters of peace and security (which is part of the political agenda) is grounded in several normative and institutional frameworks (including those of the United Nations and AU). These frameworks lay a firm foundation for the establishment and institutionalisation of procedures, mechanisms, tools and methods to predict, forewarn, prevent and manage tensions in order to forestall violent conflicts. In accordance with the provisions of the EAC Treaty, the EAC is built on four pillars, which are supposed to be achieved incrementally: customs union, common market, monetary union and, ultimately, a political federation. To attain these pillars, partner states committed to inter alia promote peace, security and stability within and good neighbourliness among themselves.

Article 124(1) of the EAC Treaty inter alia provides that peace and security are prerequisites for social and economic development within the EAC and are vital for the achievement of its objectives. It adds, in this regard, that partner states agree to foster and maintain an atmosphere that is conducive to peace and security by cooperation and consultations on issues pertaining to peace and security with a view to prevent, better manage and resolve disputes and conflicts between themselves.

In addition, the Protocol on Peace and Security (2013) (EAC, 2013) identifies several objectives for fostering regional peace and security, including “preventing, containing and peacefully resolving conflicts and disputes among and within the Partner States.”<sup>6</sup>

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<sup>6</sup> See Article 3(2)(c).

Furthermore, the EAC Conflict Management Act (2012) (EAC, 2012), which was concluded as part of the EAC's Conflict Prevention, Management, and Resolution Mechanism (CPMR) (2012), generally provides for the "promotion of conflict prevention and peaceful resolution of conflicts that might arise in the Community."<sup>7</sup> Specifically, it inter alia provides for the

prevention of internal, cross-border and regional conflicts affecting the Partner States; bringing together the conflicting parties for mediation; encouraging the parties to a conflict to resolve it amicably; and encourages cooperation among the Partner States in conflict management.<sup>8</sup>

Lastly, one of the main strategic development objectives under the 6<sup>th</sup> EAC Development Strategy 2021/22–2025/26 is the "promotion of peace, security and stability" (EAC, 2021: viii). A key priority under this strategic objective is the "strengthening of regional peace, [and] security ... processes" (EAC, 2021:ix). The strategy aims to contribute to the achievement of the EAC Vision 2050, which inter alia recognises that peace and security is an essential condition for the socio-economic transformation of the EAC (EAC, 2015). The EAC Vision also identifies the threat of political instability and insecurity as being inimical to regional integration (EAC, 2015:40). Overall, therefore, the PEP was conceived and established as part of the peace and security architecture of the EAC.

### **The EAC Panel of Eminent Persons**

According to Van Wyk (2020:117), the decision to establish an EAC Council of Elders was taken in 2002. However, it was not until 2012 when the EAC Conflict Management Act was enacted that the PEP was established. In 2014, the Modality was enacted, therefore formalising the establishment of the structure (EAC, 2014). The main mandate of the PEP is to advise the Summit on all issues pertaining to the promotion and maintenance of peace, security and stability in East Africa, including the promotion and protection of human rights and respect for the rule of law (EAC, 2014). The PEP is also mandated to pronounce itself on any issue relating to the

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<sup>7</sup> Section 3(1).

<sup>8</sup> Section 3(2).

promotion and maintenance of peace, security and stability in East Africa and related matters (EAC, 2014). According to Bigirimana (2013:22), the PEP is a preventive diplomacy tool, “with powers to diffuse tensions [within and among Partner States] ... by means of good offices, mediation, conciliation and facilitation based on dialogue, negotiation and arbitration.” Sabala (2023) further asserts that the PEP “[exists to] promote local solutions to local problems.” The PEP is made up of one eminent person from each partner state who is a highly respected personality, of high integrity and independence, and who has made an outstanding contribution to the cause of peace, security and development at national, regional, continental or international levels (EAC, 2014). Members of the PEP are nominated by the partner states and are appointed by the Summit for a period of three years, renewable once (EAC, 2014).

The main functions of the PEP are to: advise the Summit on all matters within its mandate; undertake mediation, conciliation and facilitation based on dialogue, negotiations and arbitration; facilitate peace-making and peace-building interventions; propose to the Summit actions aimed at promoting peace and security in the Community; and assist in addressing election-related disputes through their prevention, management and resolution (EAC, 2014).

Whilst the law provides that the members of the PEP are appointed for a term of three years, which is renewable once, it is silent on whether the members of the PEP serve on a full-time or part-time basis. In practice, therefore, the members are appointed on a case-by-case basis, meaning that once the task for which they have been appointed ends their work ceases (Key informant interview, 26 January 2024).

### **The PEP in action**

The PEP debuted in the crisis that emerged in Burundi following the decision of then President Pierre Nkurunziza to seek a third term as president (Apuuli, 2016, 2018; ISS, 2016; Sabala, 2023). The decision was contested by some who argued that it contravened the Arusha Peace and Reconciliation Agreement (2000) and the Burundi Constitution (2005) (Apuuli, 2016). The decision, in the end, triggered unprecedented violence

(Sabala, 2023). In 2014, COMESA joined the EAC to commence diplomatic engagements with various actors in the Burundi political crisis.<sup>9</sup> The EAC's efforts were spearheaded by the PEP which organised dialogue forums with different actors, including political parties, civil society organisations (CSOs), the media, religious leaders, the business community, women and youth (Etyang and Emurugat, 2018). Specifically, the joint initiative was aimed at (see COMESA, 2015):

- supporting reconciliation efforts and consensus building around key issues ahead of the 2015 elections;
- launching a comprehensive campaign for a peaceful electoral process;
- undertaking mediation-related activities and encouraging dialogue among key political actors;
- promoting responsible and responsive media coverage for peaceful elections in Burundi;
- engaging the youth through, inter alia, already existing mechanisms to appreciate their role in peaceful elections;
- supporting key institutions, including the Independent Electoral Commission, the judiciary and the security sector through sharing of experiences with similar institutions from the region and through confidence-building media messages;
- engaging key political actors, including political parties, CSOs, religious groups and women to play an active role in peaceful elections.

COMESA/EAC also organised forums that created a mass movement towards peace and national cohesion; however, the gains made were eroded by the escalation of violence (Etyang and Emurugat, 2018). As a result, the EAC Summit decided to directly mediate in the conflict by appointing Ugandan President Yoweri Museveni as the mediator, to be helped by former President Benjamin Mkapa who was subsequently

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<sup>9</sup> The joint mission was headed by the former Prime Minister of Tanzania Joseph Sindi Warioba, who was a member of the PEP at the time.



appointed as the EAC facilitator of the Burundi peace process (Apuuli, 2016). The EAC's intervention in Burundi generally, and the PEP in particular, did not end the country's political crisis. The intervention was met with the challenges of the lack of an effective strategy and plan; lack of sound political leadership; lack of credibility of the mediators; and lack of sufficient financial resources (Sabala, 2023; Etyang and Emurugat, 2018; Carvalho and Singh, 2017). As a result, not much has been heard of the PEP since then. Meanwhile, the EAC region continues to badly need its services, and especially for it to use its mandate of conflict prevention.

The next sections discuss some of the ongoing peace and security crises in the region, which the author believes fall under the PEP's mandate.

### **a) Eastern DRC**

The eastern DRC has been the epicentre of conflict since the end of the genocide against the Tutsi in Rwanda in 1994. In fact, the armed conflict in the DRC is one of the most serious and protracted of any since the Second World War (Okowa, 2006:205). For the eastern DRC, the insecurity emanates from the continued presence of numerous local armed militia groups such as the M23, Mai Mai and Wazalendo, among others. These are sometimes supported by the neighbouring countries and foreign armed groups such as the Allied Democratic Forces (ADF) from Uganda, the Democratic Forces for the Liberation of Rwanda (FDLR) from Rwanda, and the National Forces of Liberation (FNL) from Burundi. These groups continue to exploit mineral and other natural wealth to fund their existence and activities (Apuuli, 2011:326). Over the years, the individual East African governments of Burundi, Rwanda and Uganda have continued to unilaterally intervene in the DRC to fight the armed groups opposed to them or with the agreement of the different DRC governments.<sup>10</sup>

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<sup>10</sup> For example, on 5 November 2021, the Uganda Peoples' Defence Forces (UPDF) and the Armed Forces of the DRC (FARDC) concluded a Memorandum of Understanding (MoU) concerning Joint Operations for the Eradication of ADF/MTM/ISCAP, Other Local and Foreign Armed Groups in the Eastern part of [the] National Territory of the DRC, particularly in Ituri and Grand North of [the] North-Kivu Provinces and the Need to Secure the Works of Rehabilitation of the Kasindi-Beni-Butembo and Bunagana-Tutshuru-Goma Highways (on file with the author). The MoU allowed Uganda to station her army in DRC territory, subsequent to which on 30 November 2021, the two armies launched joint military operations against the insurgents of the ADF.

In 2022, the DRC became the seventh partner state, and while acceding to the EAC Treaty, President Félix Tshisekedi asked the regional bloc to help with tackling the dozen armed groups fighting each other and fighting state authorities in eastern DRC.<sup>11</sup> In line with its legal and normative instruments concerning peace and security, the EAC deployed a Regional Force (EAC-RF) to “help contain, and where necessary, fight the negative forces” that have continued to cause insecurity in eastern DRC (Government of Kenya, 2022). In November 2022, forces under the EAC-RF started deploying in eastern DRC and were led by Kenya (Africanews, 2022), with other contributing countries being Burundi, Tanzania and Uganda. However, after one year the DRC government asked the EAC-RF to leave its territory for failing to end the eastern DRC crisis (Russo, 2023). The EAC-RF’s deployment was not complemented by other non-military efforts, for example the PEP. Meanwhile, on 15 December 2023 following the withdrawal of the EAC-RF, the SADC regional bloc of which the DRC is also a member, started deploying elements of the SADC Mission in the DRC (SAMIDRC) drawn from Malawi, South Africa and Tanzania. Its mandate was outlined as providing support to the Government of the DRC to restore peace and security in eastern DRC (SADC, 2024). At the time of writing, the security situation in eastern DRC is yet to stabilise.

### **b) Rwanda–Uganda; Burundi–Rwanda; DRC–Rwanda tensions**

Bilateral relations of several EAC partner states continue to experience turbulence. Rwanda–Uganda relations took a turn for the worst in 2018 when Kigali levelled several accusations against Kampala, including: Ugandan security agencies targeting Rwandans living in Uganda for deportation, and a Rwandan rebel outfit called the Rwanda National Congress (RNC) led by renegade General Kayumba Nyamwasa recruiting in Uganda in order to destabilise Rwanda (Mpagi and Musisi, 2018; Okello, 2018). Uganda in turn accused Rwanda of meddling in its internal affairs, including infiltrating its security services (Green, 2018). Both countries denied the accusations levelled against them. A summit meeting in March 2018 between Presidents Museveni and Kagame did not stem the rumours (NBS, 2018). In early 2022, relations between the two states somewhat

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<sup>11</sup> Ibid.

thawed following the re-opening of their common border (The Conversation, 2022). This followed a mediation process undertaken by high-ranking government officials of both countries.

Second, Burundi–Rwanda relations began to sour in 2013 when Rwanda accused Burundi of hosting FDLR insurgents, who until then had been based in the DRC (The Conversation, 2016). It is alleged that the insurgents crossed into Burundi following the defeat of the M23 rebels by the United Nations’ (UN’s) Force Intervention Brigade (FIB) in 2013. Relations worsened following President Nkurunziza’s decision to run for a third term, which led to many of his critics in Burundi fleeing to Rwanda (The Conversation, 2016). Moreover, President Kagame criticised Nkurunziza’s third term bid (Craig, 2015). In May 2015, General Godefroid Niyombare attempted to overthrow Nkurunziza, a bid that failed, but which was allegedly supported by Rwanda (Craig, 2015). In June 2018, it is alleged that Burundian security forces and their proxies launched an armed attack in the Nyabimata Sector of Rwanda’s Southern Province (Mugisha, 2018). Rwanda has also accused Burundi of imposing a blockage of the movement of goods and passenger vehicles across the border, which it says violates the EAC Common Market Protocol (Mugisha, 2018). Just like Rwanda and Uganda’s bilateral relations, Burundi and Rwanda’s seemed to have thawed somewhat following recent normalisation (Kanyange, 2021). However, Burundi has just closed its border with Rwanda, accusing it of supporting the Red-Tabara armed group that is seeking to overthrow the government of President Evariste Ndayishimiye (AlJazeera, 2024).

Lastly, relations between the DRC and Rwanda took a nosedive following both countries accusing each other of supporting each other’s insurgencies. The DRC accuses Rwanda of supporting the M23 rebels, while Rwanda is accusing the DRC of assisting the FDLR insurgents (UN Security Council, 2022). The accusations and counter-accusations have seen the severance of diplomatic relations between the two countries, among other things. The UN has lent credence to the allegations of the two countries supporting each other’s insurgencies (Price, 2023). The allegations have escalated with President Tshisekedi threatening to militarily invade Rwanda (Monitor, 2023). One would expect the PEP to be very active in engaging the two

states to ease their tensions. However, nothing has been heard of the PEP, confirming the words of Van Wyk (2020:118) who similarly noted in relation to the ECOWAS Council of the Wise that “very little to no empirical evidence exists on the contribution of the structure on the reduction of tensions and conflicts in the ECOWAS region.” The same conclusion can be reached on the PEP. The question that arises is: Why is the PEP dysfunctional? Three reasons are highlighted.

First, the PEP does not exist as a standing body and, as noted above, its members are chosen on a case-by-case basis. Therefore, the mechanism is sporadic in its functioning, meaning its operations are unpredictable. The member states may or may not call upon it to perform its functions and therefore, it is an *à la carte* mechanism. This explains the inconsistency in its interventions in respect of the various issues in the member states. Moreover, identifying members on a case-by-case basis is not ideal. Members of the PEP are supposed to be eminent persons with expertise in matters of peace and security. Such persons may not be readily available or identifiable at short notice in the region.


Second, because of its ad hoc nature, the PEP is a ‘low-cost’ mechanism for the member states as they do not need to commit a standing budget for it. Therefore, in situations where the PEP’s intervention is very urgent, the mechanism would be constrained by budget deficits.

Lastly, the PEP functions at the whims of the partner states, which determine where and when it intervenes. Generally, EAC partner states have not welcomed the EAC’s intervention in matters that they consider to be internal. The example of the insurgency in northern Uganda is pertinent. In May 2003, the East African Legislative Assembly (EALA) passed a resolution recommending the establishment of an EAC Peace Committee for Uganda to negotiate an end to the then raging Lord’s Resistance Army (LRA) insurgency in northern Uganda (Komakech, 2003). From its start in August 1986, the Government of Uganda had cast the insurgency as a matter of national security and therefore needing no external intervention. As a result, the May 2003 EALA recommendation was merely ignored by the Ugandan government.

Notwithstanding the challenges highlighted above, the PEP can be made to function as envisaged in the EAC's normative and institutional frameworks. First, its members should be appointed as per the terms of the EAC Conflict Management Act (2012) and Modality. Second, there should be a clear budget for the PEP.

## Conclusion

As part of its conflict and security architecture, the EAC established the PEP to perform the role of preventive diplomacy. It is comprised of persons of high integrity who have expertise in issues of peace and security. The idea of the PEP is modelled on the age-old African practice of calling upon elders in society to mediate conflicts. The first crisis that the PEP dealt with was the Burundi political crisis in 2015. Its conflict resolution efforts, including organising dialogues among the warring factions in Burundi, did not tangibly result in ending the political crisis in the country. After this effort, not much has been heard of the PEP. The reason for its inactivity could be that it is appointed on a case-by-case basis and at the whims of the partner states. Based on this, the PEP appears to be just another moribund tool of conflict prevention, management and resolution in the EAC region.

However, the PEP can be made to function by, first, the appointment of its members in accordance with the EAC Conflict Management Act (2012) and the Modality for the Establishment and Functioning of the EAC Panel of Eminent Persons and for the Appointment and Deployment of Special Envoys/Representatives (2014); and, second, by the provision of a clear budget. 

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