

**IMPLEMENTATION OF THE EAST AFRICAN COMMUNITY CUSTOMS  
UNION: BOTTLENECKS AND REFORM.**

**DAVID KYALO NZIOKA**

**G62/81652/2012**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE MASTER OF LAWS (LLM) DEGREE OF THE  
UNIVERSITY OF NAIROBI, SCHOOL OF LAW**

**NOVEMBER 2018**

**DECLARATION**

I, **DAVID KYALO NZIOKA**, do declare that this is my original work and it has not been submitted and is not currently being submitted for a degree in any other University.

**SIGNED..... DATE.....**

**DAVID KYALO NZIOKA**

**REGISTRATION NUMBER: G62/81652/2012**

**UNIVERSITY OF NAIROBI**

**SCHOOL OF LAW**

This thesis has been submitted with my knowledge and approval as the university supervisor.

**SIGNED..... DATE.....**

**PROF. ATTIYA WARIS**

**ASSOCIATE PROFESSOR**

**SCHOOL OF LAW**

**UNIVERSITY OF NAIROBI**

## **ACKNOWLEDGEMENTS**

I would like to express my gratitude to the **University of Nairobi** for granting me a scholarship to undertake the course. The scholarship went a long way in enabling me to complete the course.

I wish to thank my supervisor, **Prof Attiya Waris**, for her constant support, invaluable guidance and supervision. Her support has encouraged me to delve into research.

To my wife **Eunice Mwendu** and my son, **Samuel Musumbi Kyalo**, thank you for your support.

To my mum **Rosemary Muthike**, who was the first to spot the lawyer in me. Thank you for bringing me up to what I am.

To my friends, **Joshua Ngulu, Martin Makau, Eddie, Esther Mungai, Sarah Mumo, Catherine Ngunjiri, Rose, Muthoni, Kerry, Heta and Dorothy**. I say thank you for your encouragement.

Above all I wish to thank God, my Rock, my Fortress and my Salvation. From You all wisdom flows.

## **DEDICATIONS**

I dedicate this work to all people working tirelessly towards a prosperous East African Community.

## TABLE OF CONTENTS

DECLARATION .....	ii
ACKNOWLEDGEMENTS .....	iii
DEDICATIONS .....	iv
ACRONYMS .....	vii
LIST OF LEGAL INSTRUMENTS .....	viii
ABSTRACT.....	x
CHAPTER ONE .....	1
THE EAST AFRICAN COMMUNITY CUSTOMS UNION IN THE CONTEXT OF AFRICAN REGIONALISM.....	1
1.1 INTRODUCTION .....	1
1.2 BACKGROUND TO THE PROBLEM.....	3
1.3 STATEMENT OF THE PROBLEM .....	6
1.4 JUSTIFICATION OF THE STUDY .....	8
1.5 THEORETICAL FRAMEWORK .....	9
1.6 LITERATURE REVIEW .....	11
1.5. STATEMENT OF OBJECTIVES .....	16
1.6. HYPOTHESES .....	16
1.7. RESEARCH QUESTIONS.....	17
1.8. RESEARCH METHODOLOGY .....	17
1.9. CHAPTER BREAKDOWN.....	20
CHAPTER TWO .....	23
SOCIOLOGICAL JURISPRUDENCE: LAW AS THE TOOL TO REFORM THE EAC CU .....	23
2.1 Sociological jurisprudence .....	25
2.2 Some sociological jurists .....	25
2.3 Social Engineering .....	27
2.5 The role of law in economic integration .....	29
CHAPTER THREE.....	32
IMPLEMENTATION OF THE EAC CU: BOTTLENECKS .....	32
3.1 Introduction.....	32
3.2 History of the CU.....	32
3.3 Structure of the EAC CU .....	34

3.4	Successes of the EAC CU .....	35
3.5	Bottlenecks in the implementation of the EAC CU .....	36
3.5.1	Elimination of internal tariffs.....	36
3.5.2	The Common External Tariff.....	37
3.5.3	Rules of Origin.....	38
3.5.4	Elimination of non-tariff barriers (NTBs).....	39
3.6	Conclusion .....	41
CHAPTER FOUR.....		43
LEGAL REFORM REQUIRED TO ADDRESS THE BOTTLENECKS IN THE CU IMPLEMENTATION PROCESS.....		43
4.1	Introduction.....	43
4.2	Recommendations .....	44
4.2.1	Elimination of internal tariffs.....	44
4.2.2	Common External Tariff.....	45
4.2.3	Rules of Origin.....	45
4.2.4	Dispute Resolution Mechanisms.....	46
4.2.5	Elimination of non-tariff barriers .....	47
CHAPTER FIVE.....		48
CONCLUSION .....		48
5.1	Chapter Summary .....	48
5.2	Findings.....	50
5.3	General conclusions .....	52
APPENDICES .....		54
Appendix 1: Copy of Research permit from the National Commission for Science, Technology and Innovation (NACOSTI).....		54
Appendix 2: Questionnaire .....		55
Appendix 3: Summary of Data Findings from Questionnaire Responses.....		57
Appendix 4: List of Respondents.....		62
BIBLIOGRAPHY .....		63

## ACRONYMS

ASEAN	Association of Southeast Asian Nations
CET	Common External Tariff
CMA	Customs Management Act
COMESA	Common Market of Eastern and Southern Africa
CU	Customs Union
EAC	East African Community
EU	European Union
FTA	Free Trade Area
GDP	Gross Domestic Product
KRA	Kenya Revenue Authority
NTB	Non-Tariff Barriers
RoO	Rules of Origin
RRA	Rwanda Revenue Authority
SACU	Southern African Customs Union
SADC	South African Development Community
TRA	Tanzania Revenue Authority
URA	Uganda Revenue Authority
WTO	World Trade Organisation

## **LIST OF LEGAL INSTRUMENTS**

### **Table of Statutes**

1. East African Community, East African Community Customs Management Act 2004 (passed by EALA 16 December 2004, entered into force 31 December 2004) (CMA).
2. East African Community, East African Community Standardisation Quality Assurance Metrology and Testing Act 2006 (passed by EALA 24 May 2006, entered into force 10 September 2006) (SQMT Act).

### **Table of Statutory Instruments**

1. East African Community, Customs Management Regulations, 2006 (made by the EAC Council of Ministers on 25 August 2006, entered into force 1 May 2008).

### **Table of Treaties, Conventions and other International Agreements**

1. African Union, Treaty Establishing the African Economic Community, 1991(adopted 3 June 1991, entered into force 12 May 1994) 30 ILM 1241 (Abuja Treaty).
2. Common Market for Eastern and Southern Africa, East African Community, Southern Africa Development Community, Agreement Establishing a Tripartite Free Trade Area Among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community (signed 10 June 2015).
3. Common Market for Eastern and Southern Africa, Protocol on Rules of Origin for Products to be Traded between the Member States of COMESA, 2002.



4. East African Community, Customs Union (Rules of Origin) Rules, 2015.
5. East African Community, The Mediation Agreement for Division of Assets and Liabilities of the East African Community (signed on 14 May 1984) 1388 UNTS 193 (EAC Mediation Agreement 1984).
6. East African Community, Protocol on the Establishment of the East African Community Customs Union (adopted 2 March 2004, entered into force 1 January 2005) (EACU Protocol).
7. East African Community, Second EAC Development Strategy 2001-2005.
8. East African Community, Treaty for East African Cooperation 1967 (signed on 6 June 1967) 6 ILM 932.
9. East African Community, Treaty Establishing the East African Community (adopted on 30 November 1999, entered into force on 7 July 2000) 2144 UNTS I-37437 (EAC Treaty).
10. Southern African Development Community, Rules of Origin for Products to be traded between the Member States of the Southern African Development Community.
11. Southern African Development Community, Southern African Customs Union (SACU) Agreement, (signed on 21 October 2002).
12. World Customs Organisation, International Convention on the Simplification and Harmonisation of Customs Procedures (adopted 18 May 1973, entered into force 25 September 1974) (Kyoto Convention).
13. World Trade Organisation, Agreement Establishing the World Trade Organisation (1994) 1867 UNTS 154 (Marrakesh Agreement).

## **ABSTRACT**

Globally, there has been a push towards regionalism with countries seeking to remove obstacles to trans-boundary economic activities. Regionalism is a major development in international relations, with most of the countries belonging to one or more of the existing regional economic communities (RECs). Integration efforts are across the globe, with both developed and developing economies actively participating. Notwithstanding the location of the REC, there seems to be a common thread: economic blocs are moving away from trade control and are further liberalising their economies. There is more commitment to international trade, with countries keen to broaden access to markets. Developing countries are pushing to be recognised as equal partners in the international arena. There is greater acceptance that freer trade is more than tariff reduction but more importantly must include the elimination of obstacles to trade.

Balassa's linear model has remained influential in the direction/ roadmap that RECs proceed on. However, EAC is unique in that it starts with a customs union.

This thesis will, through sociological jurisprudence, analyse the implications of the EAC customs union, critique the achievements made so far, identify the bottlenecks and finally recommend legal reform which will serve to address the roadblocks.

**CHAPTER ONE**

**THE EAST AFRICAN COMMUNITY CUSTOMS UNION IN THE**

**CONTEXT OF AFRICAN REGIONALISM**

**1.1 INTRODUCTION**

The collection of taxes is a strongly protected power of the state.<sup>1</sup> At the dawn of independence, most African states were keener to develop national institutions and were thus reluctant to cede power to supra-national institutions.<sup>2</sup> However, this has changed, with the need to improve competitiveness in the global arena and a renewed ‘African consciousness’.<sup>3</sup> States are coming together to form RECs to remove obstacles to trade.<sup>4</sup>

The linear model, advanced by economist Balassa, identifies five stages for economic integration: a free trade area, a customs union, a common market, an economic union and complete economic integration.<sup>5</sup> The linear model has been criticised with questions being asked as to whether economic integration should necessarily progress on this linear model.<sup>6</sup> Although the alternative models such as neo-liberalism<sup>7</sup> and the

---

<sup>1</sup> M Sornarajah, *The International Law on Foreign Investment*, (3rd edn, Cambridge University Press 2010) 88.

<sup>2</sup> Richard F Oppong, *Legal Aspects of Economic Integration in Africa* (Cambridge University Press 2011) 1.

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.* 6.

<sup>5</sup> Balassa (n 5).

<sup>6</sup> C McCarthy, ‘Is African Economic Integration in Need of a Paradigm Change? Thinking Out of the Box on African Integration’ (2008) 8 *Monitoring Regional Integration in Southern Africa Yearbook* 4,22.

<sup>7</sup> A Olugbenga, Onafowora & Owoye, ‘Can Trade Liberalization Stimulate Economic Growth in Africa?’ (1998) 26 *World Dev* 497.

Vinerian theory<sup>8</sup> have impacted Africa's integration process, most economic blocs in the continent are structured along the linear model thinking.<sup>9</sup>

The East African Community (EAC) comprises the republics of Burundi, Tanzania, Uganda, Kenya, Rwanda and South Sudan.<sup>10</sup> South Sudan joined membership in August 2016.<sup>11</sup> There has been consideration to admit Ethiopia, Somalia and Sudan as members of the EAC.<sup>12</sup> The main legal instrument is the EAC Treaty.<sup>13</sup> The EAC CU protocol guides the operations of the EAC CU as set out in the objectives.<sup>14</sup>

---

<sup>8</sup> J Viner, *The Customs Union Issue* (Paul Oslington ed, OUP 2014) 1.

<sup>9</sup> Opong (n 2) 7.

<sup>10</sup> East African Community Secretariat, 'East African Community Facts and Figures (2016) Report' (East African Community Secretariat 2016) 12.

<sup>11</sup> East African Community Secretariat, 'Overview of EAC' <<http://www.eac.int/about/overview>> Accessed on 13 April 2017. The Republic of South Sudan became a member of the EAC after this study had been conducted. Thus, it is not included in the study.

<sup>12</sup> John Ngirachu, 'Not yet, S. Sudan and Somalia told by East Africa Community' *Daily Nation* (Nairobi, 20 February 2015) <<https://www.nation.co.ke/news/politics/East-Africa-Community-Summit-Nairobi-South-Sudan-Somalia/1064-2630646-yq4e4f/index.html>> Accessed on 27 September 2018.

<sup>13</sup> The Treaty for the Establishment of the East African Community (adopted on 30 November 1999, entered into force on 7 July 2000) (EAC Treaty) <<http://www.eac.int/treaty/>> Accessed on 18 June 2013.

<sup>14</sup> Article 75(1) of the EAC Treaty.

## Map of Africa showing the East African Community (EAC) region



Source: EAC website <<http://www.eac.int/about/overview>> Accessed on 20 July 2017

### **1.2 BACKGROUND TO THE PROBLEM**

The integration process in the East African Community can be considered in the light of the wider debate on regionalism versus multilateralism that is sweeping across Africa.<sup>15</sup> Scholars differ on the methodology for integrating African economies.<sup>16</sup> Some advocate for informal trading structures as a basis for interaction as opposed to state-centred formal economy.<sup>17</sup> There is also suggestion that the interaction should

---

<sup>15</sup> Oppong (n 2) 7.

<sup>16</sup> *ibid.*

<sup>17</sup> M Boas, 'Regions and Regionalisation: A Heretic's View' in M Bods Page (ed), *Regionalism and Regional Integration in Africa: A Debate of Current Aspects and Issues* (Uppsala: Nordiska Afrika institutet 2001) 27.

be project based.<sup>18</sup> Close to this would be cooperation based on shared resources.<sup>19</sup> Some players prefer an immediate continent wide integration while others advocate for regionalism, with the various RECs serving as the building blocks for greater cooperation.<sup>20</sup> An advantage of regionalism is that decisions are easier to reach as the members are fewer.<sup>21</sup>

The integration of EAC is happening within a context of increased global interest in the economic activities in developing countries.<sup>22</sup> This may be attributed to greater recognition that effective trade would require the collaboration of developed as well as developing countries.<sup>23</sup> The World Bank is cognisant of the fact that developing countries are turning to regionalism for development. Developed countries are reaching out to the developing countries in attempts to boost international commerce. There is also greater recognition that effective trade is not limited to reducing tariffs and quotas but also requires the removal of barriers to trade, an achievement that requires the participation of the developing countries.<sup>24</sup>

---

<sup>18</sup> Domenico Mazzeo, 'The Experience of the East African Community: Implications for the Theory and Practice of Regional Cooperation in Africa' in Domenico Mazzeo(ed), *African Regional Organizations* (Cambridge University Press 1984) 165.

<sup>19</sup> An example would be the Great Lakes Initiative which brings together African countries in the Great Lakes region to cooperate over shared resources.

<sup>20</sup> Jeggan C Senghor, 'Theoretical Foundations for Regional Integration in Africa: An Overview' in Peter Anyang Nyong'o (ed), *Regional Integration in Africa: Unfinished Agenda* (African Academy of Sciences 1990) 17.

<sup>21</sup> Oppong (n 2) 7.

<sup>22</sup> Maurice Schiff & LA Winters, *Regional Integration and Development* (OUP and the World Bank 2003) xi.

<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*

Customs is a key source of revenue for the EAC member states.<sup>25</sup> Yet economic integration places restrictions on the countries' sovereign right to impose such customs as it may deem fit.<sup>26</sup> For economic integration to work, countries must agree to move decision making to central institutions of the bloc.<sup>27</sup> Integration transfers some legislative and policy roles to the union level.<sup>28</sup> Given the high dependence on customs, the EAC member states have at times been reluctant to commit to measures aimed at harmonising tariffs.<sup>29</sup> However, there is improvement in the administration of customs from the previous experience with the 1967 EAC, with better coordination in the collection and distribution of the customs.<sup>30</sup>

The EAC integration process needs to be examined in the socio-economic matrix of the member states.<sup>31</sup> The socio-economic and political factors condition the progress and effectiveness of the integration. The EAC consists of geographically contiguous countries. This geographical proximity eases the administration of the customs.<sup>32</sup> The proximity also breeds inter-dependency, with the landlocked countries (Uganda, Rwanda, Burundi and South Sudan) depending on the coastlines of the other

---

<sup>25</sup> Sol Picciotto, *International Business Taxation: A Study in the Internationalisation of Business Regulation* (CUP, Electronic Edition 2013) xi.

<sup>26</sup> Balassa (n 5).

<sup>27</sup> J Pelkmans, 'The Institutional Economics of European Integration' (1986) in M. Cappelliti, M. Seccombe and J. Weiler (eds), *Integration through Law: Europe and the American Federal Experience* (New York: Walter de Gruyter 3/01, 1986) 321

<sup>28</sup> *ibid.*

<sup>29</sup> Evarist Mugisa and others, 'An Evaluation of the Implementation and Impact of the East African Community Customs Union' (East African Community Secretariat 2009) 17.

<sup>30</sup> A Hazelwood, 'The End of the East Africa Community: What Are the Lessons for Regional Integration Schemes?' (1979) 18 *Journal of Common Markets Studies* 40, 81.

<sup>31</sup> *ibid.*

<sup>32</sup> T Mulat, 'Multilateralism and Africa's Regional Economic Communities' (1998) 32(4) *Journal of World Trade* 115.

members (Kenya and Tanzania) to carry out international trade.<sup>33</sup> Combined with this geographical proximity is common colonial experience, particularly with the founder members of the EAC (Kenya, Uganda and Tanzania) being former British colonies. This has been an advantage to the EAC integrative process as it has ensured a common legal infrastructure in the harmonisation of laws.<sup>34</sup>

### **1.3 STATEMENT OF THE PROBLEM**

A 2009 study commissioned by the EAC Secretariat to evaluate the impact of the EAC CU identifies structural and institutional gaps that are affecting the implementation of the CU.<sup>35</sup> The study suggests that governments have not involved the private sector meaning the traders are not aligning their businesses to fully benefit from the advantages brought by the CU. The study finds that poor rationalisation of community structures and those of states is responsible for delay in the implementation of the CU. Other findings of the study are that structural rigidities, overlapping memberships to RECs, language barriers and weak border control points have placed roadblocks in the full implementation of the CU.<sup>36</sup>

The problem is that past studies have tended to focus on structural and administrative weaknesses of the EAC CU. However, as this study will demonstrate, the bottlenecks to the implementation of the EAC CU are not just administrative in nature, but are

---

<sup>33</sup>BJ Ndulu, 'Infrastructure, Regional Integration and Growth in Sub-Saharan Africa: Dealing with the Disadvantages of Geography and Sovereign Fragmentation' (2006) 15 *Journal of African Economies* 212.

<sup>34</sup>JK Bett, 'Income Tax in the East African Community: A Case for Harmonisation and Consolidation of Policy and Law with a focus on Corporate Income Taxation' (PhD thesis, University of Nairobi 2016) 16.

<sup>35</sup> Mugisa (n 29) 23.

<sup>36</sup> *ibid.*



also to a large extent legal.<sup>37</sup> For instance, the EAC CU Protocol provides room for exemptions in the implementation of tariffs, which has led to trade distortion and the smuggling of goods.<sup>38</sup> The principle of asymmetry has been criticised as being responsible for the stagnation of the integration process.<sup>39</sup> The EAC CU Rules of Origin adopted have set high standards for origination of goods and in the process hindering the development of local industries.<sup>40</sup> Failure to harmonise community and state standards has in the past resulted in violation of the rules by the states.<sup>41</sup>

Because past studies have tended to focus on administrative and structural weaknesses, the reform introduced as a result has also tended to be administrative in nature.<sup>42</sup> The reforms have included capacity building of community staff, development of infrastructure and resource mobilisation. While the administrative and structural reforms have partially resolved the problem, legal reform is required to enhance the effectiveness of the EAC CU. It is proposed in this study that trade distortion and smuggling of goods can be addressed through amendments to article 12 of the EAC CU to limit the goods exempt from the common external tariff. The study also calls for amendment to articles 10 and 11 of the EAC CU Protocol to peg differential treatment of states to a state's reciprocal willingness to comply with treaty commitments and make alternative trade concessions.

---

<sup>37</sup> Oppong (n 2) 9.

<sup>38</sup> Article 12 of the EAC CU Protocol.

<sup>39</sup> James Gathii, 'African Regional Trade Agreements as Flexible Legal Regimes' (2009) 35 North Carolina Journal of International Law and Commercial Regulation 62.

<sup>40</sup> Editorial, 'Welcome Change to those Noxious Rules of Origin' *The East African* (Nairobi, 11 October 2014) <[www.theeastafrican.co.ke/OpEd/editorial/Welcome-change-to-those-noxious-Rules-of-Origin-/434752-2482756-qml95l/index.html](http://www.theeastafrican.co.ke/OpEd/editorial/Welcome-change-to-those-noxious-Rules-of-Origin-/434752-2482756-qml95l/index.html)> Accessed on 27 July 2017.

<sup>41</sup> EAC CU Meeting between Tanzania & Kenya on Non-Tariff Barrier: 11 February 2005 Session of the Ministers, 2.

<sup>42</sup> Mugisa (n 29) 23.

It is the view in this study that purely structural and administrative reforms would be inadequate as obstacles to customs unions are largely legal.<sup>43</sup> As Pescatore has observed, the process of integration would require a solid institutional and legal framework to achieve consistency, stability and a lasting force.<sup>44</sup> The existing legal framework requires amendments that will enhance the implementation of the EAC CU. This study therefore suggests the legal reform necessary to address the bottlenecks in the implementation process.

#### **1.4 JUSTIFICATION OF THE STUDY**

In signing the Protocol establishing the EAC CU, the partner states aimed at enhancing intra- state trade and promotion of economic development for all the partner states.<sup>45</sup> This study seeks to build on this renewed hope of regional integration by recommending legal reform that will catapult the community to even deeper levels of integration. Even after the deadline imposed by the protocol for achieving a fully-fledged CU, the EAC CU continues to experience roadblocks in the implementation of the CU. The justification therefore of this study, is to identify the roadblocks and to come up with the legal reform required to address them. The legal reform suggested in this study will thus be beneficial to the EAC in achieving a fully-fledged CU.

---

<sup>43</sup> Oppong (n 2) 9.

<sup>44</sup> Pierre Pescatore, *The Law of Integration: Emergence of a New Phenomenon in International Relations based on the Experience of European Communities* (Leiden: A.W. Sijthoff, 1974) 2.

<sup>45</sup> Article 3 of the EAC CU.

By seeking to focus on legal reform, this study addresses current weaknesses in the legal framework that are hindering the effective integration of the EAC at the customs level. Considering the lack of specific literature that looks at law as the key for reform in the context of the EAC CU, this study will hopefully be useful to regional policy makers, lawmakers, academics and the general citizenry in making the reforms required. The envisaged legal reform would also provide a clearer regime for prospective members. Somalia, Sudan, Ethiopia and DRC have expressed interest in joining the EAC, and a strong legal framework for the EAC would create a better clarity on what would be expected of the new members.

### **1.5 THEORETICAL FRAMEWORK**

The study is centred on the sociological jurisprudence particularly the *social engineering* theory advanced by Roscoe Pound.<sup>46</sup> This theory was chosen because it promotes the role of law in reform, which is a central theme in this study in calling for legal reform of the EAC CU. Pound defines law as ‘a body of authoritative precepts’.<sup>47</sup> The EAC has an elaborate legal framework centred on the EAC Treaty, protocols, acts and rules. The authoritative structure is well laid out in the legal framework and administrative structure of the EAC.<sup>48</sup>

At least three viewpoints can be seen from Pound’s definition of law that would help in demonstrating the important role that law has played in integrating East Africa.

---

<sup>46</sup> Roscoe Pound, ‘Philosophy of Law’ in MDA Freeman (ed), *Lloyd’s Introduction to Jurisprudence* (8th edn, Sweet& Maxwell 2008) 849.

<sup>47</sup> Roscoe Pound, ‘The Theory of Judicial Decision’ in MDA Freeman (n 46).

<sup>48</sup> Article 9 of the EAC Treaty.

First, law is a form of social control in an organised society.<sup>49</sup> To the extent that the EAC has such a legal framework that controls the activities of the entire EAC, then the EAC would be considered as such a society. Second, law is promulgated by the law-making organs of the society.<sup>50</sup> The EAC has a law-making organ namely, the East Africa Legislative Assembly and has organs that ensure that its laws are enforced.<sup>51</sup>

The third view point is considering law as an influencer of outcomes. As an agent of social engineering, law seeks to balance between two interests: unlimited human interests, versus limited resources.<sup>52</sup> According to Pound, law is best judged functionally by examining its impact on a society.<sup>53</sup> The partner states of EAC have set objectives and targets culminating in a political federation.<sup>54</sup> This vision may be advanced as the “end” in the sense of Pound. That law would influence the desired end can be seen in the existing legal framework put in place as a roadmap towards attaining the vision, objectives and goals.

Pound saw law as a reconciler of conflicting interests. He argued for a consensus model of society where the society would have different and competing interests. Law would then step in to adjust and reconcile the conflicting interests.<sup>55</sup> With five

---

<sup>49</sup> Pound (n 46) 855.

<sup>50</sup> Roscoe Pound, ‘The Task of Law’ in MDA Freeman (n 46).

<sup>51</sup> Chapter 9 of the EAC Treaty.

<sup>52</sup> Roscoe Pound, ‘Social Control Through Law’ in JW Harris, *Legal Philosophies* (2<sup>nd</sup>edn, Butterworths 1997) 253.

<sup>53</sup> Linus McManaman, ‘Social Engineering: The Legal Philosophy of Roscoe Pound’(2013) 33(1) *St John’s Law Review* 16, Article 1.

<sup>54</sup> Article 2 of the EAC Treaty.

<sup>55</sup> Pound (n 52) 852.

partner states each at different levels of development and interests, the EAC would be viewed as a society with different and competing interests as defined by Pound. The existing laws and the legal reform as suggested in this study would then step in to adjust and reconcile these conflicting interests.

In conclusion, this study hinges on the theory of sociological jurisprudence to call for reform in the EAC CU implementation. As chapter two of the study will demonstrate, reform cannot be achieved without a careful consideration of the legal framework as law is both the medium as well as the foundation of economic integration.<sup>56</sup> The study interlinks law and economic integration, with law being laid as the currency for guaranteeing trade commitments made by states in an economic bloc. Law, the study argues, is the ingredient required for the enforceability of contracts and eradication of obstacles to trade.

## **1.6 LITERATURE REVIEW**

A customs union is an economic integration process and most scholars discuss it within the context of economic integration.<sup>57</sup> Being an area influenced by a multiplicity of disciplines, literature on the obstacles to integration is diverse with scholars offering different viewpoints on the genesis of bottlenecks to implementation of the integration efforts.<sup>58</sup> Within the context of Africa, the literature is rich on the obstacles to integration efforts in the continent.

---

<sup>56</sup> Oppong (n 2) 9.

<sup>57</sup> LA Winters, 'What Can European Experience Teach Developing Countries about Integration?' (1997)20 World Economy 528.

<sup>58</sup> CA Cooper & BF Massel, 'A New Look at Customs Union Theory' (1965) 75 Econ Journal 742.

Some scholars see the bottlenecks to economic integration as emanating from the policies and strategies followed by Africa in general. Ssempebwa for instance attributes the collapse of East African Community 1 to the fact that it was state-driven without convergence of non-state interests and therefore easy to dismantle when there was no political will from the leaders.<sup>59</sup> Kafeero also cites failure to include all the stakeholders as affecting the integration of the EAC2.<sup>60</sup> Ademola blames the failure on Africa's trade-focused model which has emphasised countries coming together to boost their economies of scale, as opposed to pursuing common policies on external trade and cooperation on infrastructural development.<sup>61</sup> Ajomo notes that the multiplicity of regional economic institutions in Africa has complicated decision making at community level and negatively affected integration efforts,<sup>62</sup> a view supported by Mburu who describes the multiplicity as 'a web of interlocking and overlapping regional trade arrangements.'<sup>63</sup> Makame singles out the conflict of the EAC CET procedures with those of COMESA and SADC, applied resulting in difficulty in computing taxes within EAC.<sup>64</sup> Mugisa contests claims by African states to have moved to higher levels of integration.<sup>65</sup>

---

<sup>59</sup> Edward F Ssempebwa, *East African Community Law* (LexisNexis 2015) 21.

<sup>60</sup> Edward Kafeero, 'Customs and Trade Facilitation in the East African Community' (2009) 2(1) *World Customs Union*, 63.

<sup>61</sup> Ademola Oyejide, 'Policies for Regional Integration in Africa' (2000) African Development Bank Economic Research Papers No 62/2000, 14 <<https://core.ac.uk/download/pdf/6430885.pdf>> accessed on 30 June 2017.

<sup>62</sup> MA Ajomo, 'Regional Economic Organisations: The African Experience' (1976) 25 *Int '1 & Comp LQ* 59,101.

<sup>63</sup> KN Mburu, 'Customs Union and Treaty Override: A Legal Perspective on Kenya's situation in Regionalism' (LLM thesis, University of Nairobi 2005) 78.

<sup>64</sup> Abdullah H. Makame, 'The East African Integration: Achievements and Challenges' (2012) 1(6) *Great Insights* <<http://ecdpm.org/great-insights/trade-and-development-making-the-link/east-african-integration-achievements-challenges/>> accessed 30 June 2017.

<sup>65</sup> Mugisa (n 29) 61.

Some scholars argue that the obstacles arise from the general state of the African economies. Masinde and Omolo cite a number of factors as contributing to the “rudimentary” state of African integration: the weight of the colonial past, the legacy of the Cold War, the cultural, religious, and linguistic diversity, the unique relation between state and society, under development, lack of harmonization between national economies, and political tensions between states.<sup>66</sup> Venables characterises African countries as having high poverty levels, huge government debt, high levels of unemployment, over-dependence on taxes, highly dependent on donor-funding and small and inefficient industrial bases, factors that he says undermine the integration attempts.<sup>67</sup> Ndung’u agrees that these factors are obstacles to the East African integration.<sup>68</sup> Ayeety on his part sees the disintegration as emanating from macro-economic divergence, low democratic space and lack of political will.<sup>69</sup> Chibwasha blames the poverty to the heterogeneous nature of African economies as seen in differences in per capita gross domestic product (GDP), landmass, landlocked states, natural resources, sector focus and labour development.<sup>70</sup> Birundi attributes the

---

<sup>66</sup> Masinde and Omolo, ‘The Road to East African Integration’ in Emmanuel Ugirashebuja and others (eds), *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (Leiden Brill Nijhoff 2017) 11.

<sup>67</sup> A Venables, ‘Winners and Losers from Regional Integration Agreements’ (2000) CEPR Discussion Paper No. 2528.

<sup>68</sup> SN Njuguna, ‘Regional Integration Experience in East Africa’ (2003) OECD Development Centre Working Paper Number 171 <[http://www.keepeek.com/Digital-Asset-Management/occd/development/regional-integration-experience-in-the-eastern-african-region\\_148254462148#.WVpgH\\_mGPIU](http://www.keepeek.com/Digital-Asset-Management/occd/development/regional-integration-experience-in-the-eastern-african-region_148254462148#.WVpgH_mGPIU)> accessed on 3 July 2017.

<sup>69</sup> E Ayeety, ‘Sub-Saharan African Experience with Regional Integration’ in Z. Iqbal and MS Khan (eds), *Trade Reform and Regional Integration* (International Monetary Fund Washington DC 1988).

<sup>70</sup> Florence Chibwasha, ‘The Challenges of a Customs Union: The case of COMESA’ (LLB thesis, University of Zambia 2010) 31.

problem to the technical barriers to trade that exist in the form of poor road network and lack of standardisation of processes.<sup>71</sup>

Scholars have also blamed the obstacles on the legal regimes operating in the economic blocs and the states forming the blocs. Oppong argues that most of the challenges that RECs in Africa face is as a result of poor crafting of legal relations, leading to failure by states to translate obligations assumed at community level into benefits for individuals.<sup>72</sup> Gathii argues that the flexible nature of African RTAs affects the strength of commitments.<sup>73</sup> Bett singles out the heterogeneity of legal regimes as the reason why the EAC states have not achieved a harmonised corporate income tax as envisaged in the EAC common market protocol.<sup>74</sup> In discussing regionalism, Schiff and Winters cite a number of obstacles which are legal in nature and include poorly crafted timelines, failure to spell out consequences of non-compliance and dispute settlement mechanisms which are diplomatic in nature.<sup>75</sup> Nkoroi blames the poor performance of the economic blocs on the incompatibility of the legal regimes with multilateral trading systems making trading at the global level difficult.<sup>76</sup>

This study in reviewing the existing literature noted that despite the literature analysing the obstacles facing the integration process in Africa, very limited analysis

---

<sup>71</sup> GS Birundu, 'Implications of the East African Customs Union with special regard to Kenya' (LLM thesis, University of Nairobi 2006) 52.

<sup>72</sup> Oppong (n 2) 9.

<sup>73</sup> Gathii (n 39) 181.

<sup>74</sup> Bett (n 34).

<sup>75</sup> Schiff (n 22) 6.

<sup>76</sup> JN Nkoroi, 'Compatibility of E.A. Customs Union with WTO rules' (LLM thesis, University of Nairobi 2006).



or studies have been conducted in respect of the EAC CU. This is despite the EAC CU being the first stage in the integration process unlike other blocs which start with a free trade area.<sup>77</sup> Very little has been done to analyse the implementation of the EAC CU given that it is past the date of full implementation.<sup>78</sup> This study therefore seeks to fill the gap by analysing the bottlenecks in the implementation of the CU and suggesting legal reform to address them.

The literature also brings out the existing disagreement on the nature, scope and the focus the integration process is to take.<sup>79</sup> Ademola argues that integration in Africa should not be state-centred but should be modelled around the informal trading structures within African societies.<sup>80</sup> This view is opposed by Meagher who argues that in the long run, informal trade does not support economic development.<sup>81</sup> Mazzeo argues for an integration process focusing on cooperation on shared projects.<sup>82</sup> Senghor calls for immediate continent- wide integration as opposed to regionalism.<sup>83</sup> This mirrors the Nyerere- Nkurumah debate of the 1960s where Nkurumah favoured an immediate unification of the African continent with Nyerere calling for a gradual approach with the regional economic blocs being the building blocks to continental

---

<sup>77</sup> Mugisa (n 29) 2.

<sup>78</sup> *ibid.*

<sup>79</sup> Oppong (n 2) 9.

<sup>80</sup> Ademola Oyejide, 'Policies for Regional Integration in Africa' (2000) African Development Bank Economic Research Papers No 62/2000, 14 <<https://core.ac.uk/download/pdf/6430885.pdf>> accessed on 30 June 2017.

<sup>81</sup> Kate Meagher, 'Throwing out the Baby to Keep the Bathwater: Informal Cross-border Trade and Regional Integration in West Africa' in Meagher Bods Page (ed), *Regionalism and Regional Integration in Africa: A Debate of Current Aspects and Issues* (NordiskaAfrikainstitutet, 2001) 41.

<sup>82</sup> Mazzeo (n 18) 165.

<sup>83</sup> Senghor (n 20) 17.

integration.<sup>84</sup> While the discussion on the shape that Africa's economic integration is to take is useful, there has been very little literature on the place of law in shaping the integration. This is the missing part in the literature which this study will fill and demonstrate that successful integration would have to be driven by legal reform.

### **1.5. STATEMENT OF OBJECTIVES**

The main objective of the study was to analyse obstacles previously identified as standing in the way in the implementation of the EAC CU. A study commissioned by the EAC in 2009 on the implementation of the EAC CU was used as the main reference point.<sup>85</sup> The legal framework of the EAC CU was also studied with a view to identify gaps that may be hindering the implementation process. A further objective of this study was therefore to suggest legal reform necessary to address the bottlenecks identified. The study aimed at using the theory of social engineering to advance the role of law in facilitating trade and enhancing economic integration.

### **1.6. HYPOTHESES**

This study hinged on the hypothesis that the obstacles to the integration of the EAC are largely legal in nature. It was the hypothesis of the study that since these obstacles are legal in nature, law is the most effective tool in addressing them. The study further hypothesised that the current legal regime allows for flexibility in membership

---

<sup>84</sup> Chambi Chachage, 'African Unity: Feeling with Nkurumah, Thinking with Nyerere' *Pambazuka News* (Oxon, 9 April 2009) <<http://www.pambazuka.org/pan-africanism/african-unity-feeling-nkrumah-thinking-nyerere>> accessed 16 September 2017.

<sup>85</sup> Mugisa (n 29).

to other RTAs, in effect creating logistical and administrative obstacles.<sup>86</sup> Amendments to the tariff structure, RoOs and harmonisation of standards would be required as a way of addressing the bottlenecks.

### **1.7. RESEARCH QUESTIONS**

The major bottlenecks in the implementation of the EAC CU are dual membership to customs union organisation leading to conflict of international tariff regimes, inconsistent application of rules, existence of non-tariff barriers and poor commitment to community obligations. To address these bottlenecks, the study examined three questions: First, is law an effective tool in addressing obstacles to economic integration? Second, how have the obstacles manifested in the current legal framework of the EAC CU? Third, what legal reform is necessary in addressing the obstacles to enhance the implementation of the EAC CU?

### **1.8. RESEARCH METHODOLOGY**

This study substantially relied on secondary data in its inquiry. Books, journal articles, government reports, treaties, conventions, legislation and theses were reviewed. This information was obtained from the University of Nairobi's Jomo Kenyatta Memorial Library and Parklands School of Law Library. Additionally, repositories and databases from online sources were also reviewed extensively. However, based on the gaps in secondary data as discussed in the literature review,

---

<sup>86</sup> Emmanuel Ugirashebuja and others, *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (Leiden Brill Nijhoff 2017) 312.

the study used primary data to corroborate the secondary data.<sup>87</sup> Part 1.5 and 1.7 of this study sets out the objectives of the study and research questions, and they seek to identify the bottlenecks in the implementation process and the legal reform required to address them. These objectives together with the questions are exploratory in nature hence the need to adopt the qualitative research method.

The target population was the East African Community Region, since the study is on the EAC Customs Union. The study applied purposive sampling to identify respondents. This sampling was appropriate based on the assumption that there is a limit of the number of people with knowledge or information in the topic of study. The study therefore interviewed persons with appropriate knowledge in the legal aspects of the EAC Customs Union.

The interviewees were drawn from the revenue authorities of the East African states, with questionnaires being used to generate responses.<sup>88</sup> Although South Sudan joined EAC in 2016,<sup>89</sup> it was not included in this study as it has a phased implementation period until December 2019.<sup>90</sup> The five interviewees requested to remain anonymous in the findings of the study. The interview responses generated data that was analysed and included in the various chapters of the study.

---

<sup>87</sup> Refer to the license from NACOSTI - Appendix 1.

<sup>88</sup> See Appendix 2.

<sup>89</sup> East African Community Secretariat, 'Overview of EAC' <<http://www.eac.int/about/overview>> Accessed on 13 April 2017.

<sup>90</sup> Denis Elamu, 'South Sudan making progress on Regional Trade Rules' *Xinhua* (Nairobi, 8 September 2017) < [http://www.xinhuanet.com/english/2017-09/08/c\\_136595226.htm](http://www.xinhuanet.com/english/2017-09/08/c_136595226.htm) > Accessed on 27 September 2018.

To ensure validity, the questionnaire was constructed as per the study's research questions.<sup>91</sup> Validity was enhanced by properly formulating the objectives of the study and ensuring that the questionnaire matched with the objectives of the study. The English language was used in the questionnaire, a language that the interviewees were conversant with. Data collected was analysed qualitatively according to the various thematic areas under study.

In addition, secondary data was used through desktop research. In reviewing the objectives/targets that EAC has put for achieving a fully-fledged CU, the study relied on primary sources of information such as the EAC Treaty, the Protocol establishing the EAC CU, various acts and regulations enacted both by the community and the partner states. EAC Reports commissioned by the Secretariat, studies by private sector organisations such as the Trademark East Africa, articles, theses and books that have been written on CUs were relied on to validate the implementation hurdles as identified by the interviewees.

Ethical and logistical issues considered during the study included avoidance of plagiarism and fraud, confidentiality and privacy of the information obtained from the respondents and obtaining of prior informed consent from the respondents.<sup>92</sup> A research licence was also obtained from the National Commission for Science,

---

<sup>91</sup> CR Kothari, *Research Methodology: Methods and Techniques* (2<sup>nd</sup>edn, New Age International Publishers 2004) 14.

<sup>92</sup> Committee on Science, Engineering and Public Policy, *On Being a Scientist: A Guide to Responsible Conduct in Research* (3<sup>rd</sup>edn, The National Academies Press 2009) <<http://www.nap.edu/catalog/12192/on-being-a-scientist-a-guide-to-responsible-conduct-in>> accessed on 21 May 2015.

Technology and Innovation (NACOSTI). NACOSTI is the body mandated to regulate research in Kenya.

Before field work, the researcher established rapport with the prospective respondents, assuring them that the data would only be used for the study. The researcher designed the questionnaires considering the respondent's privacy and psychological needs.

### **1.9. CHAPTER BREAKDOWN**

#### **Chapter One: The East African Community Customs Union in the context of African Regionalism**

Chapter one provides the context within which EAC CU is being implemented. Globally, there is a push towards regionalism with countries seeking to remove obstacles to trans-boundary economic activities. The chapter demonstrates how this push is met with resistance through the doctrine of state sovereignty where countries are reluctant to cede their powers in the collection of taxes. The chapter also details the integration efforts in Africa and the various bottlenecks that affect economic integration in the continent. It examines and reviews the literature relating to economic integration in Africa. Further, it sets out the various objectives of this study and identifies the research methodology employed in gathering the data in support of this study.

## **Chapter Two: Sociological Jurisprudence: Law as the Tool to Reform the EAC CU**

Chapter Two discusses Pound's theory of sociological jurisprudence and its application to legal reform within the context of economic integration. Using sociological jurisprudence, law is demonstrated as possessing characteristics that make it useful to drive reform. A link will be drawn between law and economics, with this link being useful in making a case for legal reform in the implementation of the EAC CU. This chapter seeks to demonstrate the primacy of law as a tool for legal reform and refers to scholars who have advocated for the use of law as a tool for economic integration.

## **Chapter Three: Implementation of the EAC CU-Bottlenecks**

Chapter three analyses the case study which is the EAC CU. The current EAC CU is discussed in historical context, with analysis of implementation of customs union in the pre-colonial area and under the collapsed EAC 1. The achievements of the current EAC CU are discussed. Chapter three discusses in detail the bottlenecks in the way of the customs union. The chapter discusses the performance of the CU.

## **Chapter Four: Legal Reform Required to Address the Bottlenecks in the EAC CU Implementation Process**

This chapter points out the legal reform necessary in implementation of the EAC CU. The chapter recommends reduction of the goods that can be exempt from the common external tariff. The chapter calls for the widening of participation in the development of rules and standards: rather than just rely on state organs as is the

current practice, the study calls for the participation of other stakeholders such as traders, transporters, importers, exporters and farmers. The chapter also calls for the empowering of the East Africa Court of Justice to boost its capacity to resolve disputes.

### **Chapter Five: Conclusion**

Chapter five draws conclusions on the status of the EAC CU and calls for legal reform to remove the obstacles in the implementation process. In summary, the chapter concludes that although several bottlenecks stand in the way of implementation, they can be addressed through reform to the existing legal framework governing the CU.



## CHAPTER TWO

### **SOCIOLOGICAL JURISPRUDENCE: LAW AS THE TOOL TO REFORM THE EAC CU**

As previously discussed in chapter one section 1.9, this chapter is going to demonstrate the role of law in economic reform. The chapter will move forward on the basis that the EAC CU, while being successful on several fronts, still encounters several bottlenecks which are affecting its implementation. The chapter shows that the problems can be resolved using legal reform.

Regional integration studies are multi-disciplinary in nature and combine legal, economic, political science as well as other disciplines.<sup>93</sup> However, there is no consensus on theories of regional integration with theorists being influenced more by their own disciplinary inquisition rather than by a unitary approach.<sup>94</sup> Balassa, an economist, developed the linear model of economic integration in which he identifies the five stages of economic integration.<sup>95</sup> However, this theory has been criticised as not being sensitive to the economic context of Africa.<sup>96</sup> Some scholars have also argued that economic integration need not progress on the linear model proffered by Balassa as this model assumes the completion of one stage before moving to the next stage.<sup>97</sup> This is particularly the case for EAC where the integration starts with a customs union and not a free trade area.<sup>98</sup>

---

<sup>93</sup> CA Cooper & BF Massel, 'A New Look at Customs Union Theory' (1965) 75 Econ Journal 742.

<sup>94</sup> *ibid.*

<sup>95</sup> Balassa (n 5).

<sup>96</sup> Gathii (n 39).

<sup>97</sup> McCarthy (n 6).

<sup>98</sup> Mugisa (n 29) 2.

The neo-liberal economic theory has also influenced economic integration.<sup>99</sup> This theory calls on countries to liberalise economies.<sup>100</sup> However, the applicability of this theory in East Africa is doubtful, given the high dependence on trade taxes, low bargaining power and vulnerable industrial bases.<sup>101</sup> Tanzania, for instance, has opposed the liberalisation requirement pushed by the EU in the proposed EU-EAC Economic Partnership Agreement (EPA).<sup>102</sup> Contrary to the neo-liberal thinking, Jacob Viner argues that regional integration is positive, not as a result of liberalisation of the economy, but out of the ability of the region to increase trade amongst its members.<sup>103</sup> However this theory would not apply in this study as the theory assumes that trade amongst the member states is complementary and yet studies have shown this is not the case in Africa.<sup>104</sup>

Legal theorists have also tried to conceptualise regional integration. Legal pagans view law as an autonomous enterprise detached from other factors influencing a society.<sup>105</sup> This study does not progress on this thinking but on the contrary, demonstrates that EAC laws have been shaped by the social realities of the member states.

---

<sup>99</sup> A Olugbenga, Onafowora & Owoye, 'Can Trade Liberalization Stimulate Economic Growth in Africa?' (1998) 26 World Dev 497.

<sup>100</sup> *ibid.*

<sup>101</sup> KN Mburu, 'Customs Union and treaty override: a legal perspective on Kenya's situation in regionalism' (LLM thesis, University of Nairobi 2005) 19.

<sup>102</sup> Connor Vasey, 'Bloc to Bloc: Will the EAC sign the European Union's EPA?' (2017) Global Risk Insights.

<sup>103</sup> Viner (n 8).

<sup>104</sup> Economic Commission for Africa, 'Assessing Regional Integration in Africa IV: Enhancing Intra African Trade' (2010) United Nations Economic Commission for Africa, 16 <<https://www.uneca.org/sites/default/files/PublicationFiles/aria4full.pdf>> accessed 26 September 2017.

<sup>105</sup> Mohammed Bedjaoui, 'Towards a New International Economic Order: New Challenges to International Law' (1979) Holmes & Meier 98.

It is the contention of this study that although the social phenomenon of a region does not affect the binding nature of community laws, they may nevertheless affect the implementation of such laws. This study will use sociological jurisprudence, particularly the *social engineering* theory advanced by Roscoe Pound,<sup>106</sup> to demonstrate the centrality of law in achieving reform. By so doing, the study hopes to make a case for the use of law to resolve the bottlenecks affecting the implementation of the EAC CU.

## **2.1 Sociological jurisprudence**

Sociological jurisprudence, a term popularised by Pound,<sup>107</sup> connects law and social phenomenon.<sup>108</sup> To the extent that sociological jurisprudence examines the effects of law within society, it would be useful to this study in considering the legal reform necessary for bringing change to the EAC CU.

## **2.2 Some sociological jurists**

Sociological jurisprudence may be seen in the thoughts of some jurists. Jhering, one of the sociological jurists, assessed law as an instrument for serving societal needs.<sup>109</sup> Jhering argued that altruistic impulses would not suffice without the coercive form of social control provided by law.<sup>110</sup> These “altruistic” interests can be seen within the partner states to the EAC CU: with varying degrees of economic development,

---

<sup>106</sup> Pound (n 46).

<sup>107</sup> *ibid.*

<sup>108</sup> Phil Harris, *An Introduction to Law* (5<sup>th</sup>edn, Butterworths 1997) 11.

<sup>109</sup> R Jhering, *Law as Means to an End* (I Husiktr, The Boston Book Company 1913) 1.

<sup>110</sup> *ibid.*

varying economic, social and political interests.<sup>111</sup> Under the doctrine of state sovereignty, each of the partner states would be reluctant to let go of matters within its jurisdiction, such as the control of tariffs.<sup>112</sup> However, law in the form of the EAC Treaty, the CU Protocol among others, comes to reign on these “altruistic” interests.

Weber also explored the sociological foundations of law.<sup>113</sup> Weber argued that law was relatively autonomous and although influenced by economic forces, it also influenced economic and other processes in the society.<sup>114</sup> By creating of, among other things, the CET, standardisation of tariffs and harmonisation of standards, the legal framework of EAC may be influencing the trade policies of the bloc.

Durkheim, a French sociologist, argued that law was the gauging bar of any society.<sup>115</sup> Durkheim is associated with the concept of social stratification, which sees the society as a complex network of social forces with people ranking differently in terms of power, prestige, wealth or some other criterion.<sup>116</sup> According to Durkheim, law expresses the collective consciousness of the society and may be used to bear on anyone who goes against these collective moral sentiments.<sup>117</sup> This study calls for a stronger enforcement mechanism that would ensure that the partner states adhere to

---

<sup>111</sup> Article 7 of the EAC Treaty.

<sup>112</sup> Henry Kissinger, *World Order: Reflections on the Character of Nations and the Course of History* (Allen Lane 2014) 2.

<sup>113</sup> Max Weber, ‘Law in Economy and Society’ in Phil Harris, *An Introduction to Law*(5<sup>th</sup>edn, Butterworths 1997) 7.

<sup>114</sup> *ibid.*

<sup>115</sup> Emile Durkheim, ‘The Division of Labour in Society’ in Phil Harris, *An Introduction to Law* (5<sup>th</sup>edn, Butterworths 1997) 11.

<sup>116</sup> *ibid.*

<sup>117</sup> *ibid.*

the ‘collective moral sentiments’ expressed in the various legal instruments governing the EAC CU.

### **2.3 Social Engineering**

Pound is regarded as the most influential expositor of American sociological jurisprudence.<sup>118</sup> Pound saw law as a form of technology.<sup>119</sup> Pound was concerned more with the effects of law upon society.

Pound saw law as a form of social control.<sup>120</sup> This would accord well with the desire of the East African society to achieve a deeper integration, a desire which can be seen throughout the pre-colonial, colonial, independence and post-independence eras.<sup>121</sup> Law has been instrumental in shaping this desire, through the various treaties, protocols and agreements that have been ratified to give effect to such aspirations.

Pound also saw law as a reconciler of conflicting interests. He argues for a consensus model of society where the society will usually have different and competing interests. Law then steps in to adjust and reconcile the conflicting interests.<sup>122</sup> The ‘conflicting interests’ as discussed by Pound can be seen in the diversity presented by the EAC states. Rwanda and Burundi for instance have a civil law legal system influenced by colonisation by Belgium, while Kenya, Uganda and Tanzania have a

---

<sup>118</sup> Pound (n 46).

<sup>119</sup> *ibid.*

<sup>120</sup> *ibid.*

<sup>121</sup> See part 3.1 of this study for a detailed discussion of the history of the EAC CU.

<sup>122</sup> *ibid* 852.

common law system influenced by colonisation by the British.<sup>123</sup> The legal systems will usually affect how the states interpret the community legal framework, and how they apply it.<sup>124</sup>

Pound argues for a consensus model of society where the society will usually have different and competing interests.<sup>125</sup> Law then steps in to adjust and reconcile the conflicting interests.<sup>126</sup> In support of the consensus model, Parsons viewed institutions within a society as ultimately balancing out to create social stability and order.<sup>127</sup> The EAC CU Protocol is a product of consensus with each of the partner states ceding ground for the common good of the community. The consensus building can be demonstrated through the principle of asymmetry, which is a principle guiding the operations of the EAC CU.<sup>128</sup>

Pound gives law certain distinctive features, which make law ideal for bringing change.<sup>129</sup> Pound argues that for any society to succeed, it must integrate and accept its *basic postulates*<sup>130</sup> as common ground. The EAC legal framework aims at ordering the conduct of the states regarding matters of the community. The partner states are expected to adhere to the rules and regulations passed at the community level. Countries can be held to account for non-adherence to community laws. The East

---

<sup>123</sup> William Kosar, 'Rwanda's Transition from Civil to Common Law' (2013) 16/3 Ontario Bar Association 1.

<sup>124</sup> *ibid.*

<sup>125</sup> Pound (n 46).

<sup>126</sup> *ibid* 852.

<sup>127</sup> D Lockwood, 'Some Remarks on the Social System' in Phil Harris, *An Introduction to Law* (5<sup>th</sup>edn, Butterworths 1997) 22.

<sup>128</sup> Article 5 of the EAC Treaty.

<sup>129</sup> *ibid* 850.

<sup>130</sup> Pound defines the basic postulates of a society as certain basic assumptions upon which the society's ordering rests. *Ibid* 851.

African states ratified the EAC Treaty ‘to strengthen their co-operation and secure their adherence to the fundamental and operational principles of international law’.<sup>131</sup> This study perceives this as an attempt by the states to treat law as a tool or instrument to achieve their objectives.

## **2.5 The role of law in economic integration**

Economic integration refers to the removal of economic barriers between two or more economies.<sup>132</sup> According to Oppong, law is an important instrument for economic integration.<sup>133</sup> Oppong faults past economic integration efforts for paying little attention to law as an inhibitor to trans-boundary activities.<sup>134</sup> Although limitations to the movement of factors of the economy may be limited by social considerations, such limitations find expression in the medium of the law, be it national or international laws.<sup>135</sup>

In support of the important function that law plays in economic integration, Pescatore observes that a strong legal framework is a prerequisite for a stable economic bloc.<sup>136</sup>

Ugirashebuja notes that law is key in the process of integration and is one of the most powerful and indispensable instruments to achieve true integration, as effective integration requires some form of supranational legal system.<sup>137</sup>

---

<sup>131</sup> Preamble to the EAC Treaty.

<sup>132</sup> Pelkams (n 27) 2.

<sup>133</sup> Oppong (n 2) 9.

<sup>134</sup> *ibid.*

<sup>135</sup> An opposing view to the primacy of law in economic integration is by Gathii (n 39) 571. Gathii argues that integration is best achieved through informal structures.

<sup>136</sup> Pescatore (n 44) 58.

Given that economic integration cuts across different states, invariably law comes into play in governing the various relations that emerge.<sup>138</sup> Law would be required to govern the various relationships in the community.<sup>139</sup> The deeper the integration, the more critical law becomes as obligations become more.<sup>140</sup>

In examining economic integration in developed countries, vis-à-vis that of developing countries Winters emphasizes the important role that law plays in economic integration.<sup>141</sup> Winters notes that the European economic integration has been characterized by a great degree of legal integration.<sup>142</sup> He urges that the same level of legal integration can be achieved in Africa where endeavours at economic integration are relatively young, with most dating back to the middle and late 1990s.<sup>143</sup> To facilitate economic activity, Goode argues that the players in an economy require a strong and efficient legal system, with flexibility to accommodate change in trends.<sup>144</sup>

That law is an important tool in economic integration can also be seen in the law and economics movement.<sup>145</sup> The practitioner of law and economics evaluates the

---

<sup>137</sup> Ugirashebuja (n 86) x.

<sup>138</sup> Oppong (n 2) 9.

<sup>139</sup> *ibid.*

<sup>140</sup> *ibid.*

<sup>141</sup> Winters (n 57) 889.

<sup>142</sup> *ibid.*

<sup>143</sup> *ibid.*

<sup>144</sup> Roy Goode and others, *Transnational Commercial Law: International Instruments and Commentary* (2<sup>nd</sup>edn, OUP 2012) 3.

<sup>145</sup> Thomas F. Cotter, 'Legal Pragmatism and the Law and Economics Movement' (1996) 84 *Georgetown Law Journal* 2071.



functionality of law within the society. Law is a tool for encouraging economically efficient social relations.<sup>146</sup>

## **2.6 Conclusion**

One question this study seeks to answer is whether law is an effective tool in addressing obstacles to economic integration. This chapter has through sociological jurisprudence and particularly the social engineering theory, demonstrated the centrality of law in achieving reform. Law regulates economic interests and activities. Throughout the history of integrating the EAC economy, law has been central coalescing into treaties, protocols, acts, rules and regulations. This legal framework has assisted EAC in achieving consistency, stability and a lasting force in the integration efforts. Although other factors (such as *inter alia* historical ties of the communities living in the states, colonial ties, infrastructure and resources) have played a role in the integration, law has been central in providing the medium through which the aspirations and objectives of EAC can be achieved. This chapter has also demonstrated the important role played by law in governing the relations that arise in economic integration: community-state, state-state and intra-community relationships.

Having established the centrality of law in achieving economic reform, Chapter Four will discuss the legal reform necessary in dealing with the obstacles to the implementation of the EAC CU. But before then, Chapter Three will first give a detail of the obstacles.

---

<sup>146</sup> A. Mitchell Polinsky, *An Introduction to Law and Economics* (Boston: Little, Brown & Company 1989) 2.

## CHAPTER THREE

### **IMPLEMENTATION OF THE EAC CU: BOTTLENECKS**

#### **3.1 Introduction**

The previous chapter discussed how law has influenced economic integration. The chapter demonstrated how the nature and functionality of law make it ideal for reforming the EAC CU. The chapter laid the foundation for the theory of this study which is that law is the effective tool in addressing obstacles to economic integration. The second question that the study seeks to answer and which will be addressed in this chapter is how the obstacles to integration have manifested in the current legal framework of the EAC CU.

The current EAC is modelled around the 1967 Treaty.<sup>147</sup> This chapter therefore begins by giving a historical context of the current customs union. Secondly, the chapter sets out the current structure of the EAC CU. Article 2(5) of the EAC CU Protocol requires members to eliminate obstacles to trade. Through the lenses of sociological jurisprudence, the study analyses and critiques the issues of tariffs, rules of origin and barriers to trade.

#### **3.2 History of the CU**

In the pre-independence era, customs in the three founder partner states of the EAC was administered jointly by the East African Common Services Organisation (EACSO).<sup>148</sup> EACSO attempted to address trade imbalances by creating a pool of

---

<sup>147</sup> The Treaty for the East African Cooperation (signed on 6 June 1967) 6 ILM 932.

<sup>148</sup> M Nyirabu, 'Lessons from the East African Community of 1967-1977', in Ahmed Mohiddin (ed), *Deepening Regional Integration of the East African Community* (Addis Ababa DPMF Book Series 2005) 24.

taxes that could be distributed amongst the partner states.<sup>149</sup> However, the pool was not large enough to address industrial imbalance which was deemed to be skewed in Kenya's favour.<sup>150</sup> Kampala Agreement of 1964 sought to address the disparities through policies of allocating new industries to Tanzania and Uganda.<sup>151</sup> Kenya refused to implement the agreement, insisting the other partner states agree to a single currency, a condition that was unacceptable to Uganda and Tanzania.<sup>152</sup>

In 1965, the Philip Commission was established and the commission recommended the establishment of a CET, with customs being paid to the importing state.<sup>153</sup> The commission's work led to the signing of the 1967 Treaty.<sup>154</sup> The treaty called for equitable distribution of benefits.<sup>155</sup> Customs revenue was collected by a centralised Customs Department located in Nairobi.<sup>156</sup>

EAC1 collapsed in 1977, with Uganda and Tanzania accused Kenya of falsifying books.<sup>157</sup> According to Hazelwood, the unequal treatment between the three colonies as far back as 1917 contributed largely to the collapse of EAC1.<sup>158</sup> The other economic reason for the collapse was the perception of unfair distribution of gains and losses.<sup>159</sup>

---

<sup>149</sup> Alphonse Kabananiye, 'Regional Integration and Sustainable Growth in Sub-Saharan Africa: A Case Study of the East Africa Community,' (PhD thesis, Northumbria University 2011)103. <<https://core.ac.uk/download/pdf/9985147.pdf>> accessed on 20 June 2017.

<sup>150</sup> Hazlewood (n 30).

<sup>151</sup> *ibid.*

<sup>152</sup> Nyirabu (n 148).

<sup>153</sup> Kabananiye (n 149).

<sup>154</sup> East African Community, Treaty for East African Cooperation 1967 (EAC1 Treaty).

<sup>155</sup> *ibid.*

<sup>156</sup> Bett (n 34).

<sup>157</sup> *ibid.*

<sup>158</sup> A Hazelwood, 'The End of the East Africa Community: What Are the Lessons for Regional Integration Schemes?' (1979) 18 *Journal of Common Markets Studies*40, 81.

<sup>159</sup> *ibid.*

Political differences between the founding presidents of the three countries and ideological differences were the other reasons why EAC1 collapsed.<sup>160</sup>

Following the collapse of EAC1, each of the countries administered and ran its customs separately.<sup>161</sup> This lasted until 30 November 1999 when the EAC treaty was signed.<sup>162</sup> Article 75 of the EAC Treaty establishes the East African Community Customs Union (EAC CU).

A few lessons can be learned from EAC1: integration should not be a purely economic initiative but entails the ceding of sovereignty to structures of the community; there is need to coordinate policies to avoid imbalances in development and enhance bargaining power at the international market; economic integration can only work if it is people driven.<sup>163</sup>

### **3.3 Structure of the EAC CU**

The EAC treaty and protocol are the main legal instruments for the EAC CU.<sup>164</sup> The directorate of customs initiates and coordinates policies on customs.<sup>165</sup> The directorate carries out its functions subject to the direction and prescriptions of the

---

<sup>160</sup> O Mugwenyi and F Zeija, 'The East African Customs Union Protocol: An Audit of the Stakeholders' Participation in the Negotiation Process'(2006)(ACODE Policy Research Series14/2006)5.

<sup>161</sup> *ibid* 6.

<sup>162</sup> East African Community Secretariat, 'Overview of EAC', <[http://www.eac.int/index.php?option=com\\_content&view=article&id=1:welcoming-to-eac&catid=34:body-text-area&Itemid=53](http://www.eac.int/index.php?option=com_content&view=article&id=1:welcoming-to-eac&catid=34:body-text-area&Itemid=53)> Accessed on 4 September 2014.

<sup>163</sup> Edward F Ssempebwa, *East African Community Law* (LexisNexis 2015) 9.

<sup>164</sup> Article 39 of the EAC Treaty.

<sup>165</sup> Section 3 of the East African Community, Customs Management Act 2004 (CMA).

council of ministers.<sup>166</sup> The commissioners of customs are mandated to handle the operations of the CU.<sup>167</sup> The committee on customs facilitates the work of the directorate.<sup>168</sup>

### **3.4 Successes of the EAC CU**

Because of the EAC CU, intra- regional trade has generally increased.<sup>169</sup> This may be attributable to the reduction of tariffs. Increased intra-regional trade has in effect increased growth of local industries given the shift of focus brought by change of tariffs.<sup>170</sup> The removal of most of the non-tariff barriers and infrastructural development has facilitated trade within EAC.<sup>171</sup> Harmonisation of standards has introduced predictability in the conduct of business.<sup>172</sup> The EAC CU has laid the foundation for deeper integration in EAC and created room for consolidation of policies with neighbouring economic blocs.<sup>173</sup> The partner states have reported increase in revenues.<sup>174</sup> The larger market created by the customs union and the minimisation of customs clearance formalities has increased foreign direct investment in the region.<sup>175</sup>

---

<sup>166</sup> *ibid.*

<sup>167</sup> Section 5 of CMA.

<sup>168</sup> Section 4 of CMA.

<sup>169</sup> 5<sup>th</sup> EAC Development Strategy (2016/17 - 2020/21): Accelerating a People-Centered and Market-Driven Integration (East African Community Secretariat 2018) 34 <<http://repository.eac.int/bitstream/handle/11671/1952/5th%20EAC%20Development%20Strategy-%20Final%20Version.pdf?sequence=1&isAllowed=y>> Accessed 28 September 2018.

<sup>170</sup> Christabel Ligami, 'Producers to Import more Duty Free Products' *The East African* (Nairobi, 21 December 2013).

<sup>171</sup> *ibid.*

<sup>172</sup> Luise Rasanga, 'Harmonization of Standards in the East African Community: Challenges and Opportunities' (MA International Studies, University of Nairobi 2013) 52.

<sup>173</sup> 5<sup>th</sup> EAC Development Strategy (n 169).

<sup>174</sup> *ibid.*

<sup>175</sup> Ernst & Young, 'Africa Attractiveness Report 2016'.

### **3.5 Bottlenecks in the implementation of the EAC CU**

#### **3.5.1 Elimination of internal tariffs**

Article 10 calls for the removal of internal tariffs. Article 11 embraces the principle of asymmetry/ variable geometry in the elimination of internal tariffs by providing for a five-year implementation plan for certain goods affecting Uganda and Tanzania. The principle of asymmetry attempts to address development disparities.<sup>176</sup>

The EAC Secretariat<sup>177</sup> and scholars such as Makame<sup>178</sup> and Ssempebwa<sup>179</sup> agree that EAC has succeeded in eliminating internal tariffs. However, although the partner states are keen to eliminate internal tariffs, they quickly compensate for this by introducing para-tariff measures in the form of import fees and levies, withholding tax and standard levies.<sup>180</sup> A 2016 Score Card which tracks the implementation of the EAC Treaty and which is funded by the World Bank, shows that the partner states continue to levy para-tariff measures on each other.<sup>181</sup> These para-tariff measures are obstacles to the elimination of internal tariffs by EAC.

The principle of asymmetry/variable geometry adopted by EAC has been criticised as being responsible for the stagnation of economic integration in Africa as it slows down trade liberation.<sup>182</sup> To address the problem posed by variable geometry in the elimination of internal tariff, Castro recommends compensation for countries losing

---

<sup>176</sup> 5<sup>th</sup> EAC Development Strategy (n 169).

<sup>177</sup> *ibid.*

<sup>178</sup> Makame (n 64).

<sup>179</sup> Edward F Ssempebwa, *East African Community Law* (LexisNexis 2015) 100.

<sup>180</sup> Linda Calabrese and Andreas Eberhard-Ruiz, 'What Types of Non-tariff barriers Affect the East African Community?' (2016) Overseas Development Institute 1.

<sup>181</sup> World Bank and East African Community Secretariat, 'EAC Common Market Scorecard 2016: Tracking EAC Compliance in Movement of Capital Services and Goods' (The World Bank / East African Community Secretariat 2016) 14.

<sup>182</sup> Gathii (n 39) 62.

from the principle.<sup>183</sup> For instance in the Southern African Customs Union (SACU), implementation of the elimination of internal tariffs varies from one partner state to another depending on whether the state is a developing or least developing country (LDC).<sup>184</sup> Another criteria considered in SACU is a state's willingness to make alternative concessions such as faster liberalization of imports, markets and infrastructural support.<sup>185</sup>

### **3.5.2 The Common External Tariff**

Article 12 of the EAC CU Protocol establishes a common external tariff (CET) and gives powers to the council of ministers to approve measures designed to cushion members likely to be adversely affected by the CET.

Valuation procedures have not been uniform, resulting in different computed values for taxation.<sup>186</sup> The current multiplicity of membership to RTAs by the EAC partner states poses an obstacle to the administration of the EAC CET.<sup>187</sup> Geda argues that the application of two parallel CETs increases human and financial costs, causes uncertainties and jurisdictional conflicts.<sup>188</sup> CETs under different RTAs are captured in different forms, posing a challenge to institutions that are expected to implement

---

<sup>183</sup> L. Castro, C. Kraus and M. de la Rocha, 'Regional Trade Integration in East Africa: Trade and Revenue Impacts of the Planned East African Customs Union' (2004) World Bank Africa Region Working Paper Series 72/2004.

<sup>184</sup> Section 26 of the SACU Agreement.

<sup>185</sup> *ibid.*

<sup>186</sup> Makame (n 64).

<sup>187</sup> *ibid.*

<sup>188</sup> A Geda and H Kebret, 'Regional Economic Integration in Africa: A Review of Problems and Prospects with a Case Study of COMESA' (2008) *Journal of African Economics*, 357,371-372.

the EAC CET.<sup>189</sup> Besides, a country may be only keen to implement CET obligations that are favourable to it.<sup>190</sup>

While the EAC CET sets out tariff bands that are geared towards achieving uniformity, a number of gaps exist in the exceptions created by the Protocol: The exemption regime under article 12(3) is designed to cushion young industries in the partner states.<sup>191</sup> However, the provision may be abused by partner states to destroy the protection offered by CET and lead to market distortions.<sup>192</sup> For instance, Uganda, Rwanda and Burundi have been granted exemption for their industrial inputs.<sup>193</sup> This move has led to protests by Kenyan traders who term the move as unfair.<sup>194</sup>

### **3.5.3 Rules of Origin**

The rationale for Rules of Origin (RoO) is to offer special recognition to goods whose origin is in the community.<sup>195</sup> The 2015 RoOs outline the criteria for goods to qualify.

Makame notes that EAC partner states have at times used the RoOs to promote protectionist tendencies on some products such as wheat.<sup>196</sup> Dual membership to RTAs has also complicated the application of RoOs,<sup>197</sup> and created unnecessary

---

<sup>189</sup> Scola Kamau, 'External tariffs Review Pushed to 2015' *The East African* (Nairobi, 8 December 2012)1 <<https://www.google.com/amp/www.theeastafrican.co.ke/news/External-tariffs-review-pushed-to-2015/2558-1639632>> Accessed on 26 July 2017.

<sup>190</sup> *ibid.*

<sup>191</sup> Ligami (n 170).

<sup>192</sup> *ibid.*

<sup>193</sup> *ibid.*

<sup>194</sup> George Omondi, 'Traders in Protest over Uganda's Duty Free Imports' *Business Daily* (Nairobi, 6 June 2011).

<sup>195</sup> Stefano Inama, *Rules of Origin in International Trade* (Cambridge University Press 2009) 1.

<sup>196</sup> Makame (n 64).

<sup>197</sup> Edward F Ssempebwa, *East African Community Law* (LexisNexis 2015) 100.



delays in clearing goods.<sup>198</sup> The EAC, COMESA and SADC RoOs are largely similar but differ on tariff headings.<sup>199</sup> Multiplicity of RoOs increases shipping costs and deflects trade to other regions.<sup>200</sup>

The COMESA, SADC and EAC Tripartite Sub-committee calls for RoOs that are simple to administer.<sup>201</sup>

#### **3.5.4 Elimination of non-tariff barriers (NTBs)**

NTBs are limitations that make international trade complex and/or expensive.<sup>202</sup> They include sanitary and phytosanitary (SPS) measures as well as technical barriers to trade (TBT) may be considered as NTBs if improperly applied.<sup>203</sup>

Article 13 of the Protocol calls on each of the partner states to remove NTBs.

A 2014 report by the EAC Regional committee on NTBs identifies some of the NTBs as incoherent import/export procedures, varying requirements for certification marks, the imposition of import quotas and discrimination in testing requirements.<sup>204</sup> The 2016 Score Card notes improvement in the reduction of NTBs but points out NTBs that continue to exist in lack of harmonisation of standards.<sup>205</sup> The EAC Development

---

<sup>198</sup> AO Krueger, 'Problems with Overlapping Free Trade Areas' in O Takatoshi and AO Krueger (eds), *Regionalism Versus Multilateral Trade Arrangements* (University of Chicago Press 1997) 9, 18.

<sup>199</sup> TradeMark Southern Africa, 'Training Module on Rules of Origin' (2009) TradeMark Southern Africa 9 <[https://au.int/web/sites/default/files/documents/30988-doc-rules\\_of\\_origin\\_training\\_module.pdf](https://au.int/web/sites/default/files/documents/30988-doc-rules_of_origin_training_module.pdf)> accessed on 30 June 2017.

<sup>200</sup> *ibid.*

<sup>201</sup> Draft Tripartite Free Trade Area Text (n 199).

<sup>202</sup> Trademark South Africa, 'Non-Tariff Barriers' (2015) Trademark South Africa <[http://www.tradebarriers.org/ntb/non\\_tariff\\_barriers](http://www.tradebarriers.org/ntb/non_tariff_barriers)> Accessed on 30 August 2015.

<sup>203</sup> *ibid.*

<sup>204</sup> East Africa Community Secretariat, 'Status of Elimination of Non-Tariff Barriers in East African Community' (2014) 6 East Africa Community Secretariat.

<sup>205</sup> World Bank and East African Community Secretariat, 'EAC Common Market Scorecard 2016: Tracking EAC Compliance in Movement of Capital Services and Goods' (The World Bank / East African Community Secretariat 2016) 15.

Strategy 2016-2021 also identifies poor infrastructure and communication as a major impediment to trade.<sup>206</sup> The development strategy calls on members to adopt measures that ease acceptance of goods from the other partner states.<sup>207</sup>

Poor harmonization of standards has also been noted as an obstacle by the EAC Secretariat. In a study commissioned by the Secretariat in 2011, it emerged that as at 2011, only 1240 standards had been harmonized compared to 6000 standards being maintained by the partner states at national level.<sup>208</sup> The World Customs Organisation calls on members to harmonise their standards and adopt customs clearance procedures that facilitate trade.<sup>209</sup> The World Trade Organisation Trade Facilitation Symposium of March 1998 identified some of the administrative barriers to trade as excess documentation requirements, manual customs procedures and low customs cooperation.<sup>210</sup>

Some actions by partner states have been held to constitute a violation of Article 13 on NTBs. Kenya has in the past complained about Tanzania levying USD 50 on foreign registered (including Kenya and Uganda) private vehicles crossing into its territory, arguing that this was a NTB as the same is not levied on Tanzanian

---

<sup>206</sup> 5<sup>th</sup> EAC Development Strategy (n 169).

<sup>207</sup> *ibid* 12.

<sup>208</sup> W Musingizi, J Siegfried and T Dierradt, *Establishing a Regional Qualitative Infrastructure in the East African Community* (January 2011).

<sup>209</sup> International Convention on the Simplification and Harmonisation of Customs Procedures (adopted 18 May 1973, entered into force 25 September 1974) (Kyoto Convention).

<sup>210</sup> Institute of Sustainable Development, 'Strengthening Complementarities Between Trade, Environment and Sustainable Development' (WTO Symposium, Geneva, 17-18 March 1998) (1998) 12/1 ISD 1.

vehicles.<sup>211</sup> A session of the EAC Ministerial Council agreed that the levy was a NTB and required Tanzania to remove it.<sup>212</sup> Tanzania complied and amended its Road Toll Act to remove the levy.<sup>213</sup> In a separate complaint, Uganda expressed concern regarding Kenya's requirement that Ugandan milk exports to Kenya be packed with Kenyan companies labels.<sup>214</sup> Uganda argued that this affected the competitiveness of the milk in the Kenyan market and therefore this requirement was a NTB and discriminatory in nature. Kenya and Uganda settled the matter amicably with Kenya agreeing to remove the requirement.<sup>215</sup>

### **3.6 Conclusion**

The obstacles in the economic integration of the EAC manifest in the legal framework governing the EAC CU. Although EAC has been able to address several the obstacles that led to the collapse of EAC1, execution of the EAC CU at the country level has been affected by poor harmonisation of the community laws with those of the states. For instance, although states are required to eliminate internal tariffs, the para-tariff measures introduced at the national level are an obstacle in the achievement of this goal. In allowing flexibility in membership to other RTAs, the legal regime creates a bottleneck in the implementation of the CU. The impact of the multiplicity is seen in the administration of the CET and the RoOs where the application of CET and RoOs from other economic blocs has often led to conflicting laws and increased administrative costs. Although the principle of asymmetry as

---

<sup>211</sup> EAC CU Meeting between Tanzania & Kenya on Non-Tariff Barrier: 11 February 2005 Session of the Ministers, 2.

<sup>212</sup> *ibid.*

<sup>213</sup> Report of the EAC Meeting of the Sectoral Council on Trade (EAC/SR/27/2005), 40.

<sup>214</sup> EAC Council of Ministers Report of September 6-9 2004 (EAC/CM8/2004).

<sup>215</sup> *ibid.*

embraced in the EAC CU Protocol has been useful in recognising existing economic development imbalances, this flexibility has been counter-productive in the implementation process. Under article 12 of the protocol for instance, partner states have applied for exemption of CET in certain classes of goods leading to trade distortion and encouraging smuggling of goods. The complains that have been raised by manufacturers regarding the application of the RoOs shows that the legal regime, at least going by the RoOs, has not always been consistent with the developmental needs of the community. As these obstacles manifest within the legal framework, there is need to carry out legal reform to address the bottlenecks affecting the implementation of the EAC CU. The legal reform required will be addressed in the next chapter.

## CHAPTER FOUR

### **LEGAL REFORM REQUIRED TO ADDRESS THE BOTTLENECKS IN THE CU IMPLEMENTATION PROCESS**

#### **4.1 Introduction**

Chapters two and three of this study have sought to answer the questions of whether law is an effective tool in addressing obstacles to economic integration and how these obstacles manifest in the current legal framework of the EAC CU. In answering these questions, the study has demonstrated that law is key in achieving economic integration, as the obstacles to economic integration largely manifest in the legal framework of the economic blocs. Given the legal nature of these obstacles, law would be ideal in addressing them. Anchored on the theory of sociological jurisprudence, the study has demonstrated that law, more than any other tool, is effective in achieving economic reform.

Chapter three answers the third question, that is, the legal reform necessary in addressing the obstacles affecting the implementation of the EAC CU. Although inconsistencies, conflicts and gaps exist in the laws governing the application of tariffs, standards and trade and thus calling for legal reform, such legal reform would have to operate within the parameters of the other factors that affect economic integration in law including politics and socio-economic factors.

## **4.2 Recommendations**

### **4.2.1 Elimination of internal tariffs**

The partner states should renegotiate the provisions of articles 10 and 11 of the protocol and base the timelines for removal of tariffs on partner states ability to comply. Rather than offer a single criterion based on time, the protocol should be revised to give partner states different implementation time-plans based on their economic status. The least developing states will be given time commensurate to the time required to bring them at par with the other partner states. The EAC, through its organs such as the secretariat, should then carry out an annual economic survey of such countries and suggest measures that are required to accelerate economic growth in such countries. To qualify for additional timelines, a partner state should demonstrate efforts made at compliance and willingness to make alternative concessions such as faster liberalization of imports, markets and infrastructural support.

As noted by Ssempebwa, it is difficult for states to levy internal tariffs on intra-region traded goods as these are easy to detect since they must be enacted through a formal process.<sup>216</sup> What are likely to cause contentions are charges of equivalent effect, which are usually a disguised means of protecting investors in a state and often lead to disputes among the states. To make sure states do not develop charges of equivalent effect, the EAC should consider adopting the broad and effect-based

---

<sup>216</sup> Edward F Ssempebwa, *East African Community Law* (LexisNexis 2015) 100.

interpretation to the concept as applied in the EU, where the charges Are strictly prohibited.<sup>217</sup>

#### **4.2.2 Common External Tariff**

The EAC Sectoral Committee on Finance and Fiscal Affairs should harmonise the goods exemption regime, duty remission schemes, trade arrangements with other economic blocs and limit discretionary actions by partner states. This will include amending article 12 to limit the list of goods that could be exempt from the CET. EAC may consider the practice in EU which limits exemption criteria.<sup>218</sup> Additionally the impact of the exemption on the other partner states and on the community, should be considered before the exemption is granted. There is need to harmonise existing trade regime commitments, including the CET applicable under the other RTAs to which EAC states belong. Partner states should push to harmonise commitments in the other economic blocs with the commitments under EAC. There is need to hasten the tripartite negotiations under EAC, COMESA and SADC to ensure that there is a uniform CET applying in the region.<sup>219</sup>

#### **4.2.3 Rules of Origin**

There is need to reduce the RoOs requirements in the region to encourage innovation and growth of industries within the region. The threshold requiring that at least 30% of the ex-works value be added in the exporting EAC partner state for the goods to be

---

<sup>217</sup> Case 24/68 Commission vs Italy [1969] ECR 193, par. 9. Also, cases 2/62 and 3/62, Commission v Belgium and Luxemburg ECLI:EU:C: 1962:45.

<sup>218</sup> Montague Lord International LLC, 'Moving towards a Common External Tariff Regime in ASEAN' (International Weiterbildung und Entwicklung gGmbH and ASEAN Secretariat 2008).

<sup>219</sup> Article 5 of the Tripartite Agreement.

considered as originating from the partner state should be lowered particularly for emerging industries such as vehicle assembling.<sup>220</sup> There should also be exceptions granted to the least developed countries (LDCs) with more lenient RoOs. Consistent with the recommendations of the COMESA, SADC and EAC Tripartite Subcommittee on Customs, EAC should also consider simplifying the RoOs for ease of customs administration.<sup>221</sup> RoOs should be simple, flexible and easy for customs administration.<sup>222</sup>

#### **4.2.4 Dispute Resolution Mechanisms**

There is need to empower the East EACJ to boost its capacity to resolve customs disputes. Regulation 6(7) of Annex IX of the Customs Union Protocol should thus be amended to provide that the decisions of the East African Committee on Trade Remedies are subject to the direction of the EACJ.<sup>223</sup> Further the current arrangement provided by the same regulation making decisions of the committee final, should be amended to allow for appeal to the EACJ.

Regulation 6(7) should be amended to allow other parties, other than states to challenge the decisions of the committee as this would make the integration process

---

<sup>220</sup> Editorial, 'Welcome Change to those Noxious Rules of Origin' *The East African* (Nairobi, 11 October 2014) <[www.theeastafrican.co.ke/OpEd/editorial/Welcome-change-to-those-noxious-Rules-of-Origin-/434752-2482756-qml951/index.html](http://www.theeastafrican.co.ke/OpEd/editorial/Welcome-change-to-those-noxious-Rules-of-Origin-/434752-2482756-qml951/index.html)> Accessed on 27 July 2017.

<sup>221</sup> Draft Tripartite Free Trade Area Text.

<sup>222</sup> *ibid.*

<sup>223</sup> *Modern Holdings v. Kenya Ports Authority* EACJ Reference No 1 of 2008. Court dismissed an objection that it lacked jurisdiction.



accommodative of other stakeholders.<sup>224</sup> The regulation should further be amended to make any aspect of the decision of the committee challengeable before the EACJ.<sup>225</sup>

#### **4.2.5 Elimination of non-tariff barriers**

The standards committee should develop guidelines that will provide for the involvement of key stakeholders such as traders, industry experts and government officials in developing and harmonising standards.<sup>226</sup> The committee should also develop timelines for harmonizing the standards being maintained by the partner states at national level with those of the community.

Consistent with the World Trade Organisation's practice, elimination of NTBs by concurrence should be encouraged.<sup>227</sup> The protocol should allow a member to request another member to eliminate a NTB within a specified period. Where the requested partner state is unable to implement the request, it should inform the requesting partner state and either give reasons for refusal or alternative time-frame. The EAC Secretary General may arbitrate in the event of disagreement.<sup>228</sup> The protocol should introduce sanctions for non-compliance with NTB requirements. Such sanctions could include fines, surcharges, compensation to the injured partner state and concessions required of the defaulting partner state.<sup>229</sup>

---

<sup>224</sup> Kafeero (n 60).

<sup>225</sup> Article 28(2) of the EAC Treaty only allows a party to refer a matter of the East African Committee on Trade Remedies to the EACJ only on grounds of fraud, lack of jurisdiction or other illegality

<sup>226</sup> Kafeero (n 60).

<sup>227</sup> WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

<sup>228</sup> The use of good offices such as that of the Secretary General for the amicable settlement of disputes is encouraged by Regulation 5 (1) and Regulation 6, Annex IX to the EAC CU Protocol.

<sup>229</sup> Regulation 17 Annex IX to the EAC CU Protocol.

## **CHAPTER FIVE**

### **CONCLUSION**

This study set out to examine the obstacles in implementing the EAC CU and the essential legal reform for addressing the obstacles. Using multi-national and regional practices as a yardstick, the previous chapter suggested reform required to assist EAC achieve its objectives. Throughout the study, the theory has been that law is the most effective tool to address the obstacles given the nature of the obstacles and the ability of law to create binding commitments.

This chapter provides a summary of the study and draws conclusion by calling on the partner states to carry out legal reform to address the obstacles cited and as a basis for achieving the integration path envisaged in the EAC Treaty.

#### **5.1 Chapter Summary**

This study was guided by three objectives with the main objective being to identify the bottlenecks in the implementation of the EAC CU. A further objective was to advance a case for law being a primary tool in addressing the obstacles. The last objective was to suggest legal reform necessary to address the obstacles in the implementation process. These three objectives have been addressed in the various chapters of this study.

Chapter one introduced the East African Community Customs Union and discussed integration efforts in Africa as the context within which the EAC CU is being implemented. The chapter discussed the reasons offered by scholars for poor

integration in the continent. The chapter provided the hypotheses, justification for the study, theoretical framework, objectives of the study, literature review, research methodology, and chapter summaries.

Chapter two showed the importance of law in driving the reform required in integrating EAC. Using the theory of sociological jurisprudence and particularly the social engineering theory advanced by Roscoe Pound, the study argued that law poses certain distinctive features (such as the ability of law to order conduct) that place it at a higher level compared to the other socio-economic and political factors. Obstacles to trans-boundary economic activity are largely legal and therefore require legal approach to address them. Further even where the obstacles are of a political/socio-economic nature, such obstacles will mostly find expression in the medium of the law, be it national or international laws.

Chapter three recognizes that achievements have been made towards realizing the objectives of the EAC CU. Some of these achievements include elimination of most of the internal tariffs, uniform application of the CET, application of RoOs and removal of the NTBs. However, several obstacles are affecting the implementation of the CU. Introduction of para-tariffs negate the elimination of internal tariffs and act as a hindrance to trade liberalization. Multiplicity of membership to regional economic blocs by the partner states, is an inhibitor in the administration of the CET and the RoOs given that the customs officials must apply both the EAC requirements and the requirements in the other economic blocs. These requirements are at times in conflict. The multiplicity has also led to an increase in human and financial costs. The study

also identifies a threat to the removal of NTBs given the import quotas imposed by the partner states and discriminatory testing requirements.

Chapter four calls on the partner states to reconsider the current practice of achieving its objectives by giving uniform time-plans for complying. The study calls for differential implementation time-plans based on the economic status of the partner states. This recommendation is anchored on the principle of asymmetry which is adopted by the EAC CU Protocol. A differential implementation time-plan will improve the chances of partner states complying with the commitments given that a partner state will commit to a realistic time-plan. To guard against a partner state having too long a time-plan, the study suggests that such time-plans be determined based on surveys carried out by the secretariat and that the length of time granted be commensurate with a state's willingness to make alternative concessions to the states granting the time.

## **5.2 Findings**

The study answered the three questions examined.

The first question was whether law was an effective tool in addressing obstacles to economic integration. The literature analysed demonstrates that law plays a critical role in economic integration, as a medium through which integration objectives are captured and as a representation of the flexibilities made to shoulder diversity of members.<sup>230</sup> The predictability of law creates certainty. Law helps states create

---

<sup>230</sup> Gathii (n 39) 181.

structures of governance and coordination.<sup>231</sup> The EAC has created such mechanisms in its framework to govern the relations amongst the partner states. It is this role of law in economic integration that has underpinned this study in discussing the reform required in the implementation of the EAC CU.

The second question that the study sought to answer was how the obstacles to economic integration manifest in the current legal framework of the EAC CU. The literature examined identified the bottlenecks in the implementation to include lack of harmonisation of laws such as para-tariff measures, conflict of laws resulting from the multiplicity of membership to RTAs and a state driven approach that excludes other stakeholders in key aspects of the customs union.

The third question was the legal reform necessary in addressing the obstacles to enhance the implementation of the EAC CU. The study identified legal reforms including amending the EAC CU Protocol to provide for differential implementation time-plans based on a state's demonstrable willingness to adhere to treaty requirements and make alternative concessions on grants given. The study also calls for review of the RoOs to align them to the community's developmental and industrial needs. The study calls for wider stakeholder involvement in the rule-making process should be reviewed to give room to a wider stakeholder involvement.

---

<sup>231</sup> Kenneth W Abbott & Duncan Snidal, 'Hard and Soft Law' in *International Governance, in Legalization and World Politics* (Judith L. Goldstein (eds)2001) 37.

### **5.3 General conclusions**

The future of EAC is being shaped by recent developments. First is what is being seen as a lack of consensus building within the community, particularly with the advent of a “Coalition of the Willing” feared to be an attempt to isolate Tanzania particularly in major infrastructural projects.<sup>232</sup> Suspicion and mistrust continues to reign within the community with Tanzania for instance being seen as a reluctant partner to commit to community obligations, the most recent case being Tanzania’s opposition to the liberalisation requirement pushed by the EU in the proposed EU-EAC Economic Partnership Agreement (EPA).<sup>233</sup> There have been calls for EAC to address the mistrust issues to avert a situation similar to the British exiting the EU (“Brexit”).<sup>234</sup> The factors that led to the collapse of EAC1 are still alive in EAC2, particularly over concentration of power in the summit.<sup>235</sup>

Despite the developments, there is optimism that the region will weather the storms and avoid collapsing.<sup>236</sup> This study sought to buttress this hope by identifying legal reforms that will strengthen the EAC CU. In calling for legal reform in the implementation of the EAC CU, this study does not assume that law is an autonomous entity free of societal influences.<sup>237</sup> Rather, the study recognises that the EAC CU reform would have to be carried out within the environmental context of the EAC, and consequently recommendations have been made with this background in

---

<sup>232</sup> Sabastiano Rwengabo, ‘Consensus and the Future of the East African Community’ (Advocates Coalition on Environment and Development 2016) 10.

<sup>233</sup> Connor Vasey, ‘Bloc to Bloc: Will the EAC sign the European Union’s EPA?’ (2017) Global Risk Insights.

<sup>234</sup> Trademark East Africa, ‘Brexit – Impact and Economic Lessons for the East African Community’ (Trademark East Africa) <<https://www.trademarka.com/news/brexit-impact-and-economic-lessons-for-the-east-african-community/>> Accessed on 29 September 2018.

<sup>235</sup> Edward F Ssempebwa, *East African Community Law* (LexisNexis 2015) 8.

<sup>236</sup> *ibid.*

<sup>237</sup> Mohammed Bedjaoui, ‘Towards a New International Economic Order: New Challenges to International Law’ (1979) Holmes &Meier 98.

mind. It is visualised that if the proposals of the study are adopted, then the common market and the other steps in the EAC roadmap may be attained expeditiously.





## Appendix 2: Questionnaire

### 1. PART A

#### a) Introduction

My name is DAVID KYALO NZIOKA, a student at the University of Nairobi. As part of my Master of Laws (LL.M) degree, I am carrying out a project on 'Implementation of the East African Community Customs Union: Bottlenecks and Reform.' I would like to ask you some questions that would enable me to comprehend the obstacles that the Customs Union is facing. I intend to use the information gathered to suggest legal reform to address the obstacles identified.

#### b) About the EAC CU

In December 2004, Tanzania, Uganda and Kenya signed a Protocol establishing the EAC CU. EAC CU was established with an objective of, *inter alia*, eliminating internal tariffs, eliminating non-tariff barriers and establishing a common external tariff. Implementation of the Protocol started in January 2005 and was expected to be complete by January 2010.

### 2. PART B

Date \_\_\_\_\_

a) Name

\_\_\_\_\_

b) Designation

\_\_\_\_\_

c) Name of institution \_\_\_\_\_

3. PART C

- a) What are the obstacles in the implementation of the EAC CU?
- b) What legal reform is required to address the above obstacles?
  
- c) Do you have anything else you would like to comment on concerning the obstacles facing the Customs Union?

**Thank you for your time.**

**Nzioka, David Kyalo,  
Master of Laws (LL.M) student,  
University of Nairobi.**

## **Appendix 3: Summary of Data Findings from Questionnaire Responses**

### **Introduction**

The study examined the following questions:

- 1) What are the obstacles in the implementation of the EAC CU?
- 2) Is law an effective tool in addressing obstacles to economic integration?
- 3) What legal reform is necessary in addressing the obstacles in the implementation of the EAC CU?

While all the questions were analysed using secondary data sources, question 1 and 3 were also interrogated using primary data sources. A questionnaire was used to obtain the relevant information on the subject. The study used open ended questions as they would elicit more details from the respondents. The interviews were conducted in 2016.

The target population was the East Africa Community Region, since the study is on the EAC Customs Union. The study employed purposive sampling to identify respondents. This sampling was appropriate based on the assumption that there is a limited number of people with knowledge or information in the topic of study. The study therefore interviewed persons with appropriate knowledge in the legal aspects of the EAC Customs Union. Five interviewees were picked from each of the five partner states of the EAC. The five interviewees were each picked from the revenue authorities of the East Africa States.

The questionnaire was structured to extract information on obstacles specific to the objectives of the EAC CU. Secondly, the questionnaire sought to know the legal reform necessary to address the obstacles identified. The interview responses generated data that was analysed and included in the various chapters of the study.

### **Summary of findings**

**Question 1: What are the obstacles in the implementation of the EAC CU particularly regarding:**

**a) elimination of internal tariffs**

This question was answered by all the five respondents. From the responses it emerged that a major obstacle to the elimination of internal tariffs is the over reliance on customs taxes as a source of revenue. This makes the partner states put stumbling blocks in the elimination of the tariffs. It also emerged that the problem in determining the origin of goods coupled with false declarations may delay in the elimination of internal tariffs as a partner state may want to ascertain if the goods indeed originate from a partner state and therefore eligible for tariff elimination.

**b) implementation of the common external tariff (CET)**

From the responses, it emerged that lack of integration of tax and trade regimes and policies affect the implementation of the CET. This disparity is most evident with the way the partner states value their products, with the resultant effect that similar products may be subjected to different CET. This ends up bringing trade distortion where similar products unnecessarily attract different prices from one partner state to

another. It also emerged that there is a weak regional institution at the EAC level to drive the full implementation of the CET.

**c) Rules of Origin (RoOs)**

From the responses, it emerged that there is lack of adequate sensitisation to the stakeholders of the requirements of the RoOs, making adherence to the RoOs a problem. Another issue cited was the difficulty in establishing origin of goods given that the goods produced from the region are identical. There is also no consensus as to what amounts to 'origin' particularly goods requiring value addition.

**d) elimination of non-tariff barriers (NTBs)**

The respondents cited the general need for non-tariff revenue as slackening the elimination of NTBs. With the EAC partner states being LDCs, they lack ready viable substitutes making the NTBs an avenue to generate extra revenue. One of the respondents felt that it would take time to eliminate some of the NTBs as they are anchored in state laws.

**Question 2: What legal reform is required to address the above obstacles?**

All the five respondents answered this question. It was suggested that there is need for legislation giving superiority to the EAC laws over state laws, particularly around NTBs. There is also need for legislation that will deter non-implementation by partner states, by imposing heavy penalties for non-adherence to community legislation. All the administrative rulings and guidelines issued on implementation of the Customs Union should be widely gazetted, issued and published throughout the region by the EAC Customs Secretariat. Firm supervisory powers should be vested by law and exercised by the Customs Secretariat to superintend over the individual customs authorities and how they are conduct their affairs. Periodic audits should be

instituted to ascertain their levels of compliance with the Protocol. EACJ should have an expanded mandate beyond interpretation of treaty to cover economic disputes based on the EAC CU.

**Question 3: Do you have anything else you would like to comment on concerning the obstacles facing the Customs Union?**

All the five respondents answered this question. They all called a broader approach to address the obstacles in the implementation of the EAC CU including political will amongst the partner states. An example of the northern corridor infrastructure project (the coalition of the willing) between Uganda, Kenya and Rwanda was cited as a partnership out to serve the economic interests of only three of the five-member states and that it would serve to undermine the Customs Union and the EAC generally. One of the respondents cited the protectionist tendencies of the partner states as hindering competitiveness especially in the informal sectors.

**Conclusion**

This empirical research has shown that several obstacles hinder the implementation of the EAC CU. The obstacles comprise reluctance to eliminate internal tariffs and NTBs with the main cause being given as the high reliance on these factors as a source of revenue. It also emerged that there is a weak implementation system in place and that the EACJ generally lacks jurisdiction to determine matters on the EAC CU. There is need to strengthen the current legal framework to give more powers to the community to supervise the partner states and its organs with a view to ensure compliance with the laws. The empirical research supports the literature reviewed and

hence makes a case for legal reform to address the bottlenecks in the implementation process.

#### **Appendix 4: List of Respondents**

Respondent number 1, a Legal Officer with the Tanzania Revenue Authority.

Respondent number 2, a Legal Officer with the Uganda Revenue Authority.

Respondent number 3, a Legal Officer with the Kenya Revenue Authority.

Respondent number 4, a Legal Officer with the Rwanda Revenue Authority.

Respondent number 5, a Legal Officer with the Office Burundais des Recettes (OBR).



## **BIBLIOGRAPHY**

### **Books**

1. Balassa B, *The Theory of Economic Integration: An Introduction* (Greenwood Press, 1961).
2. Ehrlich E, *Fundamental Principles of Sociology of Law* (Harvard University Press 1936).
3. Freeman MDA, *Lloyd's Introduction to Jurisprudence* (8th edn, Sweet & Maxwell 2008).
4. Garner B, (ed), *Black's Law Dictionary* (9<sup>th</sup>edn, Thomson West 2009).
5. Goode R and others, *Transnational Commercial Law: International Instruments and Commentary* (2<sup>nd</sup>edn, OUP 2012).
6. Hill, *Crime Power and Morality* (Chandler Publishing Company 1971).
7. R Jhering, *Law as Means to an End* (I Husiktr, The Boston Book Company 1913)  
1.
8. Kothari CR, *Research Methodology: Methods and Techniques* (2<sup>nd</sup>edn, New Age International Publishers 2004).
9. Oppong RF, *Legal Aspects of Economic Integration in Africa* (Cambridge University Press 2011).
10. Pescatore P, *The Law of Integration: Emergence of a New Phenomenon in International Relations based on the Experience of European Communities* (Leiden: A.W. Sijthoff, 1974).
11. Polinsky AM, *An Introduction to Law and Economics* (Boston: Little, Brown & Company 1989).
12. Pound R, *Interpretation of Legal History* (Gant W and Sons Inc 1923).

13. Schiff M& L Alan, *Regional Integration and Development* (OUP and the World Bank 2003) 6.
14. Ssempebwa EF, *East African Community Law* (LexisNexis 2015) 21.
15. Ugirashebuja E and others, *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (Leiden Brill Nijhoff 2017) x.
16. Weber M, *Economy and Society* (Harvard University Press 1954).

### **Articles**

1. Ayeety E, 'Sub-Saharan African Experience with Regional Integration' in Z. Iqbal and M.S. Khan (eds), *Trade Reform and Regional Integration* (International Monetary Fund Washington DC 1988).
2. Committee on Science, Engineering and Public Policy, *On Being a Scientist: A Guide to Responsible Conduct in Research* (3rd edn, The National Academies Press 2009) <http://www.nap.edu/catalog/12192/on-being-a-scientist-a-guide-to-responsible-conduct-in> accessed on 21 May 2015.
3. Cotter TF, 'Legal Pragmatism and the Law and Economics Movement' (1996) 84 *Georgetown Law Journal*.
4. Cotterrell R, 'Why Must Legal Ideas be Interpreted Sociologically?' (1998) 25 *Journal of Law and Society*.
5. Dror, 'Law and Social Change' 33 *Tul Law Review* (1959).
6. Durkheim E, 'The Division of Labour in Society' in Phil Harris, *An Introduction to Law* (5<sup>th</sup> edn, Butterworths 1997) 22.
7. Gathii J, 'African Regional Trade Agreements as Flexible Legal Regimes' (2010) 35 *North Carolina Journal of International Law and Commercial Regulation*.

8. P.J. Harris and J.D. Buckle, 'Philosophies of Law and the Law Teacher' in Phil Harris, *An Introduction to Law* (5<sup>th</sup>edn, Butterworths 1997) 22.
9. Israel I, 'Social Dimensions of Law and Justice' (1960) L.R. 173.
10. Kafeero E, 'Customs and Trade Facilitation in the East African Community' (2009) 2(1) World Customs Union, 63.
11. Kagire E, 'Not there yet: Customs Union still a long way off,' *The East African* (2 November 2012) <<http://www.theeastafrican.co.ke/Rwanda/Business/EAC-Customs-Union-still-a-long-way-off/-/1433224/1610050/-/frwf3lz/-/index.html>> Accessed on 1 August 2015.
12. Lockwood D, 'Some Remarks on the Social System' (1956) 7 *British Journal of Sociology*.
13. Njuguna SN, 'Regional Integration Experience in East Africa' (2003) OECD Development Centre Working Paper Number 171 <[http://www.keepeek.com/Digital-Asset-Management/oecd/development/regional-integration-experience-in-the-eastern-african-region\\_148254462148#.WVpgH\\_mGPIU](http://www.keepeek.com/Digital-Asset-Management/oecd/development/regional-integration-experience-in-the-eastern-african-region_148254462148#.WVpgH_mGPIU)> accessed on 3 July 2017.
14. Oyejide A, 'Policies for Regional Integration in Africa' (2000) African Development Bank Economic Research Papers No 62/2000, 14 <<https://core.ac.uk/download/pdf/6430885.pdf>> accessed on 30 June 2017.
15. Pelkams J, 'The Institutional Economics of European Integration' in M. Cappelliti, M. Secombe and J. Weiler (eds), *Integration through Law: Europe and the American Federal Experience* (New York: Walter de Gruyter 3/01, 1986).

16. Pound R, 'Jurisprudence' in MDA Freeman (ed), *Lloyd's Introduction to Jurisprudence* (8th edn, Sweet& Maxwell 2008).
17. Pound R, 'Philosophy of Law' in MDA Freeman (ed), *Lloyd's Introduction to Jurisprudence* (8th edn, Sweet& Maxwell 2008) 849.
18. Quinney R, 'The Social Reality of Crime' in MDA Freeman (ed), *Lloyd's Introduction to Jurisprudence* (8th edn, Sweet& Maxwell 2008) 853.
19. Rock P, 'Deviant Behaviour' in MDA Freeman (ed), *Lloyd's Introduction to Jurisprudence* (8th edn, Sweet& Maxwell 2008) 1165.
20. Shany Y, 'No Longer a Weak Department of Power: Reflections on the Emergence of a New International Judiciary' 20 *European Journal of International Law*.
21. Trademark South Africa, 'Non-Tariff Barriers', <[http://www.tradebarriers.org/ntb/non\\_tariff\\_barriers](http://www.tradebarriers.org/ntb/non_tariff_barriers)> Accessed on 30 August 2015.
22. Venables A, 'Winners and Losers from Regional Integration Agreements' (2000) CEPR Discussion Paper No. 2528.
23. Wako A, 'Fast tracking East African Federation' (6<sup>th</sup> summit of the Heads of State and Government of the Partner States of East Africa, Arusha, November 2004).
24. White R 'Social Needs and Legal Action' in Phil Harris, *An Introduction to Law* (5<sup>th</sup>edn, Butterworths 1997) 23.
25. Winters LA, 'What Can European Experience Teach Developing Countries about Integration?' (1997) 20 *World Economy*.

## **Reports**

1. East African Community Secretariat, 2<sup>nd</sup> EAC Development Strategy 2001-2005 (East African Community Secretariat 2001).
2. East African Community Secretariat, 5<sup>th</sup> EAC Development Strategy (2016/17 - 2020/21): Accelerating a People-Centered and Market-Driven Integration (East African Community Secretariat 2018).
3. East Africa Community Secretariat, 'Status of Elimination of Non-Tariff Barriers in East African Community' (East Africa Community Secretariat 2014).
4. Mugisa E and others, 'An Evaluation of the Implementation and Impact of the East African Community Customs Union' (East African Community Secretariat 2009).
5. Musingizi W and others, *Establishing a Regional Qualitative Infrastructure in the East African Community* (East Africa Community Secretariat 2011).
6. World Bank and East African Community Secretariat, 'EAC Common Market Scorecard 2016: Tracking EAC Compliance in Movement of Capital Services and Goods' (The World Bank / East African Community Secretariat 2016) 14.

## **Theses**

1. Bett JK, 'Income Tax in the East African Community: A Case for Harmonisation and Consolidation of Policy and Law with a focus on Corporate Income Taxation' (PhD thesis, University of Nairobi 2016).
2. Birundu G, 'Implications of the East African Customs Union with special regard to Kenya' (LLM thesis, University of Nairobi 2006).

3. Kabananiye A, 'Regional Integration and Sustainable Growth in Sub-Sahara Africa: A Case Study of the East Africa Community,' (PhD thesis, Northumbria University 2011).
4. Mburu K, 'Customs Union and Treaty Override: A Legal Perspective on Kenya's Situation in Regionalism' (LLM thesis, University of Nairobi 2005).
5. Nkoroi JN, 'Compatibility of E.A. Customs Union with WTO rules' (LLM thesis, University of Nairobi 2006).
6. Wahome M, 'Impact of the East African Customs Union on Firms in the Edible Oils Sub-sector in Kenya,' (MA International Studies, University of Nairobi 2008).

### **Conference Papers**

1. The Council of the East African Community, 'Support to the Harmonization of Trade and Customs Policies of the East African Community,' Seminar held on 6-10 November 2006, Dar es Salaam, Tanzania.

### **Newspapers**

1. Editorial, 'Welcome Change to those Noxious Rules of Origin' *The East African* (Nairobi, 11 October 2014) <[www.theeastafrican.co.ke/OpEd/editorial/Welcome-change-to-those-noxious-Rules-ofOrigin-/434752-2482756-qml95l/index.html](http://www.theeastafrican.co.ke/OpEd/editorial/Welcome-change-to-those-noxious-Rules-ofOrigin-/434752-2482756-qml95l/index.html)> Accessed on 27 July 2017.
2. Omondi G, 'Traders in Protest over Uganda's Duty-Free Imports' *Business Daily* (Nairobi, 6 June 2011) <<http://www.businessdailyafrica.com/Corporate-News/539550-1175456-ltpksyz/index.html>> Accessed on 30 January 2017.

3. Ngirachu J, 'Not yet, S. Sudan and Somalia told by East Africa Community' *Daily Nation* (Nairobi, 20 February 2015) <<https://www.nation.co.ke/news/politics/East-Africa-Community-Summit-Nairobi-South-Sudan-Somalia/1064-2630646-yq4e4f/index.html>> Accessed on 27 September 2018.