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INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

Civil Society Organizations in Trade Negotiations: Case of EAC-EU
Economic Partnership Agreement (EPAs)

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Studies for the award of the Degree of Master of Arts in International Studies**

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DECLARATION

I certify that this thesis is my original work and that it has not been submitted for a degree to any institution or university.

Njehu Fredrick Kiarie, Signature:..... Date:.....

This thesis has been submitted for examination with my approval as the university supervisor

Mr. Martin Nguru Signature:.....Date:.....

DEDICATION

This research project is dedicated to my family, my wife Juliet Nyamwaro and our son Keith Njehu for your patience, moral support and granting me the space to dream.

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ABBREVIATIONS

ACP	Africa, Caribbean and Pacific
ATN	Africa Trade Network
AU	African Union
CDF	Consultative Dialogue Framework
CET	Common External Tariff
CFTA	Continental Free Trade Area
COMESA	Common Market for Eastern and Southern Africa
CPA	Cotonou Partnership Agreement
CSOs	Civil Society Organisations
CUTS	Consumer Unity and Trust Society
EAC	East African Community
EACSOF	East African Civil Society Organisations
EALA	East African Legislative Assembly
ECA	Economic Commission for Africa
ECDPM	European Center for Development Policy and Management
EU	European Union
FEPA	Framework Economic Partnership Agreement
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IEPA	Interim Economic Partnership Agreement
MAR	Market Access Regulation
MPS	Market Price System
NGO	Non-governmental Organisation
NSAs	Non-state actors
IPR	Intellectual Property Rights
ODA	Overseas Development Assistance
OECD	Organisation for Economic Cooperation and development
UN	United Nations
UNECA	United Nations Economic Commission for Africa
WTO	World Trade Organisation

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

The African, Caribbean and Pacific (ACP) countries and the European Union (EU) agreed through the Cotonou Partnerships Agreement signed on 23rd June 2000, in the city of Cotonou, Benin, to negotiate a new trade regime in the form of Economic Partnership Agreement (EPAs) which were to be concluded by 31st December, 2007. In order to be able to negotiate EPAs, ACP countries and the EU sought WTO waiver to enable them to continue trading in non-reciprocal trade preferences regime from the 4th WTO Ministerial Conference that was held in Doha, Qatar, in November 2001. A seven-year WTO waiver was granted, which was to expire on 31st December 2007.¹

The Framework EPA popularly known as FEPA was monogramed back in 2007 and this marked the journey to negotiate the EPA trade deal between countries in the ACP region and the EU. These strides were anchored on the obligation made by the contracting and negotiating parties to systematically begin the progression of negotiations.

Under the original plan, the first phase (2002-2003) entailed the launch of negotiations at the entire ACP level and discussions with the EU centered on general issues and EPA ideologies and those of the mutual concern to the ACP countries.²

¹ Journal of Economics and Finance (IOSR-JEF) e-ISSN: 2321-5933, p-ISSN: 2321-5925. Volume 7, Issue 2. Ver. II (Mar. - Apr. 2016), PP 26-31 www.iosrjournals.org

² Eric Pichon, EAC-EU EPA, Members' Research Service PE 620.218 – April 2018

Phase two occasioned essential negotiations that were conducted between 2003-2007 at regional points whereas phase three was expected to see the finalization of negotiations and conclusion of inclusive EPAs amongst the EU and six geographical configurations.³

It was in June 2003 that both parties to the negotiations signed the Cotonou Partnership Agreement (CPA) as a firm obligation to jointly labor regarding the accomplishment of the objectives of poverty reduction, sustainable development and the steady incorporation of ACP nations into the world economy. In their ostentatious preamble, both parties reiterated their eagerness to rejuvenate their distinct affiliation and to implement a far-reaching and cohesive methodology for a reinforced partnership built on political discourse, development collaboration, trade and economic relations.⁴

Over the last decade of negotiations, there has been persistent disapproval by small-scale farmers, CSOs, parliamentarians, media and religious groups on the proposal and arrangement of Economic Partnerships Agreement (EPAs) between EAC and the EU. Small-scale farmers and civil society groups argued that negotiators and the private sector focused comprehensively on commercial interests and the little or no emphasis to development as envisaged in the Cotonou Partnerships Agreement as well as key cross cutting issues such as environmental sustainability, fair trade and human rights. The new issues touching on environmental degradation such as drought and adverse effects of climate change were conspicuously missing in the proposed EPA deal.

³ Bilal s. and C. Stevens (edited by) 2009: The Interim Economic Partnership Agreements between the EU and African States: Contents, challenges and prospects. (ECDPM Policy Management Report 17). Maastricht: ECDPM. www.ecdpm.org/pmr17

⁴ Ibid

Based on the fundamental doctrines of the Cotonou Partnership Agreement, the EAC pursued these consultations with an understanding to incorporating themselves productively into the global economy, sustaining their economic development and reducing poverty with an eventual intention of exterminating it later. By accelerating the already existing economic integration, the EAC hoped to remove barriers to trade in the region and build bigger markets as well as inspire the necessary investments and productivity expansions that will drive development.

With the configurations already in place, the Civil Society Organizations in East Africa had to step in as individual organisations, coalitions, networks and partners to strategize on how to participate, shape and influence the outcomes of the negotiations. Being organised groups, they had gained experience in previous engagements such as the multilateral level at the WTO

1.2 Statement of the Problem

Since 27th September 2002, the EAC has been negotiating the Economic Partnerships Agreements (EPAs) with the EU that has been touted as “tools for development” to further reduction of poverty, bring about development and ensure that countries in the ACP are well positioned in the world economy. Nonetheless, the EPA discussions have remained marred with disagreements, uncertainties besides complications as well as splitting up within the EAC partner states subsequently delaying the final signatures by both parties. The European Union has set a number of deadlines for the EAC to conclude the negotiations but this has not resulted to a concrete negotiations outcomes. The “interim” provisions imposed at the time by the EU have not solved the key issues of disagreement but, on the contrary, further complicated the negotiations.

The civil society organisations (CSOs) have been very active participants in the EAC-EU EPA negotiations and their impact has been documented, not in so much detail, but considerably so. For instance, the treaty establishing the East African Community recognizes the lead role of both the businesses and the CSOs in the development process⁵. In the case of the EAC-EU EPAs, the CSOs structure of participation was driven from the distinct country to a regional level in the EAC. Ideologically, EAC governments were perceived as negotiating a deal that will further and deepen the liberalisation agenda while on the other hand; the CSOs took a more cautious approach in ensuring that any EPA agreement with the EU took cognisance of the developmental needs of the EAC region. They derived their inspiration from the democratic principles of public participation, inclusiveness, transparency and accountability.

The Cotonou Partnership arrangement, signed in 2000 gives a rebirth of non-state actors participation in the EPA negotiations in cooperation terms. The Cotonou Partnership Agreement (CPA) fundamentally provides a benchmark upon which the civil society could actively participate in the EPA negotiations, informed and consulted on cooperation policies and strategies.⁶ It further provides for CSOs capacity building initiatives including provision of financial resources and is engaged in the implementation of cooperation projects and programmes.

It is against this backdrop that this research paper aims at delving into assessing the roles and influence the CSOs had in shaping the outcomes of the EAC-EU EPA negotiations. This is anchored from a paradox that the governments are the main drivers of the economic

⁵ Article 129 of the Treaty establishing the EAC

⁶ Article 2 of the Cotonou Partnership Agreement

policy making process while the non-state actors such as the CSOs role is merely limited to participation.

1.3. Objectives of the Study

1.3.1 Overall objective

The overall objective of this research study is to assess the role and impact of the civil society organisations in negotiating the economic partnerships agreements between the European Union and the East African Community.

1.3.2 Specific Objectives

- a. Identify the key issues and concerns that civil society organisations in East Africa raised during the EAC-EU EPA negotiations.
- b. Determine the magnitude to which the East African Community member states enable or facilitate civil society organisation's participation, and the extent to which the civil society organisations have influenced the choices in the EAC-EU EPA trade negotiations.
- c. Identify and investigate some of the key impediments that hamper civil society involvement in the EAC-EU EPA trade negotiations.

1.4 Research Questions

- a. Is there correlation between the outcomes of the EAC-EU EPA trade negotiations and civil society organization's participation?
- b. To what extent has the civil society organization's influenced the outcomes of the EAC-EU EPA trade negotiations?

- c. To what extent have the civil society organisations participation in the EAC-EU EPA Talks been facilitated by the Partner states' governments in Kenya and Uganda.

1.5 Literature Review

In this section, literature review will be used to assess how the civil society organisations have effectively participated in the Economic Partnerships Agreements (EPAs) trade negotiations between the European Union and the East African Community (EAC).

Although several governments concur that NGO contribution is requisite, several also sense that the shortcomings of CSOs contribution may overshadow the paybacks. Disagreements and apprehensions thrive on both edges. Various are restless those NGOs might establish exceptional interest groups, and that their involvement would customarily mark in policy misrepresentations. Others panic that intergovernmental decision-making procedures would become bogged down by NGOs, which are not certainly illustrative of or responsible to their specific electorates.

Decision makers are also anxious that NGOs may seek to usurp the sovereign powers of governments. However, some of these concerns may be overstated, considering the advantages of civil society involvement. Civil society can help build the political will for a new approach to development that integrates environmental and social goals. Non-governmental organizations can serve as alternatives to weak or inadequate democratic institutions, as avenues for more inclusive dialogues, and as conduits for disseminating information on activities and issues within the international system.

1.5.1 Global Perspective

In their study, Vera Schattan P. Coelho and Bettina von Lieres provide a fresh perspective in documenting the role of civil society organisations and social movements in the global south.⁷ Their book documents the role of CSOs in grassroots mobilisation, awareness building, within the broader realm of democratization process or public policies. They however note that there is a lot of emphasis on institutions and formal engagement structures in as far as mobilisation is concerned and little focus on influential individuals, citizens and informal groups such as social movements.

This study illustrates the fact that democracy is not built through political institutions or development interventions alone. There are other avenues to achieve this such as through citizen mobilisation to articulate concerns, developing capacities for political engagement, mobilising for democratic change and pressuring states to act more accountably through democratic policy processes. This in essence means that there are individuals and strong personalities able to influence the outcomes of trade negotiations without necessarily being attached to an institution.

In an internal note, ECDPM hints at the fact that the ideal use can be made of the prevailing requirements on CSOs presently embraced in the EAC-EU EPA.⁸ However, it gives a caveat that this necessitates a robust assurance from the EU, or preferably all the Parties, to make all necessary efforts to enable momentous CSOs meetings. Again, informal meetings on both sides could compensate for the absence of formal domestic civil society meetings. In

⁸ Briefing note no. 93 of 2016 prepared by the ECDPM

addition, ambitious and clear 'Rules of Procedure' could be negotiated between the members of the meetings.

The brief gives an experience of the EU-Korea agreement showing that Rules of Procedure are indeed important for the practical functioning of the meetings.⁹ In this context, there should be guarantees that the broad scope of the transnational meeting (covering all the dimensions of the agreement, not only sustainable development) leaves specific opportunity for focused discussion on specific (and perhaps sensitive) issues such as labour and human rights violations. While the broad scope may offer opportunities for dialogue on various matters, there is also a danger that politically sensitive debates will be overshadowed because of an overcrowded agenda, especially if meetings only take place on an annual basis.

In an address by RLS, it noted that as a response to the discontent on both the process and content in the EPA negotiations, civil society organisations and activists in 2004 formed the Stop EPA Campaign.¹⁰ Launched both in Lusaka Zambia and London, UK on the foundations of the Accra based Africa Trade Network (ATN) together with a number of European NGOs, the movement grew into an important reference point for NGO and civil society involvement in the EPA negotiation process. The campaign deeply criticised the EPA negotiations for their lack of consultation, openness and informed debate and for many ACP States, negotiations continued largely in the circles of technical negotiators based in very fragile regional and national institutions.

⁹ Ibid

¹⁰ Free Trade at the Crossroads: Examining the Past Lessons for the Future; Key note address delivered by Rosa Luxemburg Stiftung on November, 2016

Through such fora like the World Social Forum and Africa Social Forum, the Stop EPA Campaign was able to find a medium to mobilise space for growing African social movements to voice their opinions and concerns and express their aspirations and alternatives. In many innovative ways, the campaign was able to open otherwise limited spaces for many grassroots movements and often marginalised groups including farmers, women groups, youth organisations, indigenous peoples among others. On the other hand, the movement was also instrumental in amplifying reformist viewpoints and practices for challenging and critiquing existing neoliberalism.

Professor Yash Tandon in his book¹¹ recounts the efforts made by civil society organisations to influence EAC-EU EPA negotiations. He foretells that civil society organisations have created expertise on issues related to international trade. He gives an array of reasons as to why there are a number of issues that require further probing based on his experience and knowledge. These issues will also be used to guide further research to meet the objectives of this research.

At a CSOs perspective publication for Knight Caribbean Policy Development Centre, there is a strong argument that it remains crucial for CSOs to monitor the implementation of the Cariforum EPA signed with the European Union.¹² This he argues, is for them to measure the benefits, measure the impacts and the extent to which the agreement's objectives such as poverty reduction, sustainable development are being met as well as assessing the level of obligations maintained to identify areas where there is need to take curative measures.¹³

¹¹ Tandon, Yash (2015); Trade is War, OR Books, London and New York

¹² Article 4 of the Carribean Comprehensive Agreement with EU

¹³ Article 5 of Carribean Comprehensive Agreement with EU

He further argues that monitoring the EPA and its progress should not be a static but rather a dynamic process which is consultative, participatory and inclusive of various parties and stakeholders and that a regular and wide dissemination of the results of the monitoring exercise, and regular assessment with critical review of the monitoring tactic remains crucial using both quantitative and qualitative indicators.

International NGOs continued to accuse the European Union of pursuing an liberalization agenda in the guise of development in order to lure countries into signing the EPA deal. For instance, they stated that the Singapore issues sought to enshrine rights for European corporations and further impede the ability of ACP governments to regulate them effectively.¹⁴ Involvement of civil society was very active, especially until 2008. The initiative 'Stop EPAs Campaign' mobilised more than 120 NGOs and civil society organisations in Africa, Europe, the Caribbean and the Pacific region. Although it is difficult to estimate the extent to which the initiatives influenced the formal decisions, it is clear that the mobilisation raised awareness on EPAs, which could be instrumental in negotiating further agreements with other parties.¹⁵

In their condemnations of the EU side, NGOs emphasized on the modalities used in consultations on EPA, laying emphasis on the inequality of the power positions between the EU and the ACP regions and countries.¹⁶ The requests broadly mirror those of the ACP negotiators but it is the form of the communication that differed, NGOs being less bound by diplomatic concerns. In most cases the central aim was to raise awareness and avoid

¹⁴ Actionaid: The Trade Escape. WTO rules and alternatives to free trade Economic Partnership Agreements

¹⁵ ACP-EU APAs: Facts and figures, Spring 2012.

¹⁶ Colier P and Venbales AJ (2007). Rethinking Trade Preferences: How Africa can Diversify its Exports, The world economy 21(3): 1349-1365

concluding EPAs hastily, in a form that would leave the ACP group worse off than before. It was during the run-up to the 1 January 2008 deadline for the conclusion of EPAs when the European Commission came in for most criticism.¹⁷

1.5.2 Continental and Regional Perspective

Civil Society organization's contributions were considered dismal because their precise role was not based on an institutional framework of engagement.¹⁸ However it is important to note that Cotonou Partnership Agreement on which the negotiations for EPA were curved out provided for mandatory inclusion of all non-state actors in their shades and forms. However, this study fails to adequately recognise and capture the crucial role of the civil society organisations in engaging in a series of formal and informal processes that shaped the direction, momentum and outcomes of the EPA negotiations despite their inadequate human and financial resources.

There are general consensuses among stakeholders that the civil society was viewed as antiestablishment by state functionaries in the EAC region. The civil society also felt some sort of mutual distrust and suspicion of the state to deliver effectively and in an inclusive manner for the people. However, the civil society must be lauded for putting a spirited fight in organising themselves and eventually becoming a force to reckon with when the EPA negotiations and decisions were being reached with minimal resource (both human and financial)

¹⁷ *ibid*

¹⁸ From EAC to CFTA: Integrating the voice of civil society in Kenya by CUTS International (2015)

Increasing pressure from the European Union since its failure to get the EAC to sign the CEPA in November 2010, led to an issuance of an ultimatum: if the EPA was not signed by 1st October 2014, East Africa would invite serious counter-action from the EU, which would hurt the East African economies.¹⁹ In his critique of the role of powerful forces, Yash Tandon observes that there was mounting pressure from the flower export industry in Kenya, an industry in the control of large global corporations as well as some wealthy and influential Kenyans.

Statements from the civil society organisations in Tanzania and another from Uganda signed by SEATINI in Kampala were disseminated at the scene of the convention²⁰. In both of these statements, they observed that East Africa was not ready for free trade with Europe. They laid emphasis that the agreement is a neo-liberal tool of dominance by Europe on East African economies and highlighted key detriments likely to affect the EAC economies ranging from deindustrialization, loss of jobs, and loss of revenues a major source of development.

The East African Community region had received strenuous pressure from their EU counterparts to conclude the EPA deal after a decade long of negotiations that were attributed on the failure to agree on outstanding issues between the negotiating parties.²¹ The unresolved parties, he noted were genuine and ought to have been treated as so. He further argues that issuance of deadlines to East African Community (EAC) partner states through withdrawal of the market access offer to the EU market does not equal to concluding any agreement, but only spurs tensions between EU and EAC. The areas that remained

¹⁹ The deadline for withdrawing the market access regulation “MAR 1528” was established three years earlier. MAR 1528 provided duty-free (DFQF) market access to ACP countries.

²⁰ Business Daily, June 12, 2018.

²¹ Business Daily, August 6, 2014

highly contentious include the levels of liberalisation EC demanded; export taxes; the MFN clause; infant industry and safeguards; community levies; development cooperation/ aid and the issue of whether there are new funds or only a recycling of existing funds etc.

From a legal battle, the smallholder farmers in collaboration with Kenya Human Rights Commission opposed operationalization of the Cotonou Partnership Agreement (CPA) and operationalisation/commencement of the EPA. In their petition filed at the High Court of Kenya, the plaintiffs argued EPA deal was not in the interests of small-scale farmers and was likely to have detrimental effects to the economy of the Country at large.²² The campaigners protested that consequent studies on the impact of the EPAs on the Kenyan economy had revealed that their coming into force will lead to massive losses in agricultural produce and could push a large number of farmers out of work and extirpate their means of livelihood owing to the heavy subsidization of agricultural produce by the EU.

²² Petition 1174 of 2007: Kenya Small Scale Farmers Forum & 6 others v Republic of Kenya & 2 others (2013)

Table 1: Chronology and Regions, East African Community (EAC)

February 2004	EAC partner states' members Burundi, Kenya, Rwanda and Uganda shape part of the Eastern and Southern Africa (ESA) region when negotiations with that group are officially sprung.
August 2007	At the EAC summit, Burundi, Kenya, Rwanda and Uganda decide to negotiate their own EPA with the EU together with Tanzania.
November 2007	Burundi, Kenya, Rwanda, Tanzania and Uganda agree to an interim EPA with the EU.
June 2010	The EAC and EU agree to speed up the negotiations to achieve a final EPA by the end of November 2010. However, this effort proved to be difficult largely due to resource constraints to fund further EAC preparatory efforts.
December 2011	Negotiations on 12-16 December 2011, result in progress on development co-operation and agriculture. The round is preceded by an inter-session experts meeting on 11-13 October on rules of origin, Agriculture and Development in view of preparing the December round. ²³
Source: Economic Partnership Agreements EU-ACP: Facts and key issues, updated extended edition Spring 2012.	

1.6 Justification of the Study

1.6.1 Legal and Policy Justification

The study, which investigates the role and influence of the civil society organisations in trade negotiations, is significant. To begin with, CSOs represent the interests of diverse groups of people and have increasingly put checks and balances of the conduct of states by devising strong accountability mechanisms. Secondly, the civil society organisations have

²³ Economic Partnership Agreement EU-ACP: Facts and key issues_1

the capacity to mobilise resources from international donors, development partners, governments, foundations and charities to run campaigns, programs and projects in their home countries which they are able to utilise in policy research, mobilisation, lobby, advocacy and networking. With such an increasing capacity, their voices and contribution to economic and social justice remains fundamental.

From a constitutional standpoint, there is a growing call for inclusivity, public consultation, equity, accountability and public participation in the democratic governance and an ever-expanding civic space for the non-governmental organisations. These ever expanding principles have found themselves in the economic and public policy debates within civil society organisations that have in turn exploited them.

Tenets of good governance dictate that CSOs have a crucial part to play in shaping the outcomes of trade and economic policies of their countries. This research therefore will look into institutional arrangements within East Africa partner states can learn from them in order to tackle the existing bottlenecks of constructing a framework that allow non-state actors to effectively and meaningfully be part of the trade policy making journey. States ought to bring civil society organizations (CSOs) on board that can provide accountability and valuable information for governance processes and outcomes. Remarkably, these contain a broader variety of organizations than such conventional associates as commerce organizations. In fact, applicable trade policy formulation necessitates the complete and functional involvement of a wide cross-section of CSOs at all levels.

1.6.2 General Public

The participation of the civil society organisation is increasingly being boosted by their experiences in influencing regional integration agenda as well as continental affairs at the African Union level and internationally at the United Nations and World Trade Organisation. These engagement levels have expanded mandates to incorporate the views and consult the non-state actors. These spaces have enabled the civil society organisations to effectively monitor, evaluate and assess the various commitments made by their home governments, raise the red flags and influence the outcomes of the negotiations at bilateral, regional or multilateral levels.

The EAC has set up an institutional and legal framework for CSOs participation on EAC matters. The Secretary General, under Article 127 (4) of the EAC Treaty is mandated to provide the forum for consultations between the private sector, civil society organisations, other interest groups and appropriate institutions of the community²⁴. The Council is further requested to establish modalities that would enable the business organisations or associations, professional bodies and the civil society in the Partner States to contribute effectively to the development of the community- hence the Consultative Dialogue Framework²⁵. Rules of procedure to guide the participation process are also in place on the Consultative Dialogue Framework²⁶.

1.6.3 Academic Justification

From the literature gathered for this research, scholars and experts have documented bits and pieces for the participation of the CSOs in negotiating the economic partnerships

²⁴ Article 127 (4) of the Treaty Establishing the EAC

²⁵ Article 129 (2), of the Treaty Establishing the EAC

²⁶ *ibid*

agreements. However, these studies have not specifically addresses in detail the influence the CSOs had in the negotiating processes within the EU-EPAs. In addition, most of these studies have not focused on the CSOs in the East African region, and no study has significantly documented their participation and assessed their influence. It is against this premise that this study will seek to assess the impact and influence the CSOs as pivotal players during the EPA deal consultations in the EAC with a particular interest to Kenya and Uganda.

1.7 Theoretical Framework

The theoretical framework in this section will serve as a foundation upon which the research will assess the role and effectiveness of the CSOs in influencing the outcomes of the EAC-EU EPA negotiations. The liberal theory of international relations will be a panacea of this research elaborating on how it links to civil society organisation's participation.

For purposes of this research, Liberal theory is anchored on two exclusive norms around global politics. Firstly, states are representatives of social groupings, with views a representation of what it believes in. secondly, state policy is highly persuaded by interdependence among state penchants. As for liberals, the state is a characteristic establishment relentlessly subject to seizure and recall, construction and reconstruction, by local public alliances. These social coalitions define state "preferences" in world politics at any point in time: the "tastes," "ends," "basic interests," or "fundamental social purposes," that underlie foreign policy. Political institutions constitute a critical "transmission belt" by which these interests of individuals and groups in civil society enter the political realm. All individuals and groups do not wield equal influence over state policy. To the contrary, their power varies widely, depending on the context. Some states may represent, ideal-

typically, the preferences of a single tyrannical individual, a Pol Pot Or Joseph Stalin; others afford opportunities for broad democratic participation. Most lie in between. The precise preferences of social groups, weighted by their domestic power, shape the underlying goals (“state preferences”) that pursue in world politics. Sometimes, non-governmental organisations (NGOs) and other actors may form transnational alliances to assist social forces. “State-society relations” –the relationship between a state and its domestic (and transnational) society in which it is embedded – lies at the center of liberal theory.²⁷

The liberal rationalisation for civil society rests on an idea of politics in which the aptitude to select easily one’s life projects is critical to right and in which prospect of conflict among different life projects is healthy, not cause for concern²⁸. Liberal theory assumes that different groups independent of state constitute arenas in which different interests, identities, and aspirations can flourish. Furthermore, through the associational life of civil society, citizens can examine government policy critically and mobilise for and against the hundreds of choices made every day by elected and appointed public officials. Public policy making processes including international trade negotiations is an obligation of government officials in East Africa and therefore liberal theory in this case grants the civil society the space to challenge the decisions arrived at in trade negotiations.

There is an array of prescriptions that the liberal theory generates that will be extremely fundamental in this research. To begin with both the freedoms of association and speech

²⁷ Milner, H., & Moravcsik, A. (Eds.). (2009): *Interdependence, Power and non-state actors in global politics*. Princeton, JN: Princeton University Press

²⁸ See Michael Walzer, *The idea of Civil Society: A Path to Social Reconstruction*, in *COMMUNITY WORKS* 123, 132 (E.J. Dionne ed., 1998); Michael Walzer, *The Concept of Civil Society*, in *TOWARD A GLOBAL CIVIL SOCIETY* 7, 18, 25 (Michael Walzer ed. 1995); Terry Nardin, *private and public roles in Civil Society*, In *TOWARD A GLOBAL CIVIL SOCIETY* 29, 30, 33 (Michael Walzered., 1995) (Identifying “liberal” and “Communitarian” strands in Walzer’s exposition of civil society and putting forward a pure liberal argument).

must be promised by the state.²⁹ Secondly, liberal theory is anchored on main ideologies and institutional frameworks that are a reflection of clear distinctive such as discrete freedom, political involvement, private property, and fairness of prospect that all liberal democratic societies by meaning, distribute to particular degree.³⁰

1.8 Methodology of Research

This study will mainly be focused on two EAC of Kenya and Uganda. This is because the two countries initially began the process of negotiating the Economic Partnership Agreements (EPA) with the European Union (EU) under the Eastern and Southern African (ESA) group.

Primary data will be acquired from interviews with representatives of the civil society organisation in Kenya and Uganda, selected individuals who are knowledgeable on international trade negotiations processes specifically the Economic Partnerships Agreement (EPAs). This research study is purely qualitative and will highly rely on primary and secondary data from already existing literature on the topic so as to meet the objectives outlined. This study will not examine any hypothesis, but will evaluate the policy and institutional frameworks that have been devised by both the East African Partner States and the East African Community to facilitate the engagement of Civil Society Organisations in EAC-EU EPAs.

Therefore, the secondary data will be sourced from numerous sources including obtained from published work by scholars on Africa-EU economic relations, Economic Partnership

²⁹ 68 See, e.g., Mark Tushnet, *The Constitution of Civil Society*, 75 *CHI.-KENT L. REV.* 379, 398-99 (2000) (analyzing importance of First Amendment rights of speech and association for civil society).

³⁰ Published in Bertrand Badie, Dirk-berg Schlosser, and Leonardo Morlino, eds, *INTERNATIONAL ENCYCLOPEDIA OF POLITICAL SCIENCE* (Los Angeles: Sage, 2011).

Agreements, experts journals, academic journals, periodicals, research reports from an array of sources including civil society organisation, EAC secretariat, private sector organisations, relevant ministries and government departments, small-scale farmers, parliaments and the media. Content analysis will be utilised to analyse the data collected from secondary sources.

1.9 Scope of the Study

This research purposes to study “CSOs in Trade Negotiations: Case of EAC-EU Economic Partnership Agreement (EPAs)”. The research will be limited into studying the roles the civil societies have played in international trade negotiations in Kenya and Uganda. For purposes of drawing comparisons, the research will assess the roles played by civil society organisations in other regions of the world in influencing international trade negotiations.

1.10 Chapter Outline

This study comprises five chapters. Chapter one introduces the topic which is the “The Role of CSOs in Trade Negotiations: Case of EAC-EU Economic Partnership Agreement”. The chapter gives far-reaching perspective of the research, problem statement, study justification, provides a theoretical approach to the study using the Liberal theory as the main framework, outlines the methodology applied in the study and identifies limitations to the study.

The second chapter, “Issues of Concern to the Civil Society Organisations in the EAC-EU EPA Negotiations” covers an analysis of the key items that the civil society organisations raised, presented and deliberated on during the process. It offers a detailed approach, rationale and positions taken by the members of the civil society organizations.

The third chapter on “Frameworks for Negotiations and the influence of CSOs in the EAC-EU EPAs presents the avenues that both Kenya and Uganda offered for involvement of the CSOs in the EAC-EU EPA trade consultations. It further provides a glimpse into the relationships between the CSOs and government during the negotiations as well as the extent to which the CSOs influenced the outcomes of the negotiations.

Chapter four on “Constraints faced by CSOs during the EAC-EU EPA Negotiations” is intended to present the challenges experienced by civil society organisations in Kenya and Uganda during the EAC-EU EPA negotiations, both internally and externally and how they were able to maneuver these challenges.

Chapter five on “Conclusions and Recommendations” gives a reflection on the extent to which the participation of the CSOs shaped and influenced the outcomes of the EAC-EU EPA negotiations.

CHAPTER TWO
ISSUES AND CONCERNS RAISED BY CIVIL SOCIETY ORGANISATIONS
IN THE EAC-EU EPA NEGOTIATIONS

2.1 Introduction

This chapter identifies and analyses selected key issues and concerns that were raised by the civil society organizations during the economic partnerships agreements consultations between the East African Community (EAC) and the European Union (EU). Since the launching of the EPA negotiations, CSOs campaigners across the East African region worked industriously to inform and sensitize local producers in the agriculture sector, commercial business players, media, politicians, regimes and the public about what EPAs would entail for EAC countries' populations. This resulted into an impressively better examination of the numerous provisions contained in the proposed EPA deal, offering clarity concerns of a fundamental nature. As will be illustrated in this chapter, the region was growing apprehensive regarding the commitments it was expected to make by their EU colleagues especially based in the asymmetrical nature between the two negotiating parties. They were also opposed to the introduction of new issues in the course of the negotiations process, issues that were initially rejected at the WTO level³¹

2.2 Liberalization with EU

The history of market liberalization in East Africa was initially pursued under the Structural Adjustment Programs (SAPs) and most skeptics in the region argued that it registered little success in the 1990s. Liberalization agenda was back in the relations between Europe and Africa that time under market liberalization in the EAC-EU EPAs negotiations. CSOs

³¹ Martin Khor No. 2 The WTO and the Proposed Multilateral Investment Agreement: Implications for Developing Countries and Proposed Positions.

influencing the EAC-EU EPA negotiations strongly opposed the level of economic liberalization proposed by the EU. The EU proposal of at least liberalization of 80% of the tariff lines was faced with stiff opposition. The CSOs were concerned that the proposed ambitious levels of liberalization would hurt their domestic capacities to produce competitively and export, that the EU products could take over the EAC markets which would pose a danger to local producers, that the EAC regional integration aspirations would be interrupted and weakened.

The CSOs argued that the world had undergone dynamic processes and that EAC would play a more cautious role in liberalizing their economies under EPA. They cited the credit crunch, global financial crisis and the economic fundamentalism that could eventually face the EAC in future with high levels of liberalization. In their analytical argument, the CSOs presented a case of EAC only being competitive on 10% of the total tariff lines, implying that the EU had a competitive edge on over 90% of the total tariff lines. This was premised on the fact that EAC liberalizes 80 percent for the EU market in a 15-year phase-out period.

In their analysis, the CSOs quantified enormous number of products whose production would be threatened after the implementation of full liberalization as scheduled by the EAC-EU EPA arrangement. The identified critical sectors and tariff lines likely to be affected such as final industrialized goods, chemical commodities, processed oil products, vaccines and antibiotics, intermediate agricultural products, chemical products for agriculture and vehicle industry. To validate their argument, the CSOs proposed that the negotiators prioritize domestic market as well as intra-African trade as well as the EAC regional market. Even with economic liberalism being touted, as a solution to economic challenges, there was a strong believes that domestic markets cannot be swapped in the EAC.

The liberalization being a growing concern during the EAC-EU EPA negotiations, the EU argued that it produces more sophisticated products that were different from the EAC. The CSOs strongly condemned this argument citing its flaws that were reflected in their analysis. These flaws were: that liberalizing the EAC would result into efficiency and ultimately economic growth. The counter argument presented by the CSOs was that market fundamentalism in the era of liberal economies does not fix the development problem. Markets fail if left unregulated and it the prerogative of the state to drive development, regulate markets and pursue policies and strategies that a pro-development and reflect the aspirations of the population. So, their argument was that public policies must be driven by the state and should not be left to the markets.

In their quest to promote rural transformation and regional development, the domestic market was prioritized as a panacea to stimulate purchasing power, promote local production, provide employment for the youth and create more demand for locally produced goods. In the EAC-EU EPA, this promise was not guaranteed. The EAC region that is predominantly agricultural, a well operational domestic market meant that farmers could sell their produce on the local market and gain decent prices. This argument was extended for the manufacturing sector in terms of decent jobs that would attract decent wages and subsequently stimulate the population's purchasing power. This, according to the CSOs is a viable avenue for economic transformation and economic diversification.

Table 2: Market Access Offer: Level of Liberalization

Specification of products to be liberalized under EPA	Contribution in the EAC market access offer to the EC	Rationale for the offer
Raw material and capital goods	65.4%	These tariff lines were already zero rated under the EAC customs union. Therefore, for 65.4% of the liberalized trade, there was no further reduction as often argued by those raising concern on EPAs negotiations. The EAC offered the already prevailing duty free market access to the raw material and capital goods.
Intermediate goods	14.6%	These are intermediate products that are currently attracting 10% duty and which the region does not have comparative advantage in their production. Liberalization of these intermediate goods will contribute towards industrial development through enhancement of competitiveness
Final products	2.6%	Final products liberalized under EPA are at 2.6% of the total offer. These products were offered for liberalization first because the region does not have a comparative advantage in their production, implying negligible negative impact on industrial development.

Source: Mwaniki, P (2011): EALA Workshop on the Economic Partnership Agreement (EPAs) Negotiations

Most CSOs saw neoliberal concept of liberalization of goods and services under the EPA as a clear avenue by the EU to impose stern parameters for exports of goods originating from EAC and in the process use the phase out of charges to infiltrate the region, obtain raw materials for production process by the EU conglomerates involved in agroindustry and manufacturing. This would subsequently generate a market for completed goods from the EU however at advanced or high-priced cost that cannot then be manufactured locally.

2.3 Regional Integration

During the EPA negotiations, the CSOS were deeply involved in influencing negotiating the outcomes of the EAC integration project at the same time, while the EU colleagues had already accomplished and implemented their integration plan. CSOs argued that opening their market to EU products imports before the EAC countries consolidated their intra-EAC market threatened their pursuit for integration. This is because they reasoned; intra-EAC trade encompassed less than ten percent of most countries' exports as equated to the EU whose eighty per cent of all outward trade is intra-EU.

The CSOs felt that the arrangements to pursue the EPA deal would disadvantage most of the small economies whose levels of production were minor in comparison to the more advanced EU economies. Inequality arguments pushed by CSOs was a stark presentation of how challenging the journey to arrive at a consensus would have been. There was a general feeling that CSOs preferred a more intra-African driven trade deal that support cross-border trade and investments as an avenue for economic and social transformation. Regional markets were beginning to spur and deepen the integration journey and growth of competitive economies that were able to spur regional development were ideally pursued.

2.4 Market Access Regulation 1528/2007

The Market Access Regulation 1528/2007 was to expire on 1st, October 2014 and by that time if EAC Partner States would not have signed the Comprehensive EPA with EU Kenya was to automatically begin trading under the GSP scheme with its exports to the EU attracting import duties of between 5 percent and 22 percent. The rest of the EAC countries would continue trading under everything but Arms (EBA) initiative. Kenya's horticultural and fisheries products exports to the EU market were under threat upon the expiry of the 1st October 2014 deadline. These industries were estimated to be creating in excess of 1.5 million jobs as well as safeguarding over US\$ one billion investment due to preferential access to EU market.

Some of these investments threatened to relocate to the neighboring Least Developed Countries, which were to continue enjoying EU market access under the scheme of Everything But Arms (EBA). Due to complexity of withdrawing the Market Access Regulations in the EAC, and the potential negative consequences it would have especially to the Kenyan exports to the EU, there was a solidarity call by CSOs to push for its extension pending the conclusions of the negotiations or until an substitute trade pact was settled upon.

The perceived substantive trade deal that the CSOs envisaged was to deliberately address the key developmental concerns that were missing in the existing EPA text. In their justification, the CSOs in EAC argued that the burden to conclude the negotiations should be endured by the EU due to their inflexibilities they constructed such as intimidating to revoke market access for states that did not sign and ratify EPA. Issuance of unilateral deadlines for EAC countries to conclude and initial an EPA was also perceived as a huge

obstacle not only on concluding the negotiations but also as an act of bad faith in entrenching economic diplomacy.

It is important to underscore the significance of the political dynamics of accessing the EU market as offered during the EPA consultations. EU argued that it was not subject to any substantial lobbying by the industry players for market access in the EAC region. They argued that most EAC markets are too minor and underdeveloped to be of interest to EU business. This was harshly disputed in the sense that both Kenya and Uganda were substantial exporters of key agricultural and horticultural products to the EU and the erosion of market had dire consequences on their economies.

The CSOs in Kenya and Uganda perceived the market access offer by the EU as a “dangling carrot” that was presented to them on a take it or leave it basis. The fundamental critique of the market access offer within the EPA was based on the legal modalities imposed by EU unilaterally on when and whether to withdraw the offer. It never gave room for EAC to ponder or deliberate on its merits or demerits, prepare or even debate. The CSOs vehemently termed its imposition as dogmatic and called on the EU to revise its legal instruments and ensure that any decision taken should not in any form harm EAC producers and exporters. In a temporary instance of market access withdrawal that happened in 2014, Kenya’s exports to the EU attracted higher tariffs immediately the offer was withdrawn.

CSOs laid a claim that the reinstatement of the countries that had not taken the necessary steps to initial the EPA deal, should be done swiftly by the EU without lengthy legal procedures and processes. The EU parliament, which was the custodian of the legal instruments, was mandated to ensure this process did not hurt the EAC producers in the mid

or long term. In order to undertake this exercise, CSOs sought to be consulted widely including being part of state delegations to the process.

2.5 Agriculture

In their quest to ensure that smallholder farmers and producers are protected from the overpoweringly subsidized EU imports into the EAC, CSOs enthusiastically engaged in the agriculture negotiations. The unresolved issues raised by CSOs under agriculture were export subsidies and domestic support that were considered trade distorting. CSOs contended that agriculture was a key pillar to socio-economic transformation of the EAC economies since it employed well over 75 percent of the population and was an important factor in ensuring food security and promoting rural development.

Agriculture is by far the most prospective sector for high growth and value addition and delivers a significant basis of export earnings for all countries in the EAC region. In their advocacy efforts, CSOs drew particular attention to the a report published in 2009 which presented peasants and smallholder farmers as subjects of both discrimination and mistreatment by the neo-liberal economic reform agendas that advocated for free trade and liberalization.³²

CSOs argued that the opening up of agricultural tariffs by the EAC would inescapably expose the region's agricultural sector to firm competition from low-cost commodities and more effective producers from the EU. In addition, they challenged that this would hinder intra-regional trade by dislodging native farmers from the regional markets due to

³² Vandenbogaerde, Dr. Arne. "Localizing Human Rights Council: A Case Study of the Declaration on the Rights of peasants", Journal of Human Rights, 2015

competition from the EU. The EPA negotiations were disadvantaged by deliberations on how best to address the issue of export subsidies as well as trade distorting domestic support measures.

CSOs further argued that domestic support measures lead to unjust competition particularly if they are considered trade distorting by design. To this end, they argued for insertion of a clause obligating the EU to considerably lessen trade-distorting domestic provision particularly on products of export importance to the EAC. The EU equally claimed that domestic supports are only subject to the prerequisite of transparency. In a counter proposal, the EU recommended the abolition of export subsidies on agricultural tariff lines liberalized by the EAC.

The main challenges that forestall the conclusion of the text on agriculture related to the EU's Common Agricultural Policy (CAP) and its perceived implication to production and trade competitiveness. Under this policy, EU estimates production and trade distorting subsidy support to be about 23 percent of the entire expenditures. Although some observers argued that the reforms undertaken on the CAP for the period 2014-2022 have no major implications for EAC, CSOs indicated that the withholding of export subsidies despite a commitment to eliminate them by 2013, the use of Market Price Support (MPS) and any reimbursements that were made directly to farmers that were trade-distorting in nature.³³

Initially, EAC CSOs had insisted that agricultural and export subsidies be included in the text. When the EU countered that these were matters to be addressed under the WTO, the

³³ K Walsh, M Brockmeier and A, Matthews: IIS Discussion Paper No. 99: Implications of Domestic Support Disciplines for Further Agricultural Trade Liberalization

EAC Council of Ministers consented to this proposal as a tactic and insisted that everything else still under discussion at the WTO level be taken from the EPA. This forced the technical teams to resume in February 2014 to attempt to iron out these issues.

The civil society and farmer groups were against the EPA provision that prohibited the penalizing of domestic support measures. Their argument was based on the fact that allowing EU under the CAP to keep domestic support to their farmers was injurious to the agricultural transformation in the EAC. In order to moderate such manifestation, the CSOs called upon the EPA negotiators to introduce provisions with rigid punishments for those who were not clear in justifying domestic support. The EU on the other hand maintained on restrictive obligations to transparency in domestic support while the EAC pushed for accountability on the EU to meaningfully lower trade-distorting domestic support predominantly with respect to the region's agricultural export interests.

On export subsidies, the EU promised to get rid of the export subsidies on EAC's liberalized tariff lines. The CSOs pushed the EAC negotiators to ensure that all forms of export subsidies are eliminated immediately the EPA agreement is signed and not to introduce new ones, or else they encounter public defiance. The EU proposed a language in the EPA text to phase out all forms of export subsidies progressively and not immediately the EPA is signed. The stalemate was openly connected to the nature and strategy of the trade defense mechanisms under the EAC-EU EPA and essentially permitted the EPA council the decree to make the required consents. The CSOs in their rejoinder argued that this couldn't curb import surges in the agriculture sector in the region.

The CSOs warned that the EU's "Green box" measures are limitless under the WTO's Agreement on Agriculture and would severely restrict the policy space of the EAC economies to counter to instabilities in the markets of agricultural like or directly competitive goods. This, they argued would inevitably affect the region's agricultural sector through import competition. With the Special Safeguard Mechanism provision being part of the agreement, but it was not applicable for the EAC countries since it was granted under this clause.³⁴

2.6 Export Taxes

The controversy on the use of export taxes stems from utilization of available trade policy tools for EAC countries as revenue sources to finance their budget deficits. During the EPA negotiations, EU was insistence on the removal on non-tariff barriers for their exports to the EAC region. They had placed a special appeal to the EAC.

To eliminate export taxes and to prohibit them from being applied in future trade. The CSOs in their rebuttal argued that export taxes as key trade policy instruments for governments to raise revenues to finance their budget and development aspirations. The EU on their had produced a broader external policy that was analyzed as a tool to ensure that raw materials exported to Europe did not attract any duties.³⁵

It was argued during the EAC-EU EPA negotiations that the contemporary breakthroughs of oil deposits in Kenya and Uganda and gas deposits in Tanzania presented the region with a natural resource that if exported, would attract taxes. Prohibiting the use of an export tax

³⁴ Only Botswana, Namibia and South Africa use this clause from the African continent.

³⁵ Global Europe: Competing in the World: A contribution to EU's Growth and Job strategy

as proposed by EU was contemplated as solely to the advantage of EU. This tool was analysed as an avenue for them to access key raw materials in Africa to power and drive their industrial aspirations in the future. This would mean massive loss of a key tool for development and allow EU unconditional access to these key raw materials. Consequently, it could portend a restricted policy space to be able to cater for their developmental needs, engage in regional and global value chains, safeguard their infant industries and extract more revenue from the export sectors.

2.7 Loss of Tariff Revenues

With EAC countries heavily dependent on tariff revenues, the CSOs and economic think tanks undertook extensive consultations with the negotiators in order to conduct analytical studies aimed at assessing the costs of signing the EAC-EU EPA in terms of revenues. This was based on the fact that the negotiations were asymmetrical in nature and there were bound to be winners and losers in the deal. EAC countries were faced with piling foreign debt emanating from the developed countries to finance the budget deficit. CSOs were involved in measuring the tariff revenue loss on a yearly basis as a result of signing an EPA. The benefits would be avoidance of duties for African exports to EU compared with the trading arrangement without an EPA while the cost of EPA would be tariff revenue loss.

The main concern on signing of EPA was on the loss of financial revenue, which was considered significant source of government revenues in the EAC. UN commission for Africa (UNECA) projected the economic and social impacts of the trade liberalization facets of the EPA. This study does a detailed analytical assessment on the likely implication of signing an EPA on various aspects of the agreement especially on the contentious issues. The aspect of public finance management was an important aspect of economic discourse

in Kenya and Uganda during the negotiations. CSOs argued that the loss of revenue anticipated after signing EPA would do harm on the economies desire to finance their growing developmental needs.³⁶

2.8 Development Element of EPAS

The contention on the development aspect of the EAC-EU EPA was precipitated by EU's idea that a full EPA will be an efficient development channel. In their liberal fundamentalism nature, EU was pushing for more flexible rules in intellectual property rights (IPR), and competition. This, they portended will be a panacea for the liberalization process and will consequently convalesce the quality of goods and services in EAC. They further claimed that these components would stimulate investments, and expand needed infrastructure and competitiveness and bring about economic growth. CSOs had a more pragmatic approach to development. They were concerned about the welfare of the millions of citizens in Kenya and Uganda majority of who were struggling to make ends meet.

In their comeback, CSOs claimed that there was nothing in the conventional theory that assures such outcomes especially in least developed countries. Nevertheless, paybacks are far from promised, under EPAs tariffs were to be abolished according to a stringent timetable, defensive measures elevated, and policy space to support all resident producers reduced. CSOs further argued that EPAs will necessitate ACP governments to commence substantial restructurings and to plan and generate new policies and institutions, which will have momentous costs committed.

³⁶ Mevel, S., Valensisi, G., & Karingi, S. (2015). Implication of EPAs for Africa's Continental Integration. Addis Ababa

In calculation to these costs, throughout the first stage of liberalisation only, African countries are projected to lose \$359m per year due to tariff abolition. Consequently, EAC countries were apprehensive that while their feeble economies will be incapable to face amplified competition at home and abroad, EPA commitments will also place a weighty pressure on government budgets.

CSOs insisted that the EU had very little to offer to tackle these apprehensions. EU was demanding that EAC countries endure to make in choices now that would lock in vast policy modifications for the next 15 to 25 years. On this, CSOs argued that it was a presumptive measure since the EU failed to prove that these measures would bring about development and that the EU further failed to assure that EPA costs would be met with supplementary finance. The EU repelled EAC demands for EPAs to comprise of development cooperation requirements for four long years (from the beginning of the negotiations until November 2006) and consequently then had only acknowledged non-committal language. Outside the steady funds forecasted for the EAC countries by the Cotonou arrangement. Practically, there were no real guarantees that the European Development Fund (EDF) would have additional funds neither was the so-called Aid for Trade.

The EAC countries had initially attempted to link liberalization assurances to the EU aid transfer and benchmarking, maintaining that each phase of the liberalization and transformation agenda can only be commenced when clear outcomes or yardsticks are gotten and the promise aid is conveyed. The EU was opposed to such provisional liberalisation, demanding that this would not be WTO-compliant or would not offer adequate assurance to businesses – nonetheless, this leaves the threats exclusively with EAC

governments and – worse still – the inhabitants of these countries which are among the poorest in the world.

The rationale of this discussion is significant reminder that the overall objectives of the EPAs have never been specified in concrete, operational terms. What comprises “sustainable development”? What does incorporation into the global economy entail? What degree of “poverty reduction” is tracked? What outcomes should EPAs convey in the next five, ten, fifteen years? CSOs point was clear, when development objectives are not stipulated; it is unmanageable to establish what sequencing is needed to be followed, therefore, when will it be said that EPAs were on the right track in regards to development needs.

The contentions on the role of EPA in fostering development was questioned by CSOs due to EU insistence in undertaking its negotiations objectives and secure liberalization of goods and services. On the differing, the EU has also attempted to ensure that the EPAs adapt as carefully as likely to the EU’s standard approach to trade as described in 2006 in its strategy document. It was obvious during the trade negotiations in two ways. First, Global Europe is centered on EU worries about its market share in the world, its access to energy resources and raw materials, and the cumulative competition with emerging economies.

2.9 Chapter Conclusions

The review from this chapter has established that the CSOs were able to identify the key issues that were of concern to the region especially those affecting the smallholder farmers and producers. The resistance on the key issues was based on their desire and pursuit for economic justice in a trade arrangement that had a superior partner- that is the EU. Most of

the contentious issues under negotiations were pointed out to be the key reason why the negotiations dragged for a long time.

CSOs had the ability to identify issues of key interest to the region based on economic sovereignty of the EAC, the long search for regional integration especially after the initial integration collapsed in the 1970s. Having identified development pillar as a key component of the EPA negotiations, CSOs were left convinced that a trade deal with the EU would deliver that development. The commitments that EAC were required to make were ambiguous, unsustainable and would not guarantee economic transformation since they were based on a liberalization agenda pursued by EU.

CSOs were driven by the desire to ensure economic prosperity anchored on trade relations that were beneficial on a win-win basis devoid of neoliberal dominance by EU. Protection of raw materials and other natural resources for development sustainability was the key motivation behind identifying issues in the negotiations that would threaten EAC's future development. EPA negotiations came at a time when three economies in the region had discovered natural resources. Kenya and Uganda discovered oil deposits while Tanzania discovered massive gas deposits in the coastal region. In order to safeguard future development, the EAC saw these resources as a perfect foundation in guaranteeing economic transformation of its people and as an avenue to steer its people away from poverty.

It is therefore true to affirm that the nature of the issues raised by CSOs depicted economic independence based on productive and competitive economies that prepared to get

integrated into the global value chains. The core of achieving this was anchored by an ambitious EAC integration project that enjoyed the support of CSOs and was driven majorly by the political will of the leaders in the region.

CHAPTER THREE
PARTICIPATION AND INFLUENCE OF CSOS IN EAC-EU EPA
NEGOTIATIONS

3.1 Introduction

This chapter looks at the policy frameworks upon which CSOs utilized during the EAC-EU EPAs negotiations. There is an initial basis upon which Europe and Africa began the consultations of EPAs, and that was comprehensively addressed when the Cotonou Partnerships Agreement was endorsed. The salutation of non-state actors and their “corresponding” role of and potential for “development” creates a groundbreaking part and a requisite leeway of the Cotonou Agreement.³⁷

While controlling their involvement to “where appropriate”, the partnership agreement confines the non-state actors, and as such CSOs are to be abreast and engaged on collaboration approaches and policies, in addition to financial resources and capacity-building support “as part of their contribution in the implementation of the agreed programs envisaged by the arrangement.”³⁸

CSOs are seen as unassertively influential to inconsequential when evaluated on the role they played in the EPA negotiations in Kenya and Uganda whereby their assessment varied on the respondent’s view of CSOs. In those instances where CSOs were matched to other non-state actors per se, and thus encompassed both trade unions and, more essentially, research institutes, evaluation tended to be more positive than in those cases where CSOs were comprehended as non-for-profit interest alliances.

³⁷ Part 1, Chapter 1, Article 4 of the Cotonou Partnerships Agreement

³⁸ *ibid*

3.2 Stop EPA Campaign

Most of the respondents in this research cited the “Stop EPA Campaign” as reference for CSOs involvement in the EPA negotiation process. It was during the European Social Forum that happened in London in 2004 that the “Stop EPA Campaign” was launched as an initiative of the Africa Trade Network (ATN), an Accra-based wing of the Third World Network, alongside a barrage of European NGOs such as 11.11.11, Action-Aid International, Oxfam and was later joined by national based CSOs and farmer movements.³⁹ The distinctive message from the “Stop EPA” campaign was a clarion call on national parliaments and governments to interpose with the EU for a postponement of the EPA deadline post-2007 in order to incorporate the key elements of a “development friendly” alternative to EPA.⁴⁰

Stop EPA campaign continuously warned against the EPA as a deal that could sink the poor countries especially the least developed once. The campaign leaders censured the EU of using EPA as an avenue to re-colonize Africa. This standing in contradiction with the EU is to be implicit within the wider outlining description of the WTO negotiations. Within the EAC, Oxfam had launched a similar major campaign just before the WTO ministerial conference in Cancún, Mexico that attracted approximately three million signatures. But although the campaign’s speech-making reflected that of the WTO, where a minor number of internationally functioning NGOs, and predominantly Oxfam and Action Aid, shaped the center of the civil society’s resistance group that wanted to protect the benefits of the developing countries against the dominance of the developed countries.⁴¹

³⁹ The Journal of Pan African Studies, vol.7, no.10, May 2015

⁴⁰ About 160 organisations had joined the Stop-EPA movement by 2008 and the campaign was still active up to 2015

⁴¹ The standard Wed, December 21st 2016 Read more at: <https://www.standardmedia.co.ke/business/article/2000227483/eu-could-cut-aid-to-nations-frustrating-its-trade-agreement>

The CSOs dialogues organized under the banner of the Africa Trade Network were instrumental in driving the consultations with the key economic and political influencers. The interviewee mentioned the resistance they faced in particular for their continued partnerships with European based NGOs. The EU NGOs had an upper hand since they had a quarterly dialogue with their DG, Trade as part of the Civil Society Dialogue (CSD). This meant that their apprehensions were openly debated within an institutionalized forum with commission officials.

Nevertheless, though official announcements presented in the CSD gave the impression that the Commission was conceitedly enthusiastic to contain the campaign, notwithstanding the fairly good access to decision-makers in the Commission, little tangible change in position could be causally located back to the incorporation of concerns by the Stop EPA campaign.

3.3 Pursuing Equality and Reciprocity

REPAs (later changed to EPAs) were to be negotiated after 2008 - to replace non-reciprocal preferences with reciprocal relationship. Why? Because it was argued that the European ‘preferences’ for Africa were incompatible with the WTO principle of reciprocity, and unfair to the rest of the trading community, especially other countries of the South - such as the Philippines and Costa Rica - that did not ‘enjoy’ such preferences.⁴²

It was a significant concern by the CSOs to understand the meaning of “preference” and “non-reciprocity”. When and why did these terms become part of the vocabulary of international trade? How did non-reciprocity become an aspect of the preferential trade

⁴² Tandon, Yash (2015). Trade is War” OR Books, New York and London (pg. 87)

regime? *Was the 'preference' given to Africa really preferential? Was it a 'concession' given by Europe to Africa? Or was it, perhaps, the other way around, preference given by (or taken from) African nations to the particular imposing countries that controlled their economies? The questions are rhetorical, of course. But just for CSOs to raise them was significant.*

The original concept used in the Cotonou Agreement (CA) was REPA – Regional Economic Partnership Agreements. Slowly the 'R' of REPA was dropped. How did this happen? And why is it important to know this? The principle of regional integration is very important for the ACP countries. Cotonou Time-Table of phased negotiations was as follows:

1. Start up process: ACP-wide consultations; Regional consultations
2. ACP Action Plan
3. ACP Ceremonial Procedures for Negotiating New Trade Arrangements.
4. Technical assistance in maintenance of EPA negotiations.
5. Phase I: Action Plan from Jan 2001 to Sept 2002
6. Phase II: 2004-06 Substantive Negotiations
7. Phase III: 2007: Concluding & signing

The first item on the agenda was “regional consultations”, and fourth item “capacity building”. The first was carried out most superficially and hurriedly, and the fourth almost none at all.

There were continued delays in conducting strategic EPA meeting and financing technical researches as had been envisaged under Cotonou Agreement. This happened frequently. The EC was sitting on the purse string and not releasing the money as it had committed to in the CA. As indicated earlier, the ACP ambassadors work out of the "ACP House" in Brussels

owned by the EC, and they depend on the EC largesse and *per diems* to attend meetings and conferences. With such a degree of dependence on EC funds, it was hopelessly naïve to assume that the EC would go out of its way to finance regional seminars and analytical studies.⁴³

All the cards were stacked against the ACP and in favour of the EC. The EC decided the pace of the process of the negotiations, the agenda, and the preparations leading to the negotiations, and the text to be negotiated. Every time it was the EC that produced the text and the ACP ambassadors had to either sign on the dotted line, or “negotiate”. The EC was always in haste to get on to phases II and III (see above). The EC bureaucracy was under increasing pressure from lobby groups (such as, for example, the food industry or the pharmaceutical companies) and so was always in too much of a hurry to get things “stitched up”.⁴⁴

The result was that the ACP countries were never able to reach their ambitions of regional integration or for that matter a studied analysis of complex issues presented by the EC. For many ACP embassies, the staff turnover was frequent and capricious. And so when the EC deftly dropped the ‘R’ in the REPA concept, nobody in Africa even noticed it, and soon the negotiations were about the EPAs. In the end Africa was so divided that the EC started negotiating with individual countries, dictated by the whims of the EC bureaucracy in Brussels rather than by the development or welfare needs of the people of Africa.

⁴³ Tandon, Yash (2015). *Trade is War* OR Books, New York and London (pg. 71)

⁴⁴ *ibid*

3.4 Challenging EPA Application

In order to keep the public out of what was being negotiated under the EPA deal with the EU, EAC governments made it a default position to lock them out of the proceedings. Even the evidence detailing their public preserved positions and aspirations, which they discussed in detail with Europe, as confidential and inaccessible.

The effect is that citizens and citizens groups who ultimately bear the brunt of agreements have usually been in dark about the agreements, unless they badger their way into the process. Bizarrely, EU has necessitated African CSOs participation to the EPA consultations, largely due to the pressure they received from their own citizens. In most cases, there were divide and rule tactics on CSOs that were initially seen as being more vocal on issues of EPA and they could not be allowed by EU to consistently state their position. In most cases, most of these CSOs had to fizzle out of the radar. Some CSOs that were initially vocal resurfaced back and had taken a different and more supportive approach to negotiations, calling for immediate signing of the deal. Most of these were in cohort with the private sector organisations whose interest on the deal was a matter known to the public. By withstanding the negative perception created by their own governments, CSOs in EAC demonstrated their responsiveness as a critical player whose contribution was used by the negotiating teams to develop their positions. They have prepared and passed to the table the assessments and distresses of a sundry collection of socio-economic citizenries whose welfares and incomes have been incriminated in the precise formulations approved in the EPAs – from domestic enterprises, to farmers, to traders. It's probably not an exaggeration to say that had it not been for this work, a much more atrocious version of the EPAs would long ago have been concluded across Africa.

The EU has been accused of exploiting its financial and economic leverage over Africa, as well as the lack of cohesion among African countries during the negotiation processes, to push through the EPAs despite stakeholder objections and reservations on account of their potential negative impacts. For example, the tight deadlines unilaterally imposed by the EU for concluding the negotiations, as well as the EU's threat to renounce privileged market entrance for states that flopped to meet these deadlines, placed enormous pressure on participating African countries to the point of creating tensions between governments and various societal groups.¹³

At the same time, African leaders as well must bear some responsibility for their failure to build cohesion and articulate a common position on the EPAs and the issues involved. A related aspect of the EPA negotiations that has thus attracted strong criticism is their state-centric nature. The negotiations were essentially high-level government-to-government processes that, by and large, excluded many other important stakeholders, including business, trade unions, and broader civil society. Not surprisingly, the EPA negotiation processes were characterised by recurrent protests by diverse interest groups that objected to the agreements.

In Uganda, for instance, regional organisations led by SEATINI-Uganda endeavored vainly to convince the government from signing the EU's so-called "stepping stone" EPA for fear that it would lead to the total collapse of Ugandan industries. The segregation of a range of stakeholders from the negotiations of the EPAs raises a number of challenges for the application of the arrangements going forward. First, the segregation has made it problematic for numerous stakeholders, particularly those at the grassroots level, to be conversant with the deal. Second, this has built a "select foundation", which makes it

demanding for stakeholders at the margin to support the application of an agreement they did not participate in formulating.

Third, given that trade negotiations, by their nature, are complicated, tortuous, and offer little or no room for re-negotiation once they are signed, and taking into account the EU's strong negotiating capacity, Africa needed to have been represented by strong – trained, knowledgeable, experienced, and multi-disciplinary – teams of negotiators. Some civil society actors in South Africa hold that weak negotiating teams represented African states and that more inclusive teams could have negotiated a better deal. The view has also been expressed that apart from their exclusion from the negotiation process, civil society stakeholders have not been sufficiently engaged since the signing of the EPAs.

Through such evidence-based analyses and dissemination activities, NGOs painted a comprehensive and vivid picture of the impact of the EPA on EAC's economy and advocated for rejecting such a trade deal. While the EAC Partner States themselves showed little enthusiasm for the EPA, there is significant evidence to suggest that the active involvement of NGOs influenced the Partner States' decision not to sign the agreement.

3.5 EPA Court Case

The utilization of lawful right to obtain impartiality by smallholder farmers and CSOs was pursued when there was a general feeling and realization of non-inclusiveness and lack of transparency in the consultations. In their petition, the plaintiffs aimed at halting the debates pending the determination of the controversial clauses and arrangements are commenced for hands-on and knowledgeable discussions of the trade pact. The plaintiffs in their submission were mainly concerned about the levels of market access offer that the

negotiators were offering the EU claiming that it was overly generous given the low levels of progress and the disproportionate nature of the consultations.⁴⁵

It is not worth mentioning that when the litigation option was floated by select number of organizations, some key players were not convinced that going the legal way was going to bear any fruits. The legal system for pursuing economic justice was not significantly well established in both countries but was better structured in Kenya. This was during the judicial sector reforms that were happening concurrently.⁴⁶

Moreover, that Regional integration and economic development was to slow down since the agreement emphasized sharing of the accrued benefits to other countries rather than the EU must be done on a quid pro quo basis. They were troubled that the EPA comprised of provisions whose results hamper market entry for EAC goods and services, by presenting severe and irrational circumstances involving to the “Rules of Origin” and “Trade Facilitation.”

The EPA was to subvert the sovereignty of the EAC states by reducing their competence to guard local manufacturers over taxation of imports that might put local producers out of business; guarantee food security and satisfactory supply of indispensable goods through the rising of export duties in times of need; and produce satisfactory income for the delivery of crucial services through taxation, hence, making local governments vulnerable to dependence on foreign and domestic credit. The EPA was to generate a trade affiliation that confines local industrialization since it fostered a nation where raw materials and unrefined

⁴⁵ Petition 1174 of 2007: Kenya Small Scale Farmers Forum & 6 others v Republic of Kenya & 2 others

⁴⁶ *ibid*

goods are exported to Europe, while ultimate products of the same are imported back to the EAC.

The plaintiffs argued that the loss of tariff revenue for the provision of essential services would force the government to increase consumer taxes on basic commodities, including food thus increasing commodity and food prices. The Petitioners further faulted the process that the EPA document was agreed upon. They argue that the arrangement as it stood ignored welfare concerns brought forth by the plaintiff and the citizens at large. Further, they challenged modalities employed in the process of discussions on the basis that governments blatantly ignored the international best practices of honoring the commitments on public participation in the entire process.

In their petition, the plaintiffs complained that; At paragraph 24 of the Petition, they complain that; *“Contrary to the declared principles and basis for negotiations the EPA process has been solely driven by the Government of Kenya with selective and discriminative admission of participants, thereby excluding the Petitioners or their representatives from participation in the negotiations.”*⁴⁷

To further make a stronger argument in the petition, the plaintiffs filed two sworn affidavits that were based on additional policy researches conducted in support of the case. In both of those affidavits, the petitioners condemned the procedure by the state citing lack of a proper plan of engagement for CSOs and interested parties to the agreement, lack of key apparatus for accessing and sharing of information requisite for them to draw informed conclusions

⁴⁷ Petition 1174 of 2007: KSSF & 6 others V Republic of Kenya & 2 others, paragraph 4

in the EPA process. There was no proper sanctioned civic inquiry encompassing shareholders and the population.⁴⁸

Notwithstanding all the apprehensions raised the government was still hell-bent in finishing and signing an EPA exclusive of appropriate discussions as mandated by the constitution. Consequently, they required that the government adjourn the consultations between the EU and the EAC until producers' concerns are tackled. That the Kenyan government assurances access to information prepares participants and institutes frameworks for well-thought-out contribution of stakeholders in the negotiations; and that it institutes actions that boosts the competitiveness of local producers in the global market and to shun adoption of an arrangement that requires EAC countries to open a large proportion of its sensitive market in a huff. The petitioners anticipated that the court grants them and sanction hindering the government from signing the EPA deal until all the controversial areas are ironed out. They further argued that the EU stops the campaign of bullying and frightening the EAC countries into signing the EPAs and engages in the process in good faith.

The petitioners anticipate that the court will grant an injunction stopping the government from signing EPA until all these issues are finally resolved. The plaintiffs averred that the self-determination would be compromised if the deal failed to meet the basic requirements that undermined state sovereignty such as right to food as enshrined in the constitution. They drew fear out of possible dumping of cheap and subsidized products that would access the EAC market from EU. Especially producers whose interests were to pursue economic and social transformation considered this unfair competition. They felt that the deal never gave them this guarantee.⁴⁹ There were no impact assessments undertaken by autonomous

⁴⁸ *ibid*

⁴⁹ Petition 1174, of 2007, KSSF & 6 others v Republic of Kenya and 2 others [2013] paragraph 41

researchers around various disciplines. Parliament on the other hand, which is a legislative organ, was not involved and its endorsement attained.

Standard practice dictate that the executive which is mandated in pursuing treaty negotiations or through cabinet led by a cabinet secretary are to be guided by various constitutional provisions in order to make an informed position based on the likely impacts of that particular treaty. The Act infuses clearness in the treaty making procedure by advocating for cabinet and parliamentary backings. It also encourages civic awareness by delivering for agreement and tabling of pacts before the National Assembly yearly and publication of the similar in the native dailies.

The high court through its human right department after perusing through the evidence presented to it gave far-reaching orders. They directed the respondents who were government to launch a method for connecting shareholders incorporating the petitioners in the EPA negotiations within thirty days. They were further ordered to circulate communication concerning the discussions by circulating on a regular basis on at least two local newspapers in order to elicit public discussions round the issues.

3.6 Legal Scrubbing of the EPA Text

Selected CSOs from both Uganda and Kenya contributed to the legal process that was undertaken in the EU capital Brussels on 9th to 13th October 2015. This procedure occasioned cleaning up the EPA text after rounds of discussions on unresolved issues. Being a high level technical officials meeting, CSOs were only permitted to contribute at their own expenses. The few who succeeded to take part in this process reported that the legal

scrubbing opened up new areas for discussions that were still controversial. The language used in the text by the EU was challenged and branded confrontational.

The legal scrubbing progress was primarily smooth but the last two rounds brought about disparities in the way the two parties interpreted certain sections, presented new language which amounted to renegotiations, regenerating texts which had previously been settled throughout the EPA negotiations. Nonetheless, particular issues according to Kenya were not as problematic as articulated by Tanzania and Uganda particularly on the definitions. There were areas that the EU introduced old language which had previously been scrubbed and agreed to remove, or introduce entire new texts, particularly on security exception and geographical indications.⁵⁰

The EAC in some cases maintained its position even where it was clearly reaching a compromise would lose nothing. This emanated from the fact that EAC should have one position even where some do not support such a position especially on matters of definition of the EAC party. As a result, the meeting could not agree on a number of areas including on the agreed matrix that had been developed against the EAC and National positions. The CSOs and the Kenyan delegation to the last legal scrubbing were toiling with the idea of concluding the exercise even though this was not the final outcome. In case the process of ratification takes longer than anticipated (as could be the case due to dissimilar internal processes by other parties to the EPA), they could separately adhere to endorse the arrangement, before the interim submission, to the level sufficient.

⁵⁰ Ministry of EAC, Kenya, EPA negotiations in Brussels, 14th October 2014

3.7 Lobbying Key Influencers

The CSOs were tactical in the way they disputed the case against the ratification of the EPA, and this involved speaking and engaging key powerful personalities within EAC and EU. Lobbying ensured that CSOs concerned was brought to the attention of high-ranking public figures that could directly speak truth to power. Some included retired politicians and influencers who had occupied key government positions and had prior knowledge and experience on diplomatic negotiations and processes.

Among the key influential personalities was former Tanzanian president Benjamin William Mkapa whose mandate was to influence the then president Jakaya Mrisho Kikwete. A CSO representative presented twenty-one issues that had been researched and convinced the then president of Tanzania to rally his counterparts in Burundi, Rwanda, Kenya and Uganda not to sign the deal. In his own statements, former president of Tanzania, Benjamin Mkapa constantly maintained that there was no basis upon which Tanzania was to sign the EPA agreement.⁵¹

⁵¹ ICTSD reporting; “Don’t sign EU accord, Parliament tells govt,” The Citizen, 9 November 2016

Table 3: The seven most contentious issues in the EC-proposed text to the EAC on FEPA

No	Issues presented to former Tanzanian president Jakaya Kikwete
1	FEPA demanded 80 percent tariff liberalization from EAC. This would open EAC market to a flood of foreign imports that would kill whatever industries the EAC had locally and cause massive unemployment.
2	FEPA permitted around fourteen percent of all the imports from the EU as sensitive goods to enter EAC. This was insufficient. To obtain a comprehensive trade policy that spurred economic transformation, the region should have a flexible trade regime that safeguards its production over a long term.
3	EU did not eliminate subsidies in their food industry, and was unlikely to do so in future because of the political dynamics the sector had across the EU. Hence under FEPA they could produce bankrolled food into the EAC region, and impend the region's food-based industries and long-term food security.
4	The standstill Clause under FEPA (Art.13) forbade the EAC intensification of tariffs during twenty-five years of liberalization. It would exclude the use of tariffs to protect future East African industries and, in any case, it was incompatible with GATT Art 24.
5	<p>Article 15 of FEPA disallowed new export taxes, or made them difficult to apply. This policy limitation was incompatible with WTO rules. More importantly, the EAC needed export taxes to preserve its natural resources for its own future industrialization.</p> <p>The MFN clause (Article 16) of the FEPA demanded that any concession the EAC made to, for example, China, India or Brazil, would have to be extended to Europe. This would effectively undermine East Africa's efforts to build South-South relations.</p>

One of the key outcomes harvested by CSOs from this meeting was the fact that President Kikwete assured them that the EAC region would not be divided on the EPA issue. He averred that the integration journey pursued by the EAC member states should be reflected

in the EPA negotiations and that the trade deal should not be used as a tool to divide the region.⁵²

3.8 Lobbying Key Institutions

CSOS in Kenya and Uganda were very tactical in the way they influenced the major institutions that were part of the EPA processes both locally, regionally and internationally. Regionally, it was the East African legislative Assembly's engagement with CSOs that heralded a new era of delayed EPA talks. Due to their regional reach, they constantly passed declarations to the EAC ministerial council to involve their EU counterparts in addressing the controversial issues of the deal prior to conclusion. CSOs held regional seminars and workshops in a bid to persuade the regional legislators on halting the talks due to the inherent dangers posed by the deal.

CSOs utilized the annual secretary General's forum to push for an anti-EPA agenda and presented petitions, resolutions and recommendations that should be taken up by the negotiators in order to disclose the solidarity. The forum was a well-structured event that allowed CSOs to present their concerns and proposals that could enable the region integrate more deeply. The insisted that the region must negotiate and any signing must be made by the entire block as opposed to the single country being coerced to sign the deal.

The African union (AU) was instrumental in inviting the CSOs to attend consultation meetings within the region. The AU's efforts were to ensure that the continent is able to speak in one voice regarding the EPA outcomes. In a meeting held in Arusha Tanzania in

⁵² Reporter 2014. 'EAC tasks Kikwete on central corridor', Citizen, 1 February.

September 2010 and attended by about fifteen African ambassadors based in Brussels, EPA negotiators from various capitals, the CSOs presented the controversial issues and proposed a more detailed approach to resolving each of them. They issued a separate press release and spoke to the media on the importance on regional cooperation in tackling the contentious issues. In their statement, they emphasized on the leadership roles that are supposed to be played by major countries in Africa in counterattacking EPA deal.

3.9 Chapter Summary

The responses captured in this chapter show that there were concerted efforts by CSOs to influence the outcomes of the EPA negotiations. The responses from CSOs reflect courage, resilience and regional comradeship in pushing for a positive outcome of EPA that could not leave the EAC region worse off than they found it. The creation of a robust South-South movement to defend the interests of the countries party to EPAs is a clear reflection of the influence the CSOs harbored over time on matters economic negotiations and diplomacy.

CSOs responses indicated that their contribution in the EPA process is responsible for the delay in signing the agreement. CSOs ability to employ multiple tactics to achieve a positive EPA outcome is a reflection of their creativity and consistency. They were able to position themselves strategically as core part of the policy making process by raising their voices on matters of EPA. In the instances where they felt their contributions were not adhered to, CSOs quickly changed tactics and adopted strategic methods of influencing the negotiations.

It is worth noting that CSOs were able to create wider allies not just in the Pacific and the Caribbean regions that also negotiated EPA, but also in the EU and the US. A number of

Western based CSOs were also opposed to numerous provisions of the EPA agreement and in order to communicate this clear to the negotiating parties, they showed solidarity jointly with their counterparts in Africa. The responses further establish the CSOs aptitude to influence the political class in their respective countries. They tactically reached out to retired presidents and eminent persons who had served in previous government as a way of giving the EPA debate much needed weight.

CSOs push for a common position on EPAs despite concerted efforts by the EU to have countries sign on individually was vehemently rejected and communicated in unison. Their ability to present evidence based outputs such as research papers and analytical briefs boosted their credibility as an important source of information to be relied upon by the negotiating parties. The credibility of the information generated by CSOs was widely disseminated through multiple channels to signify the rationale behind using facts to influence the outcomes of the EPA negotiations.

CSOs role and importance in the EPA negotiations was appreciated and unacknowledged in equal measure especially by the proponents of the negotiations who perceived them to be a setback in reaching an agreement. Having learnt about the divisions in the EPA negotiations, CSOs strategized to identify key entry points, obtain political and public support requisite to influence EPA outcomes. Their strategy was not only local or regional but also international.

CHAPTER FOUR

CONSTRAINTS FACED BY CSOs IN KENYA AND UGANDA DURING THE EAC-EU EPA NEGOTIATIONS

4.1 Introduction

This chapter culminates in presenting the constraints faced by CSOs during the EAC-EU EPA negotiations. Trade negotiations became more essential to the non-state actors due to the growing demand for public engagement in shaping trade policies anchored in legal and institutional frameworks as enumerated in chapter three. Since the CSOs are not official elected representatives of the people, their influence and participation in the EPA process was faced by abundant constraints some of which were maneuvered and tackled in the process. In order to achieve this objective, this chapter attempts to systematically analyze the views of CSOs representatives on the constraints they faced in influencing the outcomes of the EAC-EU EPAs.

During the EAC-EU EPA negotiations, North-South CSOs interactions were instrumental in addressing the challenges that existed in their attempts to influence the outcomes. Borrowing heavily from the CSOs in the global north who had a past vast influence in influencing the outcomes of trade negotiations, CSOs in Kenya and Uganda created and enhance these interactions, harvested the learning that enabled them have more meaningful engagements. To set the context presented by this research, the constraints faced by CSOs in influencing the outcomes of the EAC-EU EPA trade negotiations were both internal and external in nature.

4.2 Complexity of the Trade Issues and Lack of Expertise

First, due to a dearth of expertise on the technicalities of trade matters, very few non-state actors were engaged in the consultation process during the EPA negotiations. The topic of trade is complex and technical, and only few CSOs could support the EAC Partner States with evidence-based policy analyses and impact studies needed to back advocacy. Building the technical capacity of CSOs is central and should be supported by encouraging partnerships between non-research CSOs, universities (with expertise in international relations) and other research institutions (such as think tanks).

CSOs from the global north were at a more advantageous position since they were better resourced, organized and could offer more technical support to their counterparts in the global south. Most CSOs in Kenya and Uganda could not match the expertise that existed in other key institutions such as the think tanks, universities and research institutions that were able to churn out intellectual products that were a basis for negotiations. The few CSOs who had the capacity to produce the same claimed that they lacked the right channel and avenues to influence the EPA outcomes.

CSOs provided some insights on how it was challenging for them to produce evidence that was framed in a manner likely to influence the talks. Whenever they produced such outputs, their EU counterparts would use the report to reframe their position, rendering the researches inappropriate to speak to the controversial matters.

Many CSOs in Kenya and Uganda had extremely few experts who possessed deeper knowledge on EPA trade talks. In addition, few organizations had representation in the EU capital Brussels, and this subsequently restricted their influence to their home capitals. The

ones who participated locally never had a personal persuasion, charisma or the prerequisite work ethic pertinent to keep up with the negotiations. Most who responded claimed that steadfastness; personal charm and repute of the personalities from had a very momentous weight on how much CSOs contribution was taken into consideration by the negotiators.

Technical knowledge on the complex EPA issues especially the legal provisions was challenging for most CSOs. The importance of the diplomatic skills, which CSOs lacked, was considered a hindrance to their impact. They were accused of being combative and insensitive of foreign relations and doctrines of commercial diplomacy. The diplomatic abilities revealed the need for CSOs to be adaptable, sincere and transparent. On the other hand, CSOs averred that EPA negotiators were influenced psychologically based on their colonial ties. They argued that in EPA talks, some negotiators were prejudiced to either expect the EU to be compassionate or, at the other severe, to postulate that they will have no unconditional authority at the negotiations table and so surrender totally.

CSOs cited instances where some negotiators constantly diluted their contributions since by then they lacked the decree to represent the people. Turnover in many organizations who either joined government or the private sector was a significant setback to their pursuit of influencing the outcomes. The institutional recollection and eroded expertise meant that they either had to retrain new people or hire fresh expertise to take up these roles. This was challenging since the market lacked these skills. In few instances or turn-over, the expertise with deep knowledge absorbed by the private sector or government were used to counter the positions presented by the CSOs since they had accumulated insider information.

4.3 Lack of Data and Information from Negotiations

The complexity of EPA negotiations required that CSOs have the relevant up-to-date data and information required to develop their position to influence the outcomes of the negotiations. The survey question asked what sources of information CSOs rely on to influence the EPA negotiations. Precise and appropriate evidence is central in framing trade policy and for formulating goals and priorities for trade negotiations. In the interviews conducted in Kenya and Uganda, this research investigated the degree to which information was accessible to the CSOs and their bases. The conversations with CSOs who took part in negotiations underscored a solid opinion that poor quality information was a momentous limitation to their involvement.

This research shows that CSOs in Kenya and Uganda relied greatly on a collection of sources for information, comprising that generated by them, governments, international organizations, autonomous research groups, think-tanks and other parties to the negotiations, and Brussels based missions. The interview question asked: “If you have communicated your views on participation in the EPA process to officials. If yes, what has been the outcome of it?” The results show that most CSOs depended on research conducted by independent researchers, NGOs, international NGOs, universities and research centers, think-tanks and a few of them relied heavily on the researches from UN agencies working on the areas of trade and economic governance, private sector as well as intergovernmental organisations and Brussels based missions.

The attribute of evidence to which the CSOs had access to was also alleged as a major constraint. They acknowledged gaps that came with that sort of information. Most CSOs stressed the prominence of refining the quality of economic impact assessments on EPAs,

highlighting on such information to be custom-made so they can straightforwardly be connected to shaping a negotiations position. CSOs stressed the need for enhanced intelligence on the benefits of the negotiating partner saying that they studied this to be the single supreme significant kind of information. Others noted the need for statistical data and information but acknowledged that this required enhanced human resource capacity specifically analytical skills to best effect.

External independent consultants and capacity building programs were frequently used to try and increase the superiority of information and address the gaps. The information delivered by think tanks and external consultants did not continuously meet the requirements of the CSOs to influence the EPA negotiations. An additional challenge, as perceived above, is that independent outside consultants, occasionally entrenched long term in capitals, may be bankrolled or assigned openly by the same governments with who CSOs were engaging in EPA negotiations, raising uncertainties about the neutrality of information. In particular, evidence gathered by consultants was not always a true reflection of the economic realities of either Kenya or Uganda and tended to be regional rather than country specific. The CSOs raised additional perceptions in regards to the political intricate in obtaining government information.

In sum, insufficient access to timely and accurate information was a significant constraint for CSOs and is closely related to human resource capacity. Although they had abundant information accessible, they were met with extensive human resource-related constraints in examining it and turning it into tangible negotiations positions. Some evidence was not accessible for CSOs such as impact assessments on various positions taken by government negotiators or even the implications it would have on specific aspects of the domestic economies.

4.4 Lack of a Clear Strategy to Inform CSOs Participation

Since cooperation and alliance building is considered an important element for effectiveness and meaningful participation of CSOs, this research identified this aspect in greater depth. This research shows that most CSOs in Kenya and Uganda were participating in the EAC-EU EPA negotiations in form of a coalition, network, working group or an alliance. Few organizations took positions independently mainly due to their institutional values and principles while others were working closely with government to an extent they could not contradict state positions.

CSOs in Kenya and Uganda lacked a joint strategy on how to both plan for the negotiations and influence the EPA negotiations. They cited lack of clarity on the positions their government took, weak coordination and convergence on the issues in the negotiations that affected their participation. In some instances, CSOs issued contradicting statements to the public through the media, and this was used against them during the EPA negotiations. This adversely affected coalition building among CSOs and further weakened their influence in the negotiations process.

There were reasons that enabled CSOs in Kenya and Uganda to negotiate together primarily due to the fact that both countries were active members of the EAC integration agenda. Secondly, the trade between the two countries was so significant that it could be disrupted by a third party agreement through trade diversion and since the two shared the same customs territory, it was imperative that CSOs attempt to come up with joint negotiations. The assembling of expertise within the CSOs was becoming a challenge in building an effective strategy to influence the outcomes. Therefore, the coalitions of CSOs were considered primarily offensive rather than defensive.

There were conflicting interest-based reasons that curtailed CSOs in Kenya and Uganda from crafting a joint strategy to influence the EPA negotiations. Since different CSOs worked on different issues related to the EPA campaign, finding consensus was proving more challenging. Expanding the sizes of coalitions and networks in many instances undermined the influence CSOs had on EPA negotiations while keeping them lean was more fruitful. However, other CSOs organized themselves around a critical issue in the negotiations and were able to present a common position. In some instances, this strategy worked against CSOs when for instance the issue was either struck off the negotiations or resolved in their favor.

Few CSOs pursued an interest-driven, rather than philosophical tactic to coalition building making them participate in more coalitions and networks around the EPA negotiations including some outwardly unlikely associations from Europe. Where interests deviate within a coalition, CSOs were still able to collaborate by working to limit the plan to subjects of shared interest. Sometimes, coalitions were beneficial to advance legitimacy for certain negotiating objectives such as agriculture and regional integration that most CSOs considered as significant. Consistent with this reason was the preparedness also to act solitary in cases where this would better attend to national interests.

The decision-making processes within CSO coalitions and groups could have significant impact on their efficacy. Most CSOs operated from a code of consensus building and spent substantial amounts of time struggling to harmonize varying interests at the same time spending much time lobbying the EPA negotiators. In some instances, CSOs had to change their positions and begin the lobbying process afresh due to lack of an effective strategy. This leeway largely depended on the flexibility and responsiveness of the negotiators.

4.5 Legal Challenges

There was an extensive debate among CSOs regarding the alignment of the EPA deal with the principles of GATT rules. The Cotonou arrangement endorsed in 2000 framed EPAs, as an avenue to turn the existing trade arrangement between the EU and ACP is compatible with the WTO rules. CSOs hoped to see a more reciprocal between the EU and EAC that reflects a trading regime that is not only free but also grants collaboration in other areas.⁵³

Legally there were two sets of issues threatening EPAs raised by CSOs; one was the compatibility with the prevailing trade procedures, and two, the steadiness with the upsurges in the WTO negotiations. The CSOs argued it was imperative for countries to preserve their preferential admission to the EU despite the fact that reciprocity would mean gradual opening of their domestic markets for EU imports. Compatibility with the WTO rules was elaborated clearly during a Ministerial conference in Doha in 2001 that stated.⁵⁴

4.6 Lack of Coordination among CSOs

Preferably, CSOs working to influence EAC-EU EPA negotiations would work inside well-harmonized trade policies and priorities built around their positions. Similarly, the success of CSOs involved in EPA negotiations would be measured against their ability to have their negotiations positions adopted by the government in the outcome documents. CSOs in Kenya and Uganda developed their positions based on the outcomes of numerous rounds of negotiations, and in instances where they could not obtain up to date information it was relatively difficult to come up with solid positions.⁵⁵

⁵³ The Cotonou Agreement 2014 Signed in Cotonou on 23 June 2000 Revised in Luxembourg on 25 June 2005 Revised in Ouagadougou on 22 June 2010 and multiannual financial framework 2014–20

⁵⁴ Article XXIV of the General Agreement on Trade and Tariffs

⁵⁵ <file:///Users/fnjehu/Downloads/Trade-Notes-EU---EAC-Economic-Partnership-Agreement.pdf>

During the negotiations processes, Kenya was ranked higher in the pecking order of the UN classification, while Uganda was considered as least developed country (LDC) meaning that the implications of EPAS on these two countries differed significantly. However, as a compromise, the CSOs argued that the levels of development in the entire region was not so different and that this was a divisive tactic used by the EU to coerce countries to sign on to EPAs. In maneuvering around this challenge, CSOs in both countries had agreed in principle to come up with similar positions and in cases where there are conflicting interests, offer solidarity support. The numerous joint statements and positions that were issued and presented to negotiators in both countries reflected this.⁵⁶

There was no formal coordination mechanism for CSOs in Kenya and Uganda and their levels of interactions with government negotiators differed. In Uganda, there was a cordial relationship between CSOs and negotiators while in Kenya; there was growing mistrust by government teams on CSOs involvement on trade negotiations. However, the outcomes from the negotiations was regional in nature, so the CSOs used that avenue to share information across, do analysis and develop positions.

A more unified front and better coordination would help improve information flow and greatly improve the effectiveness of CSOs advocacy. While information on the EPA negotiations was well published and visible to CSOs at the negotiation table, there seemed to be a break or a lag in transmitting information down to CSOs that were not directly involved in the negotiations. For instance, only staff members and participating state and non-state actors could access key documents on the EAC website. It is critical for participating CSOs to transfer such documents broadly to aid the advocacy of a wider group

⁵⁶ *ibid*

of CSOs. At the international level, better information flow would have allowed other CSOs and countries to better understand the reason why Tanzania has so far refused to sign the EPA agreement.

4.7 Financial Resource Constraints

The EAC-EU EPA talks were financially strenuous for most of the CSOs in Kenya and Uganda. With the EPA negotiations content being technical and evidence-based, this meant that most CSOs capitalized heavily in conducting research and policy analysis on the consequences of signing the EPAs on diverse areas of the economy to inform their positions. Gathering evidence meant that many CSOs had to invest heavily on building the capacity of researchers and policy analysts including sending them for overseas trainings to gain the knowledge and skills required to generate information, conduct deep analysis and present policy positions to government negotiators.

The costs related to participation in trade negotiations sessions were prohibitive for most CSOs and they could not keep up with the numerous sessions that were being undertaken in major capitals across the EAC. In addition, other sessions took place in European Capitals such as Brussels or Geneva where majority if not all CSOs never had presence, making their participation challenging. These costs related to air travel, accommodation, per diems and other contingency demands. This essentially made it extremely difficult for CSOs to participate and share their demands with the negotiating teams. From a domestic level perspective, CSOs were involved in national briefing meetings organized by the Ministries of Trade and Industry in developing the negotiations positions, but it was challenging to travel across the EAC with government delegations for the actual negotiations.

The participation of other CSOs was greatly curtailed by the lack of financial resources. To remedy this, national and international organizations as well as donors were encouraged to expand their funding to CSOs especially for trade-related issues, as trade is vital to economic diplomacy, poverty eradication, development, and growth. Most ODA from developed countries is channeled to governments, while an ongoing analysis of funding patterns suggests that donor support for CSOs has plateaued.

With increasing controversy and dragging of the negotiations for about a decade, most donors and development partners involved in providing financial resources to the CSOs in developing and least developed countries significantly reduced their support or pulled out of EPA related projects. This lack of adequate financial resources for the EPA related projects consequently led to most CSOs ceasing their EPA related projects, bowing out of participating in influencing its outcomes and focused on other programs related to economic policy making process. These included programs such as public finance management, tax justice, agriculture, devolution, gender, good governance, democracy, elections environment and climate change.

4.8 Chapter Summary

Based on the analysis in this chapter, it can be established that there were enormous challenges that CSOs faced in influencing the conclusions of the EPA trade deal. Premised on regional nature of the EPA negotiations, CSOs were able to quickly share lessons and experiences from other regions that had experienced EPA negotiations such as the Pacific and Caribbean countries. To avert these challenges, CSOs from different regions shared information on EPAs.

It is evident from the respondents that keeping up with diplomatic negotiations of economic nature was taxing for most CSOs and at some point there were those who dropped off from the course. The dynamic nature and the high political stakes from the EPA negotiations meant that time and resources were required in order to effectively and constructively engage to obtain a favorable outcome. Since most CSOs engaged on EPAs were donor funded, the sustainability and consistency in engaging on EPA was limited. In most instances, CSOs pulled together resources by building alliances and coalition in order to share the burden of engaging in EPA negotiations. This was faced by numerous challenges especially by smaller organizations that could not financially contribute significantly in activities related to EPA negotiations.

Since CSOs had no negotiating mandate but to be consulted, there were growing perceptions that their contributions were not valid. These perceptions were the cause of power struggles between CSOs and negotiators and this ultimately delayed the negotiations. Essentially, this was a main cause for restructuring the negotiations and since they were government driven, the structure was more bureaucratic to the disadvantage of the CSOs whose approach was less bureaucratic. Ultimately, it was growing more complex for CSOs to identify whom exactly to influence. The state was in equal pressure from lobby groups within the private sector who were proponents of the EPA based on their huge commercial interests and desire to protect their markets in the EU.

CHAPTER FIVE

SUMMARY CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The primary research objective that guided the research work was to evaluate the role and influence of CSOs in EAC-EU EPA negotiations. The primary questions that this research study sought to answer were: (i) is there correlation between the outcomes of the EAC-EU EPA trade negotiations and CSOs participation? (ii) To what extent did the CSOs influence the outcomes of the EPA deal? And (iii) what extent has CSOs participation in EPA negotiations been facilitated by the EAC partner states?

Chapter one presented a brief introduction to the research study, statement of the problem, objectives and rationale/justification of the research study. It further provided theoretical basis, methodology and scope of the study. These sections gave the groundwork to the successive chapters.

5.2 Conclusion

From this research, it is evident that the role of CSOs in influencing the outcomes of EPAS was instrumental. Using legal and policy frameworks available the CSOs carved their niche over time and became worthy influencers in the EPA negotiations. Bearing in mind that there was no legal mandate given to CSOs to negotiate EPAs on behalf of their citizens, they continuously used the public participation and inclusiveness avenue to have their voices heard. They accessed powerful offices and office bearers to push for a positive outcome that was beneficial to the region.

CSOs had the leeway to engage multiple strategies that were creative in participating in shaping the outcomes of EPAs. Public mobilization and information sharing was a niche that CSOs enjoyed during the EPA journey. With more fluid and less bureaucratic structures, this was an advantage in staging a spirited fight against provisions in the EPA that were detrimental to the integration process and the livelihoods of the millions of small scale farmers and producers.

The neoliberal nature of the EPA negotiations, asymmetrical nature of the negotiating parties was a motivation enough for CSOs to come up with positions that could be adopted by government negotiators. Their numerous opportunities of shaping the EPAs constantly uplifted their credibility as powerful actors in the trade negotiations. Their advocacy agenda was helpful on shifting public mindsets about the likely impacts the EPA negotiations would have on EAC economies. Many saw some of their views as radical and confrontational and this enticed public mockery especially from some public officials who considered them busybodies.

This study reveals that government negotiators faced immense pressure from CSOs, as they were more accountable to the citizens on anything the outcomes of various negotiations were. CSOs knew they were competition with a more resourced, well-organized EU whose economies were more superiors and resilient as compared to those of the EAC. The CSOs constantly attacked the EU investments within the EAC region touting them as the only beneficiaries of the EPA deal was it to be signed. The private sector in the EAC pushed for the signing of the EPA as they considered EU an important market to loose. This created a huge division with the CSOs who took a more cautious approach to EPA negotiations.

From this study, it is evident that CSOs were prepared to go to extra length and use multiple tactics to ensure the issues they raised were heard. Through the use of formal and informal channels, the CSOs ensured that they constantly made public the outcomes of the EPA negotiations and issued warnings where they detected the deal was becoming unfavorable to the region.

5.3 Recommendations

This research proposes a number of recommendations to be taken forward:

1. Legal and policy framework for EAC-EU EPA negotiations established. The partner countries to include regional economic issues such as EPAs and ensure there are accountability mechanisms from the negotiators should domesticate the current dialogue framework initiated by the EAC. This framework should be extended to all regional economic issues that are founded to ensure that regional integration is deepened and aggressively pursued.
2. Government to include CSOs in actual negotiations. The negotiating team should comprise of key stakeholders and their representatives in order to ensure that their issues are formally raised in the negotiating table and addresses. Ad hoc consultations are not sufficient for CSOs to participate. The structure should be expanded to allow for active representation of non-state actors and players that are likely to be affected by the trade deal.
3. Public participation to be initiated. This is anchored in the constitutions of both Uganda and Kenya. Holding public forums on EPAs is an important process that would ensure that citizen's voices are heard directly and their voices incorporated in the EPA negotiations. The spirit of inclusiveness and openness is an important principle as depicted by the Cotonou Partnership agreement.

4. CSOs organization in Africa are bit confrontational when it comes to dealing with African governments which has led to strained relations between the two groups and this also plays out within the Regional Economic Communities (RECs), therefore in order to have a collaborative and collegial relations CSOs should be trained on diplomacy.⁵⁷ The governments on their part should understand that Civil Society Organizations exist to complement their efforts in addressing the developmental challenges that affect the society but not replace them

⁵⁷ Bhekinkosi. M,Muzondidya J,Mlambo N.,Samasuwo N. (2007) A report on Civil Society Organizations“Engagment with Regional Economic Communities in Africa. UNDP

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APPENDIX 1: QUESTIONNAIRE

Research Project: Civil Society and the EAC - EU Economic Partnership

Agreements Negotiations

Civil Society African Interviewees

1. Does your organization have a policy on trade arrangements and in particular on the EAC-EU Economic Partnerships Agreements? If yes, state the position.
.....
.....
2. How does the position above compare to that of officials from the EU and EAC?
.....
.....
3. What specific development outcome should EPAs deliver for the EAC region?
.....
.....
4. One of the objectives stated by the ACP - EU EPAs is poverty reduction and sustainable development. What is your view on the ability of the EPA to deliver these development outcomes for the ACP in general and East Africa in particular?
.....
.....
5. Have you communicated your organisation's expectations of the development outcomes of the EPA to relevant officials or organisations? If yes, to whom or where was it directed, and which method did you use to transmit your views? What has been the response?
.....

6. If you have communicated your views on participation in the EPA process to officials. If yes, what has been the outcome of it?

.....
.....

7. In relation to the statement, “trade agreements and their implementation should be conducted in a democratic manner”, how should “democracy” be defined in this context, in your view?

.....
.....

8. Has your organisation been engaged in the EPA process at any stage? If yes, did your engagement have the desired impact or did it meet your expectations? Please explain your answer.

.....
.....

9. How far does your understanding of democracy and participation in relation to trade policy development and your expectations align with the nature and degree of your actual engagement and that of the wider civil society in the EPA process?

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