

NON-STATE ACTORS IN REGIONAL INTEGRATION:
THE CASE OF THE KENYA PRIVATE SECTOR

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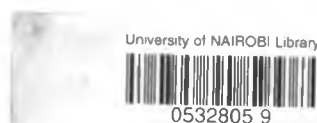
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DECLARATION

This thesis is my original work and has not been presented for a degree in any other university.


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

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DEDICATION

To all East Africans genuinely interested in, and committed to striving and sacrificing themselves to realize the great potential in their oneness for creation of a united and strong East Africa and the African continent, in fulfillment of the dream of free Africa's founding fathers led by Kwame Nkrumah, Julius Nyerere and others who never saw their dream of creating an African Continental government and economy fulfilled.

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ABSTRACT

This work investigates the role of the Kenya private sector as a non-state actor in the East African regional integration process. The assumption is that having recognized the private sector as crucial in the process, and clearly declaring so in the Treaty for the establishment of the East African Community, each of the Community's partner states namely, Burundi, Kenya, Rwanda, Uganda and Tanzania would clearly provide for, and facilitate private sector participation in the process. Secondly, recognition of the sector by the member states as crucial implied assumption that it indeed has a role to play. The study therefore, examines and analyzes the nexus between success in regional integration and private sector participation, starting by determining the extent to which the East African Community member states, and Kenya in particular has facilitated the sector's participation, and the extent to which the sector has influenced Kenya's foreign policy decisions on the process. Findings are that the Kenya government has involved only a part of the private sector through the sector's representative and apex bodies without a clear policy or legal framework defining the sector and the nature of involvement. Although the integration process has recorded success in achieving some of the agreed milestones like the Customs Union and Common Market with minimal involvement of the sector, the sector has potential in strengthening the efforts towards success. It is concluded that success will be determined by the state taking the lead, but involving the private sector and other relevant non-state actors more than it has hitherto done. It is recommended that Kenya and the other EAC member states should come up with a policy and legal

framework for private sector participation. Further research is also recommended to determine whether East African states' sovereignties hinder or enhance the region's integration interests.

LIST OF ABBREVIATIONS

ASEAN	Association of South-East Asian Nations
COMESA	Common Market for Eastern and Southern Africa
CM	Common Market
CU	Customs Union
EA	East Africa
EABC	East Africa Business Council
EAC	East African Community
EAC 1	East Africa Community 1967-1977
EAC 2	East African Community 1999 onwards
EACS	East African Community Secretariat
ECOWAS	Economic Community of West African States
EU	European Union
GDP	Gross Domestic Product
GOK	Government of Kenya
KAM	Kenya Association of Manufactures
KEPSA	Kenya Private Sector Alliance
MU	Monetary Union
OAU	Organization for African Unity

TABLE OF CONTENTS

	Page
DECLARATION	i
DEDICATION	ii
ACKNOWLEDGEMENTS	iii
ABSTRACT	iv
LIST OF ABBREVIATIONS	vi
TABLE OF CONTENTS	vii
CHAPTER ONE: INTRODUCTION TO THE STUDY	1
1.1 Introduction	1
1.2 Statement of the Problem	4
1.3 Research questions	6
1.4 Objectives of the study	6
1.5 Literature Review	7
1.5.1 Regional Integration	7
1.5.2 Types of Regional Integration	9
1.5.3 Regional Integration in Europe, Africa, South-East Asia and Middle-East	10
1.5.4 East African Community initiative	14
1.5.5 Private Sector	15
1.6 Justification of the study	16
1.7 Theoretical Framework	18
1.8 Methodology	23
1.9 Hypothesis	24
1.10 Chapter Outline	24
CHAPTER TWO:A CONCEPTUAL ANALYSIS OF REGIONAL INTEGRATION	26
2.1 Introduction	26
2.2 The Concept of Regional Integration	28
2.3 Regional Integration in Europe: European Union	34
2.4 Regional Integration in South East Asia (ASEAN)	34
2.5 Regional Integration in Africa	39
2.6 Regional Integration in the Middle East (UAR)	44
2.7 East African Community (EAC)	47
2.8 Non-state actors in regional integration	55
2.9 Non-state actors in ASEAN	58
2.10 Conclusion	60
CHAPTER THREE: KENYA PRIVATE SECTOR IN REGIONAL INTEGRATION	62
3.1 Introduction	62
3.2 The status of EAC Integration	63
3.3 Kenya Private Sector profile	68
3.4 Influence on Policy	72
3.4.1 Customs Union and Common Market	73
3.4.2 Monetary Union	75

3.4.3 Private Sector in EAC Cooperation spill over	76
3.5 Evaluation of the Kenya Private Sector	81
3.5.1 Rational Actor (model 1) and, EAC and Kenya institutions	82
3.5.2 Organizational process (model 2) and EAC operating procedures	83
3.5.3. Governmental bargaining (Model 3) and Kenya's Regional Integration policy formulation	86
3.5.4 EAC 2 Integration success score card and Private sector participation	88
CHAPTER FOUR: CONCLUSION AND RECOMENATIONS	94
BIBLIOGRAPHY	101
APPENDICES	104

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

Kenya, Uganda and Tanzania signed the Treaty for East African Cooperation on 1st December 1967 thus, setting up the regional organization of the East African Community (EAC 1). This was the first cooperation initiative by the respective independent governments of East Africa free from colonial rule. This initiative is distinguished from the second initiative (EAC 2) which commenced in 1999. At the height of the EAC 1 the organization operated common services of over thirty institutions, including the following four major corporations: the East African Railways, East African Harbors, East African Posts and Tele-communications, East African Airways and a formidable array of joint research institutions.¹

The regional organization was in operation for only ten years before it collapsed in 1977. Domenico Mazzeo cites mal-distribution of the benefits accruing to the community between member states, lack of a supervisory institution, and politico-ideological rift between the leaders of Kenya and Tanzania as responsible for the collapse.² Tanzania's development blueprint, The Arusha Declaration, was at variance with Kenya's national philosophy of African Socialism and its application to planning in Kenya. Although Kenya's policy document had a socialist label it was not socialist in content. Kenya openly followed a free enterprise path to development. Tanzania's Arusha declaration and Uganda's

¹Hazlewood, Arthur, "The end of the East African Community: What are lessons for Regional Integration Schemes" in Onwuka R.I., and Sesay A., The future of Regionalism in Africa, Mcmillan Publishers, 1986 p96

² Mazzeo D, 'The experience of the East African Community: implications for the theory and practice of regional cooperation in Africa', in Mazzeo D (editor), African Regional Organizations, Cambridge University Press, Britain, 1984, p152 - 156

Common man's Charter were socialist, with Tanzania implementing its blue-print while Uganda's permanently stalled following the ouster of Milton Obote from power hence breaking the Tanzania-Uganda ideological axis. Ideology influences the structure and orientation of socio-economic systems and consequently vital areas of country relations within a regional group, which includes the role of the state in the economy and in public enterprises in the regional grouping. With two of the main countries of the East African Community, namely Kenya and Tanzania pursuing diametrically opposed ideological and development paths, there were major disagreements on which path to follow. This ideological rift undermined the spirit of compromise and tolerance which is one of the most essential prerequisites for cooperation.³

Inequitable distribution of benefits from the community is also cited by Mangachi as another reason for its collapse.⁴ The foundation for the mal-distribution of the benefits is traced to the colonial heritage in East Africa. Mangachi argues that concentration of economic as well as other activities in Kenya during the British colonial period put the other two partners at a permanent disadvantage with benefits concentrating in Kenya.⁵ Mention of the economy especially in Kenya where free enterprise has been the development path pursued since independence is demonstration of the importance of all actors in the economic process which includes the private sector as a non-state actor. The Kenyan economy thus grew at

³ Ibid p155

⁴ Mangachi M W, Regional Integration in Africa, Safari Books Limited, Ibadan, 2011, p 109

⁵ Ibid p 110

the expense of the other two. This predominance by Kenya in the economy was resented by Uganda and Tanzania.⁶

The Community also suffered from institutional weakness. This was reflected in lack of an autonomous body similar to the Commission of the European Community with power to make final implementable decisions and resolution on financial and general policy matters affecting the Community⁷. The EAC therefore lacked an effective authority to harmonize the national interests of the member states; consequently major decisions were left to the individual East African heads of state, increasing the danger of transformation of personal differences into state rivalries. The East African heads of state were not able to meet for seven years because of individual enmity between Amin, the president of Uganda and Nyerere, the president of Tanzania, and a rift between Kenya and Tanzania because of ideological differences and Tanzania's accusation of Kenya of supporting the military regime in Uganda. Major policy decisions could therefore not be made as these relied on the Heads of State Summit meeting as the supreme decision making forum. The East African Community secretariat on the other hand cites lack of popular participation and input of the East African population, civil society and private sector in the process at both policy formulation and implementation levels as another reason for the collapse.⁸

From the early 1990s, with different individuals as heads of state in East Africa, Moi in Kenya, Mkapa in Tanzania and Museveni in Uganda initiatives were

⁶ Mazzeo D, 'The experience of the East African Community: implications for the theory and practice of regional cooperation in Africa' in Mazzeo D, *op cit* p151

⁷ Strange S, The Retreat of the State: The diffusion of power in the world economy. Cambridge University Press, 1996, p 172

⁸ EAC Secretariat, Perspectives on Regional Integration and Cooperation in East Africa. Report of the Proceedings of the 1st International Seminar on East Africa Cooperation, Arusha, 25 -26 March 1999

commenced to revive the Community. The founding three states of East Africa, namely, Kenya, Uganda and Tanzania, were later joined by Rwanda and Burundi in the year 2007 in forming the new East African Community (EAC 2) regional organization as a means of realizing their objectives both within the region and internationally.

While The Treaty for the establishment of the East African Community recognizes states as important actors in the integration process, non-state actors as well are acknowledged. The private sector is recognized as one of the important non-state actors in the process. The Treaty provides for the creation of an enabling environment for private sector participation, and cooperation among business organizations and professional bodies to ensure that they are among leading players in the integration process.⁹In analyzing the East African integration therefore, it is important to inquire into the role that each of the players listed in the Treaty has played and the impact of this on what has been accomplished, and the likely effect of this on the success of the process. This study is therefore, concerned with the contribution of the private sector of Kenya as a non-state actor to the re-establishment and sustainability of the revived East African Community (EAC 2).

1.2 Statement of the Problem

President Benjamin William Mkapa of the United Republic of Tanzania, Mwai Kibaki of the Republic of Kenya and Yoweri Kaguta Museveni of the Republic of Uganda established a committee to examine ways and means to expedite and compress the process of East African regional integration so that the

⁹ East African Community Secretariat, op cit Articles 128-129

ultimate goal of a political federation is achieved. One of the observations of the Committee was the importance of other actors other than the state in the integration process. The Treaty establishing the Community had already acknowledged the importance of the private sector among other non-state actors as important in the integration process. In line with this recognition, the government of Kenya pledged to give key consideration to enhancement of participation of actors other than the state in its activities in the East African integration process. It specifically invited the private sector to be a key participant in the process.

Some scholars on the East African integration process argue that lack of non-state actors in the process was one of the reasons for the collapse of the first integration attempt. Provisions of the Treaty for the Establishment of the East African Community on private sector participation are in line with this argument, though the Treaty is not specific on the role of the private sector. Even if the Treaty is unclear about how the private sector is expected to play its role, and if this will be done independent of the state, it recognizes the importance of the private sector and other non-state actors in the process. While the state has in the past dominated regional integration processes, and most of the formal discussions and negotiations supporting such processes have been the preserve of politicians and government officials, a new paradigm has developed where the state has been seen as finding itself in league with the private sector, or has itself invited private sector participation in regional integration processes.

While the Treaty for the revival of the East African Community acknowledges the importance of the private sector, and even the Kenya government has pledged to enhance participation of the sector as an actor, the

actual function and influence of the private sector on the integration process has not been made clear, nor is evidence available to prove that it actually has a role to play, has its own internal force propelling it forward and its participation is not just state action by proxy. It is important to know whether the private sector in Kenya has played an independent role, and has influenced state's policy on the East African integration process.

1.3 Research questions

- a. Is there correlation between success in regional integration and private sector participation in the process?
- b. To what extent has the private sector in Kenya influenced the country's policies in the East African Integration process?
- c. To what extent is the Kenya private sector participation in the integration process facilitated by the Government of Kenya?

1.4 Objectives of the Study

In answering the research questions the study has the following objectives:

- a. Examine and analyze the nexus between integration and private sector participation;
- b. Determine the extent to which the East African Community member states and Kenya in particular facilitate private sector participation, and the extent to which the private sector has influenced state choices on integration.

1.5 Literature Review

The study will focus on literature on integration as a general global trend, and on themes in work on integration initiatives in Europe, Asia, and Africa, with particular focus on East African integration. It will also examine how states and non-state actors are conceived in the literature with a view to understanding how the two relate in international relations, specifically in regional integration. With regional integration schemes seen from the perspective of the functionalist theory of integration focus will be on literature on the driving forces behind cooperation and integration. The main interest in specific cases will be to find out and understand the imperatives behind the initiatives, the actors involved and the impact of their involvement.

1.5.1 Regional integration

Regional integration is viewed as a general global trend meant to enable actors to benefit from the global economy and political set-up by regional collective engagement with the global economy. Domenico Mazzeo observes that in the 1950s and 1960s the regional integration trend was reinvigorated by a number of interacting factors, the most notable being the existence of the United Nations which permitted regional arrangements, the raging East-West conflict, and the United Nations' principle of equitable geographic representation in the United Nations elective bodies.¹⁰ As a global trend regional integration is conceived as a process toward or an end product of political unification among separate national units.¹¹ While integrating units are states the communications

¹⁰ Mazzeo D, 'Introduction: the regional trend' in Mazzeo D (editor), *op cit*, p1

¹¹ Couloumbis T A and Wolfe J H, Introduction to international relations, Prentice Hall, Inc, 1990 p298

approach school of thought associated with Karl W Deutsch measures the process by watching the flow of international transactions, such as trade, tourism, letters and immigrations and expects such transactions to eventually lead to integrated sociopolitical systems.¹² Actors in these transactions are merely mentioned but not as crucial participants in driving the process, but as beneficiaries of conditions laid down by states.

A number of scholars have analyzed this trend globally while others have focused on individual regions. While actors in the process are motivated by expected gains, the gains vary from one region to another. Nyanjom draws a distinction in expected gains between developed and developing countries. He argues that among developed countries integrating parties are motivated by their comparative initial development status, which defines their respective purposes. These countries, he argues, resort to integration to maintain and build on their existing development attainments. For developing countries regional integration is an attempt to counter the weakness inherent in colonial balkanization carried into independence. Integration to them is a means to gain leverage on global markets, leading to better trade terms that could provide resources with which to come out of poverty.¹³ In his analysis states are presumed to be the only actors in the process.

On factors requisite for union and integration Etzioni lists morphology of the region, the distribution of natural resources within it, and the existence or non

¹² Ibid p 199

¹³ Nyanjom O 'Can the EAC help to deliver the Millenium Development Goals' in Ajulu R (editor) The Making of a Region: The Revival o the East African Community, Institute for Global Dialogue, South Africa, 2005 p186

existence of a natural border that defines the area.¹⁴ He believes that in general, contiguous territory and a morphology that allows easy transportation and communication will enhance integration. In addition to this he also lists presence of a common enemy, and social factors. He sees the threat of a common enemy as the condition most often credited with initiating the union of countries on the basis of the need for common defense. Other essentials, he argues, are shared cultural symbols, ethnic origin, language and a sense of common identity, though he is quick to add that most unions do not have all these elements. He gives the example of the United Arab Republic between Egypt and Syria as an integration attempt of states that were not directly geographically contiguous. While requisite conditions are well listed, states which are the uniting elements are not disaggregated into the various components making them and the role of each of the components explored. This employment of the state level of analysis leaves out other actors other than states whose role has to be investigated if the entire integration process is to be clearly understood.

1.5.2 Types of Regional Integration

Regional integration schemes have been seen as including those in which the integrating states shift their loyalties and political activities to a new center with jurisdiction over existing national states.¹⁵ According to Karl Deutsch they can also be classified to include those in which sovereign states cooperate to enhance their security.¹⁶ While there may be varying conceptions of regional integration schemes most of them have evolved along functionalist lines whereby integration

¹⁴ Etzioni A, Political Unification, Holt, Rinehart and Winston, Inc, New York, 1965 p 27

¹⁵ Haas E B, 'International Integration: The European and Universal Process' in International Political Communities: An Anthology, Doubleday New York, 1966, p 34

¹⁶ Deutsch K W, Political Community and North Atlantic Area, Princeton University Press, Princeton, New Jersey, 1967, p 66

is built through creation of a web of functional relations in economic, social and political fields. Msuya Waldi Mangachi has identified four of them¹⁷, namely: Preferential trade areas in which trade barriers between integrating states are eliminated; Customs Unions in which the integrating states adopt a common external trade tariff towards non-member countries; Common Market where there is free movement of factors of production (capital, labour, services and goods); and Economic Unions where member states harmonize their economic policies including exchange rates and monetary policies.

In this research the East African regional integration which is analyzed in functionalist terms is perceived as trade, private sector and market driven, with a composite of state-private sector activities driving the process, whereby the private sector as a non-state actor is investigated to determine its role in the integration process. Of particular interest is the Kenya private sector in the East African integration process which, according to the Treaty establishing the East African Community is part of the wider East African private sector that is to play a crucial role in driving the process beyond market functionalist activities towards the political federation as the final objective.

1.5.3 Regional Integration in Europe, Africa, South-East Asia and the Middle-East

The European Union is credited as a comparatively more successful deliberate integration effort. having begun as the European Coal and Steel Community, with production of this vital material pooled across frontiers. It later developed into numerous but related Europe-wide institutions and projects like single market and

¹⁷ Mangachi M W, Regional Integration in Africa: East African experience, Safari Books Limited, Ibadan, Nigeria, 2011, p 6-7

currency, product and environment regulations, work and safety standards, all of which are handled at international level.¹⁸ Couloumbis and Wolfe contend that the most advanced cluster of regional organizations have been developed in Western Europe most of them fashioned along the lines of the European Union.¹⁹ The European Union is a regional economic union comprising 27 member states located primarily in Europe. The union traces its origin from the European Coal and Steel Community. The coal and steel industry started after the Second World War with the aim of eliminating further wars between its member states by means of pooling their national heavy industries associated with war machinery. The founding members of the community are listed as Belgium, France, Italy, Luxembourg, Netherlands and Germany. Once the pooling commenced integration was strengthened and expanded by secondary priming;²⁰ that is, unification in one sector tending to trigger unification in others. Etzioni observes that the opening of trade barriers for steel and coal in six European countries under the European Coal and Steel Community created a need to remove preferences in order to avoid indirect discrimination against imported products from member countries.²¹ This created a spiral of spillovers of integration towards what the EU is today. The entire analysis has been done on the assumption that there are no other actors other than the mentioned states in the process. The closest one has come to implying popular participation or roles of non-state action is when Deutch suggests that an integration venture can only survive if allocation of rewards accruing from the venture to the actors precedes

¹⁸ Deutch K.W, et al, Political Community and the North Atlantic Area, Princeton University Press, New Jersey 1968 p 116

¹⁹ Couloumbis and Wolfe, op cit p 304

²⁰ Rostow W W Stages of Economic Growth p 52

²¹ Etzioni A, Political Unification, Holt, Rinehart and Winston Inc, New York, p 55

burdens, and consent ought to come before political unification.²² Non-state actors' role will only be implied if consent is widely understood as encompassing the wider public and all actors in the economy and political process.

Studies on integration in Africa have recorded several schemes undertaken since the 1960s with 13 of them between this year and the 1980²³. It is within this period that the Organization of African Unity (OAU) was formed bringing together 32 independent states with the original ambition as continental integration of the economies and political systems of Africa. While Domenico Mazzeo observes that by the 1980s integration and cooperation initiatives had proliferated in Africa and Latin America, he at the same time argues that integration and cooperation flourished mainly among industrialized countries in Europe.²⁴ This is a contradiction since the same author acknowledges the 1967-1977 East African case as having been successful in areas which the European Union that is portrayed as a success is yet to attain. It is therefore inaccurate to omit recording this general trend in Africa as elsewhere in the world when the region has clear cases of integration attempts.

Contrary to this omission it is noted that while there are absolute benefits globally arising from reduction and elimination of economic protectionism, weaker economies especially those in Africa are individually disadvantaged in global competition. There is therefore a tendency towards regional collective bargaining in order for weaker countries to have a stronger bargaining position.²⁵ Martin has identified more than twenty regional integration initiatives

²² Deutch K W, op cit p71

²³ Martin, Guy, Africa in World Politics, Africa World press, 2002, pp129-131

²⁴ Mazzeo, 'Introduction: the regional trend' in Mazzeo D (editor), op cit, p1

²⁵ Nying'uro P O, 'EAC's prospects on the global stage' In Ajulu R, op cit p 31

in Africa which include the following: ²⁶The Arab Maghreb Union in North Africa grouping Algeria, Mauritania, Morocco, Tunisia and Libya; Economic Community of West African States (ECOWAS) bringing together 16 West African states; Common market for Eastern and Southern Africa (COMESA) and South African Development Community (SADDC). Although the survival rate is low this is not a uniquely African characteristic. The Federation of West Indies in the Americas and the United Arab Republic are cited as examples of attempts that did not succeed²⁷ although the latter was not exclusively non-African with Egypt having been a member.

Although these integration schemes in Africa are well documented, they are portrayed as matters of states without other actors' involvement in the processes. Matters of trade, immigration and other cross-border activities involve private citizens, civil society, the private sector and other organized groups whose role should not be ignored and has to be studied and understood. The United Arab Republic between Egypt and Syria (1959- 1961) is documented as an integration initiative which failed due to its dominance by a small ruling elite and exclusion of other actors other than states in the process.²⁸

South-East Asia is a region with similarities with Africa. Most countries in this region are former colonies of European countries. Since their independence they were grouped together with African countries as the least developed of world economies. Like in Africa, interest in regional integration in this region was expressed in the 1960s with the formation of the Association of South East Asian Nations in 1967. According to Dosch J(2007) this grouping brought together the

²⁶ Martin G, *Africa in World Politics*, Africa World Press,2002 , chapter 6

²⁷ Etzioni A, *Political Unification*. Holt, Rinehart and Winston Inc, New York, 97

²⁸ Ibid p 98

states of Malaysia, Thailand, Indonesia, Singapore, Philipines, Brunei, Vietnam, Cambodia and Laos in an integration venture that was largely a brainchild of an elite group of policy makers to perform a regional security function. The association has succeeded in harmonizing its foreign policies and is able to speak in one voice on major issues in international affairs. Although the association was initiated by an elite decision making group, it has gradually been tending towards a less centralized model with an increasing number of other actors, including the private sector.²⁹

1.5.4 East African Community initiative

The case of East African Community is presented as one with mixed experiences of both success and failure. According to Mazzeo the first attempt between the year 1967 and 1997 went beyond the traditional concern with trade liberalization and harmonization of industrial policies to include joint infrastructural development and cooperation in fields related to science and technology.³⁰ Despite the success this initiative lasted only ten years collapsing in 1997 following major disagreements between the governments and presidents of the member states. This first attempt is covered as if it was an exclusive concern of states as the only actors in the process. Participation of other actors other than states in the process is noted in literature on the second integration attempt. Attempts by the former member states to revive it were initiated in 1993 with commitment to avoid mistakes that led to collapse of the first attempt. The treaty

²⁹ Dosch J The Changing Dynamics of South East Asia, Lynne Publishers, London, 2007, p 2

³⁰ Mazzeo D, 'The experience of the East African Community: implications for the theory and practice of regional cooperation in Africa' in Mazzeo D, op cit p151

for re-establishment of the community acknowledges importance of participation of non-state actors including the private sector in the initiative.

Beginning with the signing of the treaty for the establishment of the East African Community, the implementation institutions put in place, and the integration fast-tracking mechanisms, focus is on expected gains to member states. While there is increased effort to speed up the process towards a political federation in East Africa it is recognized that one of the causes of the collapse of the first East African community that lasted between 1967 and 1977 was the low level of involvement of society level actors. As spelled out in article 127 of the treaty, the member states were to create and promote an enabling environment for participation of non-state actors including the private sector in the process. The government of Kenya committed itself to make participation of the private sector in Kenya one of the key considerations and variables determining its choices in the integration.³¹

Whatever role the private sector is expected to play, whether or not it has indeed been involved, if it has its own driving force and has actually been able to influence choices on integration by member states, and specifically Kenya's choices has not been covered in the literature reviewed. This forms the purpose of this study.

1.5.5 The Private Sector

While the Treaty for the establishment of East African Community recognizes the private sector as an actor in the integration process, the private sector remains unclear as the Treaty does not define it. The literature focused on in this research

³¹ GOK, MEAC, Strategic Plan 2008 – 2012, Popular Version, p 2

where the private sector features does not have consensus on the definition of the private sector. There is however, plenty of literature on non-state actor activities in some regions in the world. The Association of South-East Asian Nations secretariat for instance has documented the role of the private sector in the region's integration process,³² while Alexander Chandra has also elaborately written on the role of non-state actors in the region.³³ The literature however, mainly focuses on the business community when discussing the private sector. It is important to note however, that business networks in themselves cannot be deemed to constitute the private sector on the basis of assumed independence from state links. Practice complexities create links between private business organizations participating in political-economic affairs and states. While there is literature on the reciprocal influence between states and the private sector in some regions, there is no literature on the influence of the Kenya private sector on Kenya's policy choices in the East African integration process.

1.6. Justification of the Study

Despite the collapse of the first East African integration venture, the regional states still see the need for another attempt at regional integration. The membership of the community has even increased from the original three to five with the joining of Rwanda and Burundi. This venture can be seen in the context of emerging trends in the global, political and economic order.³⁴ Developing countries are faced with economic and political marginalization by the Northern Industrial States that increasingly apply protectionist measures in their intercourse

³² ASEAN Secretariat, ASEAN Economic Community Handbook for Business, ASEAN Secretariat, Jakarta, 2011

³³ Chandra A, 'The role of Non-State Actors in ASEAN, in Revisiting South-East Asian Regionalism, A Publication of Focus on the Global South, December, 2006

³⁴ Nying'uro P O, 'EAC's prospects on the global stage' In Ajulu R, op cit. 36

with these countries. Collective regional bargaining therefore is a logical response that can be seen to give strength to these countries in the world arena. In this respect, the member countries of the East African Community are expected to benefit from this second initiative.

In order to create a successful and sustainable community, all the forces and variables determining the community's integration process have to be understood. As the focus has been largely on state activities, other actors that are also important have been neglected thus limiting the scope of understanding of the entire exercise. It will not be possible to create institutions and formulate policies for a sustainable integration process if the role of all actors involved in the process is not determined. East African Community member states and Kenya specifically have declared participation of the private sector in the process important and have continued to engage financial and human resources in mobilizing private sector participation. It is important to ascertain the effectiveness of this participation to the success of the process. This is why an inquiry into the role of the private sector as one of the non-state actors is necessary.

Before the collapse of the first East Africa regional integration initiative, there was joint infrastructure development and cooperation in fields related to science and technology. There were joint ventures in aviation, roads, post-primary and university education. The member states in the second initiative are beginning to invest substantially in the initiative to reach this level of integration attained during the first initiative before its collapse and surpass it. It is therefore important that determinants of success be well understood in order to avoid the mistakes made during the first phase of the East African integration process.

The East African Community Secretariat clearly argues that lack of participation of the private sector during the first phase as one of the reasons for the collapse. It is not just enough to state so. It is important to go beyond this and ascertain the role it should have played or is playing in the second phase. In addition to this, literature on East African integration does not define the private sector which as provided in the Treaty is expected to play a role in the process. The Kenya private sector participation has not been explored, hence the need for a study to bridge these gaps.

1.7 Theoretical Framework

In the literature on International Relations, the international system has traditionally been portrayed in terms of large and small billiard balls that move around constantly and often stumble into one another with destructive consequences to each other. The world has been seen as characterized by competition between states for power and dominance. This is the basic realist world view. There is however, a general trend towards cooperation and integration in the world as is reflected in the number of regional integration initiatives. In Africa alone there were over thirteen initiatives by 1980 within barely two decades after independence of African countries from colonial rule.³⁵ Europe has a well established regional organization that has enhanced cooperation and integration among member countries. There is no single region in the world without cooperation and integration attempts. Cooperation and integration are therefore clear characteristics of the contemporary world scene, and are likely to so continue long into the future. Given the uniqueness of each region in the world there are also different aspects of integration from one region

³⁵ Martin G, Africa in word Politics, Africa world Press,2002, p 130

to the other. It is therefore difficult to create an overarching approach to explain all aspects of integration in one regional organization, or a single theory to explain all integration initiatives. As a result a number of theories have been used to analyze different integration initiatives in the world.

The purpose of theory in social science is to describe what has happened, explain why it has happened and how the trend or movement described and explained will evolve in future. Theory also forms a basis for prediction of possible events in social relations or interactions. Functionalism theory has been used greatly to describe, explain, and predict on the European Union integration initiative. Although member countries of the European Union have different political, social and economic variations from those forming the East African Community both initiatives have the elements of economic cooperation given prominence. The role of the private sector in the East African integration process, which is the main focus of this research, is a matter of economics and relations in the production process. It is a question of functional processes and relationships. The functionalism theory of integration associated with Ernst Haas will therefore be used in this analysis as it is ideal in identifying the actors engaged in the functional relationships. His assumption is that pursuit of common interests through integrated agencies would ultimately lead to greater integration through secondary priming or spillover from one sector to another.³⁶ States are viewed as arbitrary fragmentation of the globe; these entities will not be dismantled easily, hence functionalists advocate a gradual approach toward regional unity and organizations bigger than states in geographical area, population and activities engaged in eventually rendering nation-states obsolete. According to this school

³⁶ Haas E B, The Uniting of Europe, Oxford University Press, Stanford, 1958, p 139

of thought there should be piecemeal nonpolitical cooperative organizations in economic, technical, scientific, social and cultural sectors, referred to as functional sectors. The steady spread of functional organizations to greater circles is expected to trigger a spillover or demonstration effect which will enhance cooperation and integration. Such effect is a process characteristic of most organizations including private business in the private sector. If we are looking at the private sector as an actor we shall be focusing on functional relationships which the theory clearly explains. Organizations both state and non state ones exist because of their ability to create value and acceptable outcomes for various groups of stakeholders, where stakeholders are actors who have an interest, claim or stake in the organization, in what it does and how well it performs. Stakeholders are motivated to join and participate in an organization as long as the inducements they receive exceed the value of the contribution they make for the organization to exist.³⁷ The organization is used by different stakeholders at the same time, and the purpose of each of them is to accomplish its own goals. The effectiveness of each organization varies for each group, as each group evaluates the organization by judging how well it fulfills the specific group goals. Obviously, the goals of actors or stakeholders vary and can be contradictory, therefore they bargain over their gains. While the functionalist approach is ideal in identifying the actors and activities in the integration process, together with the imperatives of integration, it is limited in analyzing the effectiveness of these actors in the process. It will therefore be used together with three derivatives of Graham Allison's model on bureaucratic decision making used in analyzing

³⁷ Ibid p 31

foreign policies of nation-states.³⁸ These models, namely: rational actor model, organizational process model and governmental bargaining model have standards that are useful in measuring effectiveness of the actors in the integration process. The position held in this research is that regional integration is a matter of foreign policy decision making involving all actors participating in the process. The role and effectiveness of the Kenya private sector as an actor in the East African integration process is therefore assessed on the basis of the three foreign policy decision making models.

Each of them is briefly discussed below so that the standards, processes and procedures contained in them which are to be applied in the analysis are clear before their application in chapter three. The three models are organizational-bureaucracy centered, and analyzing the East African Community and the Kenya government therefore, together with actors involved in the integration process as organizations like any other as viewed in these models, makes them ideal for the analysis.

a. Rational actor model (model 1)

This model conceives foreign policy as a decision making process where states take actions because people in governments choose those actions. The model presupposes that the decision maker calculates the costs and benefits of each possible course of action, and finally chooses the one with the highest benefits and lower costs. The choice may be complicated by uncertainty about the costs and benefits of various actions. Governmental behavior can be summarized as action chosen by a unitary, rational decision maker: centrally controlled,

³⁸ Alison G T, *Essence of Decision Making: explaining The Cuban Missile Crisis*, Little Brown, Boston

completely informed and value maximizing.³⁹ This simplification though does not conceal the fact that a government as an organization consists of a conglomerate of loosely allied organizations and actors, each with a substantial life of its own. Leaders sit formally, and to some extent, in fact, on top of this conglomerate. But governments perceive problems through organizational sensors. Governments define alternatives and estimate consequences as their component organizations process information.

b. Organizational process model (model 2)

Foreign policy decision making is seen as relying for most decisions on standardized responses or standard operating procedures. Government behavior is constrained by the routines of the organizations of which the government is composed.⁴⁰ This model does not operate at the moment of decision but rather, it explains deviations from ideal rationality at the moment of decision by highlighting the ways in which organizational routines constrain the formation of options, and explains deviations from perfect instrumentality after decisions are made by revealing how routines affect implementation. This model says nothing about the decisions themselves.

c. Governmental bargaining (model 3)

Decision making is conceived as a process in which leaders who sit on top of organizations are not viewed as a monolithic group but as members of different groups; with each individual group, in its own right, a player in a central, competitive game, bargaining along regularized circuits among players positioned

³⁹ Golstein J S International Relations, Longman, New York, 2001, p 166

⁴⁰ *ibid* p 167

within government. Players make government decisions not by a single rational choice but by the pulling and hauling.⁴¹ According to this model, these bargaining games may operate during decision itself as well as in the option formation stage or during implementation. Decisions result from the bargaining process among various government agencies that have somewhat divergent interests in the outcomes.

The government of Kenya and the private sector are in this research viewed as interested actors in the survival of the East African Community as an organization, as an elementary condition for pursuing their goals, and in this sense they are expected to influence each other. Actors in functional relationships generally compete when it is necessary and cooperate when it is necessary; no actor aims to annihilate the other, as this will disrupt equilibrium achieved in integrated areas which benefit all actors. If therefore the states in East Africa, together with all sectors that are involved in economic, social, and political spheres are seen as actors involved in organizational functional relationships, then the functionalist approach employed to identify the actors and activities in the process, used together with the models which have standards to measure effectiveness of the actors in the process become ideal for the analysis.

1.8 Methodology

The study will be centered mainly in Nairobi, Kenya because this is the centre of the Ministry of East African Community and Ministry of Trade, key government actors in the East Africa integration process; it is also the main seat

⁴¹ Welch D A 'The organizational process and The Bureaucratic Politics Paradigms: Retrospect and prospect' in International Security, Vol. 17 No 2, Fall, 1992, p 118

of the private sector institutions and organizations that have been invited by the government during preparations for and negotiations on East African integration.

Primary data will be obtained from interviews with representatives of private sector organizations in Kenya, selected individuals who have knowledge about the East African integration process, and Kenya government officials involved in the process. Published work by scholars on the Community, Publications by the East African Community Secretariat on private sector activities in the process, official government records at the Ministry of East African Community and Ministry of Trade in Nairobi, and other Government of Kenya agencies involved in the integration process will be used in the study. Qualitative methods will be applied in data analysis.

1.9 Hypotheses

- a. The East African Regional integration is a function of the private sector participation in the process.
- b. The Kenya private sector has played an independent role in influencing Kenya's policy choices on East African integration.
- c. The Kenya Private sector participation in East African integration process has been facilitated by the government of Kenya.

1.10 Chapter Outline

This study is contained in four chapters as follows:

Chapter I introduces the study with a general view of regional integration by focusing on selected regional integration initiatives and the integration

imperatives; it then gives a background to the East African Integration initiative. Literature reviewed in this study is also introduced in the chapter;

Chapter 2 is a conceptual analysis of regional integration and a review of literature on selected integration initiatives with special focus on East Africa and identification of knowledge gaps in the literature to be filled by this study;

Chapter 3 is on the Kenya private sector profile in the integration process; it also contains an evaluation of the Kenya private sector in the process;

Chapter 4 bears the conclusion of the study and recommendations.

CHAPTER TWO

A CONCEPTUAL ANALYSIS OF REGIONAL INTEGRATION

2.1 Introduction

The chapter conceptually analyses regional integration and examines regional integration initiatives in general, identifying them by the different levels at which they are. It focuses on economic and political organizations and integration imperatives upon which they are formed. There is then focus on specific cases selected from different regions in the world for comparison in order to understand the organizational imperatives of integration. The main interest in the specific cases is to determine the driving force behind the ventures and identify actors in the process, and the impact of their involvement. The East African integration initiative and how it compares with other initiatives is examined for the purpose of drawing lessons for East Africa though the study is not a comparative analysis.

The chapter builds on the main themes under literature review in the first chapter, namely: integration initiatives in Europe- the European Union (EU), in South East Asia- The Association of South East Asia Nations (ASEAN), in Africa- the Economic Community of West African states (ECOWAS), and Southern African Development cooperation (SADDC). The United Arab Republic (UAR) between Egypt and Syria is also analyzed. These regional integration initiatives are viewed in the wide context of international organizations that operate across country external borders, relating with states or initiated by states, but sometimes evolving capabilities beyond the control of states. They therefore, either reinforce the authority of states, if they are still under state control, or limit state authority, if they develop beyond state control.

According to Susan Strange international organizations in general in their exercise of authority, are essentially system preserving. Their political activities have served to reinforce the authority of governments, fellow-members of the mutual-recognition club of member states.⁴² The author however, observes that there are cases of international and regional organizations which defy this generalization. The EU is given as one of them. It has some institutions which enjoy effective supranational supremacy over individual member states' powers. The European Court of Justice is a good example. Its decisions override those of individual state Judicial institutions.⁴³ It has therefore been selected as it offers some unique cases of supranational institutions which East African Community is expected to create if its ultimate vision of political federation is to become a reality. The ASEAN on the other hand is selected for analysis because South East Asia has been in the same development bracket with East African countries but has fast developing economies which place them a step ahead. It therefore offers good lessons and comparison with East African states. SADDCC and ECOWAS have been selected because they are in the same Africa region with EAC, facing similar regional development and political challenges. The UAR is analyzed because being partly in the Middle East and partly in Africa, and documented as an integration initiative which failed it offers important lessons to be avoided by those involved in the second East African integration attempt. There is also focus on non-state actors, with emphasis on their role in regional integration. Their role in regional integration in Southeast Asia is examined to illustrate the influence they are able to exert on the process. This will form a background to the analysis

⁴² Strange S The Retreat of the State: The diffusion of power in the World Economy, Cambridge University Press, UK, 1996, p 171

⁴³ *Ibid* p172

in chapter three which is on the Kenya private sector as a non-state actor in the East African integration process and the conclusions in chapter four.

2.2 The concept of Regional Integration

The concept of regional integration and cooperation varies considerably as there does not seem to be a clear agreement on what the term represents. It is defined by Ernest Haas as a process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities to a new centre whose institutions possess or demand jurisdiction over pre-existing national states.⁴⁴ Onwuka defines it as a form of economic arrangement prevailing, or proposed, at both regional and sub-regional level, with a common market, a free trade area and a cluster of economic institutions to support them.⁴⁵ Mittrany on the other hand argues that the end result of the process is a new political integration community superimposed on former national states.⁴⁶

Watts holds the view that attempts to harmonize the different definitions of the concept has tended to emphasize levels of integration with varying thresholds.⁴⁷ The concept has therefore been broken down into economic and political integration, hence a considerable amount of literature has accumulated on the subject of regional integration, federalism, federal political systems and federations.

⁴⁴ Couloumbis T A and Wolfe J H Introduction to International Relations, Prentice Hall, 1990, p 299

⁴⁵ Onwuka R I and Sesay A The future of Regionalism in Africa, Macmillan Publishers, London, 1985, p1

⁴⁶ Quoted in Mangachi M W Regional Integration in Africa: East African Experience, Safari books limited, Ibadan, 2011, p 3

⁴⁷ Ibid p 4

Integration is also perceived as linked to the theory of comparative advantage in international trade and considered as a mechanism of removing trade barriers between neighboring countries through free trade areas, custom unions, common markets and economic unions. It is believed that regional integration promotes efficient allocation of resources. For the functionalist school the ultimate goal of integration is the building of an international community which gradually ties the integrating communities together by virtue of functional interactions, but does not necessarily entail the end of the nation state. This approach sees predominance of economic variables over political ones in the process. The economy and technology are viewed as generating demands and pressures on existing political institutions and decision makers.⁴⁸ These pressures compel common political approaches to issues. According to this perception, integration is promoted through gradual steps of building a web of functional relations in economic and later, social and political fields. This approach also sees the process evolving through a customs union, common external tariff, common market and eventually, harmonization of economic and political policies to allow free movement of goods and people.

If regional integration can be seen in terms of states and people within a given region agreeing and signing treaties, protocols and agreements for joint decision making and action in given issue areas of international relations, it can also be conceived in the context of international regimes. According to Hasenclever A, Mayer P, and Rittberger international regimes are explicit principles, norms, rules and decision making procedures around which actors' (states) expectations converge in a given area of international relations. Principles

⁴⁸ Sengor J C 'Theoretical foundations for Regional Integration in Africa' in Anyang Nyong'o et al Regional integration in Africa. Academy science publishers, Nairobi, 1990, p17

are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions and proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choices.⁴⁹ According to the same authors a regime exists whenever states cooperate and the focus of this cooperation is to overcome collective action dilemmas, thus, situations where cooperation avoids suboptimal outcomes for the cooperators. Interest based theories of cooperation note the spillover effects of cooperation (functionalism), whereby because of the costs of creating and maintaining institutions, establishing cooperation in one issue area can result in solutions that can then be reused in other issue areas. The states and people that are active in the issue area concerned must share common interests which they can only realize through cooperation.⁵⁰ They therefore cooperate as a collective response to functional requirements. This cooperation in functional areas is a result of negotiations between the actors in the process and results in negotiated agreements and commitments. The East African Community as an outcome of negotiations, a Treaty and protocols, can thus be seen in this context.

This neo-functionalist approach is private sector-trade and market driven cooperation. It omits the stage of political federation which is largely state driven. It is however clear that even if the market was to drive the process the state will still continue to play the crucial role of ensuring peace and security for the economy to function. The state and the private sector will therefore unavoidably play complimentary roles. Failure to see how the state and the private sector

⁴⁹ Hasenclever A, Mayer P and Rittberger V Theories of International Regimes, Cambridge University Press, UK, 1997, P 9

⁵⁰ Ibid p 30

complement each other, or the influence of the two on each other can easily lead to exclusively state-centric or market-centric analysis leading to wrong conclusions. In ordinary and common usage the term integration and cooperation are used interchangeably further preventing development of a clear meaning. Even if there is no consensus on the term what seems to reflect in all conceptions is economic and social exchange between the communities involved and cooperative political interaction even if there is no agreement on which one precedes the other, or how they influence each other.

Integration can also be seen as an end result of a process which culminates into a merger of several states, or a shift of some state sovereignty to a supra-national level. It can further be viewed as the process itself with those involved having aspirations towards this end result. Despite varied definitions and interpretations the common factor in all of them is adoption by states of common approaches to agreed issues in international relations. It also implies reduction in, or compromise between states on their sovereignty. It can therefore be seen as an arrangement by which states in a particular region increase their level of interaction with regard to economic, security, political and socio-cultural issues through a degree of transfer of elements of their power to supra-national authority.⁵¹ Different authors thus focus on different elements, but the synthesis of a number of these elements as done by Van Grinkel and Langenhove⁵² is considered most appropriate and is taken as the working definition in this research. According to them regional integration is viewed along three dimensions, namely: geographic scope, substantive coverage and the depth of

⁵¹ Van Grinkel H and Langenhove L ' Introduction and context' in Van Grinkel H (ed), Integrating Africa : Perspectives on Regional Integration and Development, UNU Press, 2003, p 8-9

⁵² Ibid p 10

interactions, where geographic scope illustrates the number of countries involved in the arrangement, substantive coverage refers to activity or functional coverage (trade, labor mobility, macro policies and sector policies), and depth of interaction denotes a range of activities from involvement of many and large sectors to surrender or loss of sovereignty. All these elements need not however, be in an arrangement for it to qualify as will be illustrated later in the case of the United Arab Republic between Egypt and Syria (1959-1961). In this research membership in a regional arrangement is considered a political choice of any one country whether based on political, social geographic or economic considerations.

Regional integration arrangements are a part of the present global order and this trend can be acknowledged as a future trend of the international system. Regional arrangements are becoming mainly the outcome of necessity felt by nation states to integrate their economies in order to achieve rapid economic development, decrease conflict, and build mutual trusts between the integrating states. The nation state system, which has been the predominant pattern of international relations since the treaty of Westphalia in 1648 is evolving towards a system in which regional groupings of states is becoming more important than sovereign states, and other actors other than states operating within states and across state boundaries are assuming prominence in determining international relations. There is a powerful perception that the idea of the state and its sovereignty is increasingly getting under siege.⁵³ E H Carr believes that the

⁵³ Strange Susana, The Retreat of the State: The diffusion of power in the World Economy, Cambridge University Press, 2009, p1

concept of sovereignty is likely to become even more blurred and indistinct than it is at present.⁵⁴

Even if regional integration may be viewed as matter between states, state dominance of international relations is increasingly reducing. State centric theories of international relations give the main reason of state action as pursuit of national interest. Examination of the concept of national interest however, demonstrates the problem of seeing everything as state driven, and the importance of focusing on other actors other than states in determining international relations, including regional integration. Arnold Wolfers argues that the concept of national interest is a device used by those seeking support for particularistic policy than a real, concrete attribute of the nation as a whole.⁵⁵ Rather than affecting everyone in similar ways, most policies have different impacts on groups even in the same country. As an illustration, even though global climate change raises temperatures for everyone, and therefore might be thought of as the quintessential national interest, it will negatively affect those living in low lying coastal areas and already dry climate areas more than those in temperate regions, with farmers in higher latitudes perhaps even gaining from longer and warmer growing seasons. Different group interests may therefore be similar or at variance with those of the state yet influence state behavior. These groups of people including the private sector, distinct from states, have therefore emerged pursuing their own interests, but in the process, influencing state choices. It is in this context that the private sector's role in regional integration can be understood.

⁵⁴ Carr E H The Twenty Years Crisis, Mcmillan, 1978, p230-231

⁵⁵ Wolfers Arnold, ' National security as an ambiguous Symbol' in Political Science quarterly 67 (4) 1952 p 481

Involvement of the private sector as a non-state actor in regional integration is implied by the very nature and idea of a well functioning market which is the foundation upon which the process rests. Ultimately integration is for the benefit of people of the region concerned. The private sector thus should then be a crucial actor, and governments and regional organizations only facilitators through appropriate policy choices. Enhanced production and trade of goods and services are dependent on improved performance of private firms, and private consumers will be the main beneficiaries of larger markets and investment opportunities resulting from integration initiatives. This means that the private sector operators have to be involved in the design and implementation of regional activities, which would change the perception that regional arrangements are simply remote outgrowths of government bureaucracies rather than an instrument of empowering the private sector region-wide. The private sector participation in the economy, and therefore in the process, merits examination to determine its source of influence, its targets and strategies and the extent to which it is nationally and regionally cohesive and autonomous from state influence in regional integration.

2.3 Regional integration in Europe

The European Union is a regional grouping formed after the Second World War, and has passed through a series of evolutionary stages both in membership and scope over the past fifty years. It was initiated by a merger of the French and Germany steel and coal industries into a single framework that could efficiently use the two states' coal and steel mills with the aim of eliminating further wars following the devastating experience of the Second World War by pooling their

national heavy industries associated with war machinery.⁵⁶ It later grew into the European Coal and Steel Community with Belgium, Netherlands, and Luxembourg joining. According to Goldstein, the five states worked through the coal and steel company to reduce trade barriers and coordinate their coal and steel policies. Once the pooling commenced integration was enhanced and expanded by secondary priming⁵⁷; that is, unification in one sector tending to trigger unification in others. Another important feature of the EU was provision for active participation of the private sector and trade unions in the process. This was spelled out in article 193-198 of the Treaty of Rome which established the Economic and social committee that was to see direct participation of different interest groups.⁵⁸ The initial five states were later joined by Britain. The community formed a coordinative authority which, to some degree, bypassed governments and dealt with companies in the private sector, labor unions, and individuals directly.⁵⁹

Issues involved in this initiative largely concerned engineers and technical experts across borders. This did not pose any threats to those who wielded power. Although technical cooperation in this venture succeeded, political and military cooperation proved unattainable. The community member states for instance signed a treaty creating the European Security Community to work towards integrating European forces under one command, but France declined to ratify it.⁶⁰ While success was recorded in economic cooperation there was no success in military and political affairs where state sovereignty prevailed. The states forming

⁵⁶ Goldstein J S International Relations, Priscilla McGeehan, 2001, p 444

⁵⁷ Rostow W W, Stages of Economic Growth, p52

⁵⁸ Asante S K B, op cit p107

⁵⁹ Ibid p 444

⁶⁰ Etzioni Amitai Political Unification: A comparative study of leaders and forces, Holt, Rinehart and Winston, Inc, London, 1965

the community took the lead in initiating the cooperation but created a suitable environment for the private sector to participate in the process. The private sector however confined their activities to economics without interfering with state sovereignty. The 1957 Treaty of Rome expanded cooperation to include issues of atomic energy, a common market and a customs union. The common market achieved adoption of a common agricultural policy.⁶¹ Agriculture however, has been one of the most difficult sectors of the world economy in which free trade can be achieved, where states often protect their own agricultural sector from external threats to maintain food security. In the European Union the agricultural policy led to conflicts between nationalism and regionalism. Lessons this may provide to those involved in the East African case where the economies of the countries involved are predominantly agricultural have not been explored.

To reduce states' fear of loss of sovereignty, the Treaty of Rome provided for all changes to it and all major decisions to be approved by all its member states. France used this provision in 1963 to veto Britain's application for membership to the Union.

Institutional framework of the Union includes the EU Commission consisting of supranational experts and bureaucrats at the headquarters answerable to the council of ministers. They are balanced in the EU structure by provisions that uphold the power of states and state leaders. They propose solutions to problems they identify to the council of ministers and implement decisions once the ministers decide. The council of ministers has a weighted voting system based on populations of each state and a rotating presidency. In 1997 the state leaders created for themselves a special place in the Commission to

⁶¹ Goldstein op cit p 446

oversee direction of the Community. This structure shows the resistance of the state leaders to being governed by any supranational body made up of people that are not at the centre of political power.⁶² Private sector participation in matters that extend beyond state boundaries will always be seen as a silent onslaught on the state as is demonstrated in this particular case, yet in the East African initiative there is declared commitment reflected in the Treaty establishing the Community to a market driven process with active private sector participation without concerns about the implications this will have to the sovereignty of the member states, and the effect this will have on the failure or success of the process. This is a rare case of states willingly and easily, by declaration, expressing intention to cede their sovereignty or part of it and the effort of driving the process of integration to a non state sector and authority. A study to explore capabilities of the private sector in East Africa in this process, expected challenges and possibilities of success or failure has not been conducted.

2.4 Regional integration in South-East Asia

The Association of South East Asian Nations (ASEAN) came into being in 1967 as a brainchild of an elite group of policy makers who saw intensified regional cooperation as a means of strengthening South Asia's position in the Asia Pacific area, and thereby reducing its risk of becoming a victim of great power rivalry. It is a sub-regional grouping consisting of Indonesia, Malaysia, Thailand, Singapore, Philipines, Brunei, Vietnam, Burma, Laos, and Cambodia. From its inception it has performed a security function. According to Jorn Dosch the association members have succeeded in harmonizing their foreign policies and often speak in one voice in international affairs, but becoming less

⁶² Ibid p 445

centralized as it gradually draws in more actors other than states.⁶³ This has enabled ASEAN to establish formal relations with the leading regional and global powers such as the United States, China and the European Union. It was instrumental in orchestrating **Vietnam's** withdrawal from Cambodia and the subsequent Paris Peace accord in 1991 which ended the Indochina conflict.⁶⁴ This association fits well in Karl Deutch's model of a pluralistic security community in which the use of military force as a means of problem solving in relations among members becomes highly unlikely.⁶⁵ It should however be observed as Jorn Dosch notes that although the association may be tending towards the direction of a pluralist, less centralistic model characterized by a growing number of actors including the private sector, it was for the first three decades of existence a framework for government elites, statist, highly centralized and one-dimensional. The state therefore assumed centre stage in the organization's initial stages though later accommodated the role of the private sector. This case differs remarkably from that of the EAC as reflected in the provisions of the Treaty establishing the EAC 2 which provides for a people-centered and market-driven cooperation and the establishment of an export oriented economy thus signifying the importance of the private sector in the process.⁶⁶ Katumanga on the other hand is cited by Mangachi as holding the view that the private sector model was not likely to work in promoting integration in East Africa and proposes that the state should actively participate in the process.⁶⁷ While the state configuration in Africa is changing regarding decision making, it is still dominated by top

⁶³ Dosch J The changing Dynamics of Southeast Asian Politics, Lynne Rienner Publishers, London, 2007, p 2

⁶⁴ Ibid p 4

⁶⁵ Deutsch K W et al Political Community and the North Atlantic Area, Princeton University Press, 1967, p 66

⁶⁶ Mangachi M W op cit p13

⁶⁷ Ibid p 12

leadership. Odem notes that given low levels of economic development in Africa, the emergence of interest groups, a vital feature in the integration process, is precluded leaving the leaders alone as the supreme decision making authority. Regional integration in Africa thus stands and falls with the maintenance of cordial relations between the personalities concerned.⁶⁸ Can these two conflicting views on the best approach to integration be reconciled; if not, which of them should be followed with more prospects of success? The studies done have not analyzed these two positions nor attempted to answer these questions.

2.5 Regional Integration in Africa

Domenico Mazzeo argues that integration and cooperation has flourished mainly among industrialized countries in Europe.⁶⁹ The same author however contradictorily adds that regional integration is part of a general global trend meant to enable actors to benefit from the global economy by regional collective regional engagement. Integration and cooperation in the world is progressively becoming fashionable as is evidenced by the number of attempts globally, including those in the African region. National borders are increasingly becoming irrelevant in the conduct of global activity. Nying'uro observes that while the world benefits in absolute terms from reduction and elimination of economic protectionism, economically smaller countries are disadvantaged in the global competition. There is therefore a tendency towards integration and regional

⁶⁸ Odem B 'Southern Africa after apartheid' in Regional integration and external resources, Uppsala, the Scandinavian Institute of African studies, 1993, p 41

⁶⁹ Mazzeo D 'Introduction: the regional trend', in Mazzeo D itor op cit p1

collective bargaining in order for weaker countries to have a stronger bargaining position globally.⁷⁰

Regional integration on the African continent has a fairly long history in virtually all parts of the continent. The desire for regional integration can be traced to the pan- African movement period. In the year 1900 a conference devoted to the idea of Pan-Africanism took place in London aimed at building unity among black people in the fight against racial discrimination.⁷¹ This meeting became the foundation upon which African independence movement leaders were to build on in demanding for independence and later calling for political and economic integration of the entire continent. A number of African leaders called for the integration of Africa soon after independence. Kwame Nkrumah the president of newly independent Ghana was one of the strongest proponents of African integration as is reflected in his address to the 1958 Pan-African conference where he called for formation of an African continental government.⁷² The 1963 Addis Ababa conference which formed the Organization of African Unity (OAU) was therefore, completing a process going back more than half a century back. After formation of the continental body however, there were no main steps put in place right from the start to realize the objective of formation of a continental government. It was only in the 1970s and 1980s that concrete steps were taken to establish economic integration institutions, the flame for political integration having faded away with the exit of Nkrumah and his fellow generation of African leaders who shared the political unity dream with

⁷⁰ Nying'uro P O 'EACE's prospects on the global stage' in Ajulu R (editor) The making of a Region, Institute for global dialogue, Midrand, 2005 p31

⁷¹ Rubin L and Wenstein B African Politics: A Continental approach, Praega Publishers, New York, 1977, p230

⁷² Ibid p231

him. Guy Martin observes a proliferation of these initiatives with thirteen of them recorded by 1980 and many more thereafter.⁷³ The initiatives include Arab Maghreb Union, Economic Community of West African states (ECOWAS), Common Market for Eastern and Central Africa (COMESA), Southern African Development Community (SADC), and the East African Community. The success and survival rate of these initiatives is low, but this is not unique to the African continent.

Before looking at the East African case that is the main concern of this project, literature on two African cases is examined as the cases offer useful lessons for analysis of the East African Community, namely the Economic Community of West African States and, South African Development community.

ECOWAS is a sub-regional organization rated as the most ambitious in sub-Saharan Africa bringing together sixteen countries. According to Asante the sub-region includes not only some of the richest and most populous countries in Africa, several of which possess immense mineral wealth, but also a number of the poorest on the continent. It is also highly politically fragmented.⁷⁴ Given this background integration is the only way of building viable self-sustaining states out of mini-states inherited from the colonial powers. Asante argues that what is at issue is not the imperative of integration but the question of an effective process. ECOWAS began by building structures necessary for trade liberalization and free movement of people across the region though it is observed that on free

⁷³ Martin G Africa in world Politics, Africa World Press, 2002, p130-131

⁷⁴ Asante S K B, 'Regional Economic Cooperation: the experience of ECOWAS' in Nyong'o A (editor) Regional Integration in Africa, Academy Science Publishers, Nairobi, 1990, p 103

movement not much has been achieved. Despite the efforts made positive integration in this region has not been achieved to the expected level.⁷⁵

The highest decision making organ of ECOWAS is the Heads of state Summit assisted by the Council of Ministers and the Executive Secretariat below the Council made up of regional supranational technocrats like the European Union. Asante further points out that the structures of the ECOWAS institutions do not provide a forum for interaction with the private sector, are a brainchild of the elite and have no organ through which the private sector can bridge the elite-mass gap.⁷⁶ This is contrary to the functionalist position that the private sector as part of interest groups in an economy is crucial in promoting regional integration. Asante concludes that the West African Integration process is yet to be sold to a reluctant and skeptical private sector and working population. He argues further that the application of the European model to West Africa at this stage of development is inappropriate or the rest of Africans have not yet genuinely accepted the idea of cooperation and integration. He advances a strong case for private sector participation in the process but does not elaborate on what the role of the sector is and whether the sector has its own momentum to drive the process.

SADC is a sub regional grouping of countries in the southern part of the African continent whose motivation for integration was collective struggle against colonialism and apartheid South Africa, and prospects of economic gain once the struggle succeeded. Ibbo Mandaza argues that the sub-region is already

⁷⁵ Ibid p111

⁷⁶ Ibid p 106

integrated into a political and economic entity.⁷⁷ He argues that although the origin of this initiative cannot be attributed to a flashpoint in history much of what is hailed today as unity can be ascribed to the region having been colonized. The organization's new Treaty was signed in 1992 with the objective as 'to achieve development and economic growth, evolve common political values, systems and institutions, promote and defend peace and security.'⁷⁸ According to him the colonization process set in motion economic, socio-cultural and material developments between and within countries which integrated these countries. These cover educational and cultural development, transport and communications, labor migration, trade finance and a myriad of other activities which transcend boundaries of countries in this sub-region. It is further pointed out that today there are millions of Malawians in Zambia and Zimbabwe, millions of Zimbabweans in Malawi and Zambia, millions of Zambians in Zimbabwe and Malawi and millions of migrant labor from these countries in South Africa.⁷⁹ Tanzania is the odd one having joined the organization because of its role in the liberation of these countries. The SADC is a case of a sub-region with a strong foundation for integration yet the pace beyond the current level into the political sphere in the functionalist fashion spillover is yet to be realized. While the respective economies and people in this region are more integrated than elsewhere in the continent the respective countries sovereignties are holding back the process which already has a strong foundation for integration more enhanced cooperation.

⁷⁷ Mandaza I 'SADC: Problems of Regional Political and Economic Cooperation in Southern Africa: an Overview' in Nyong'o A. *op cit* p141

⁷⁸ SADC Secretariat, Declaration Treaty and Protocol of South African Development Community, Gaborone, 1995

⁷⁹ *ibid* p 147

2.6 Regional Integration in the Middle-East (United Arab Republic)

The United Arab Republic is an integration initiative between Egypt and Syria which was aimed at evolving later into a large Union to include all Arab speaking countries. It began on a high note, with political federation as the priority agenda. The attempt was however, short lived lasting only five years between the year 1958 and 1961, becoming chronicled as a Union that failed.⁸⁰ Unlike other regional integration attempts the UAR was not between states that were directly contiguous. Egypt and Syria are geographically far apart with Jordan and Israel in between them, though there is direct connection between the two Union states through the Mediterenian Sea. The case for application of geographical proximity in defining regions has been strongly argued. Gath le Pere observes that although regional integration does not conform to a set of immutable laws in the contemporary global political economy, nor does it subscribe to definitional correctness, regional integration suggests geographically contiguous units and physically adjacent economies.⁸¹ The author holds the view that regional integration presupposes a geographical bounded set-up as the starting point. The UAR case however, puts to contestation the qualification of geographical contiguity as a guide to defining regions. Contiguity has to be defined before it is used for classification. Should the condition of all states being contiguous to each other be held as a key qualification for defining a region, then even East Africa will not qualify because Kenya is not contiguous to Rwanda and Burundi just like Syria and Egypt are not geographically linked but have other features of interaction and connection. Should geographical contiguity

⁸⁰ Etzioni A, Political Unification: A Comparative study of Leaders and Forces, Holt, Rinehart and Winston, Inc, New York, 1965, p 97

⁸¹ Gath le Pere, 'The EAC: A Theoretical Homily' in Ajulu R, op cit, p 267

not be, as is the case with UAR, then other qualifications should be applied and accepted as sufficient. This is because failure to do so will leave out initiatives like the UAR that offer crucial and critical lessons on this important global trend of regional integration. Although the UAR initiative collapsed it broadens the understanding and yardsticks for definition of a region, and unfolds realization that states which do not share a common border can initiate the integration process, awaiting incorporation or the joining of others that are geographically in between them, as long as the two have other characteristics which unite them as the case demonstrates.

Egypt is on the African Continent while Syria is in the Middle East. Both countries however, are predominantly Arab speaking, Moslem, identified with Arab Nationality and both were members of the Arab League at the time of their integration attempt. According to Etzioni (1965) the Union began on a high note of political federation, initially commanding enthusiasm to becoming the first stage of formation of an all-encompassing Arab Nation. It however, began prematurely as only the two countries' political elites and strong personalities, especially Gamal Abdel Nasser, the Egyptian President took center stage in driving the process, leaving out other politically effective groups including the army, landlords and the business community. This was therefore an entirely state driven process.

The two states managed to achieve political federation by fusion of their individual sovereignties into one with a single government headed by Nasser of Egypt and seven vice presidents: five Egyptians and two Syrians. The Union also achieved a Customs Union with increased flow of trade between the two regions

that formed the Union, the Southern (Egypt) and the northern (Syria).⁸² There were however, differences in the conception of the institutional expression to be given to the new government set-up. Syria expected a loose federation with matters of defense and foreign policy to be decided jointly while other matters would be controlled autonomously by each region. This did not happen as expected since Egypt's dominance saw introduction of a centralized system of governance on all affairs within a few years of formation of the Union.⁸³ The Nasser dominated government came up with the centralized Five year Development Plan (1960-1965), which was to increase investment by sectors or regions, with the Egyptian region as the industrial and manufacturing center, while the Syrian region was to specialize in production of agricultural raw materials. The Union government did not involve private sector participation in planning, especially the agricultural sector which was excluded from formulation of the common agricultural policy for the Union yet it was expected to take part in the policy implementation. The common policy was therefore seen by the farmers from Syria as imposing. They protested against the policy's intention to extend to Syria the benefit of Protection of the Farmers Law, which had an unacceptable clause to Syrians limiting land holdings by one family to 200 acres. The Syrian peasants felt this was more applicable in land hungry Egypt rather than Syria where land was abundant.⁸⁴ The UAR case ended up as state dominated to the exclusion of the private sector particularly agriculture and the business community. It therefore became unpopular and easily collapsed within a few years after its inception.

⁸² Etzioni A, op cit p127

⁸³ Ragaei El Malakhi, 'Economic integration in the United Arab Republic: A study in Resources Development' in Land Economics Journal, Vol. 3, 1960 p 252-253

⁸⁴ Etzioni A, op cit p 128-129

While the reviewed literature on the UAR regional integration case associates collapse of the initiative to the state-centric approach to integration, it does not elaborate on how participation of the private sector and other non-state actors would have influenced the process had they been involved, just as is the case with literature on the East African Community, as demonstrated below.

2.7 East African community (EAC)

There has been a tendency when looking at the international scene to focus only on competition between states as constantly in conflict, rather than on cooperation between them. Important issues have been seen as activities of only states and diplomats as their representatives. John Burton contends that this state-centered, conflict oriented, and defense oriented conception of the international system not only distorts reality but tends to become self fulfilling; and that if you see the world "from the viewpoint of kill or be killed, you are likely to act accordingly, thus reinforcing a jungle like behavior."⁸⁵ In this view therefore, an approach to integration which focuses on non-state actors is advocated where actors in functional areas of production, transportation and communication are seen to take the lead. This will increase possibilities for success since governments will find it difficult to oppose the growth of functional organizations since these nonpolitical bodies are of benefit to the participating states and do not threaten their sovereignty. This is the context in which the second East African integration initiative (EAC 2) is analyzed.

The efforts to revive the East African community following the collapse of the first initiative in 1977 can be traced to the drive commenced by the three Heads

⁸⁵ John Burton et al, The Study of world society: A London perspective, Pittsburg, 1974

of state of Kenya, Uganda, Tanzania, namely, Moi, Museveni and Mwinyi respectively. They signed an agreement setting up the Permanent Tripartite commission for East African cooperation in 1993 putting in motion a process to re-establish a new regional body. In 2004 a committee to investigate and report on ways of fast-tracking the new initiative was set up by the East African Heads of state. In its report the committee pointed out that the earlier attempt in East Africa between 1967 and 1977 (EAC 1) failed partly because of the democratic deficit in the entire process particularly at decision making level by lack of participation of crucial non-state actors. The Committee observed that the new integration initiative (EAC 2) was taking place within changed environments in partner states when the states could no longer act as if they were the only players in the regional affairs. Other actors other than states were therefore recognized as crucial in the process. The protocol for the establishment of the East African Community therefore, recognizes the importance of the private sector as a non-state actor, and provides a place for it in the integration process. Before looking at the implications of this it is important to first examine literature on the historical evolution of the integration process in East Africa as this will form a good basis to analyze the revival of the second integration initiative. This will guide effort to re-examine the basic tenets of the theory and practice of regional cooperation, or at least help to raise questions and draw conclusions that will be relevant to analysis of the revival initiative.

The integration process in East Africa can be traced to the period after 1948 when formal institutions of cooperation were created under the East African High

Commission.⁸⁶This was later transformed into the East African Common services Organization to cater for the East African states of Tanzania, Kenya and Uganda when they became independent. Mangachi notes that these countries tried to form a political federation shortly after independence, but for various reasons did not succeed.⁸⁷The common services organization was dissolved and in its place the East African community formally created in 1966. This initiative collapsed only ten years later. Domenico Mazzeo records that at the time of this collapse this initiative had gone beyond the traditional concern with trade liberalization and harmonization of industrial policies, and had developed joint training and research institutions and infrastructural development in fields related to science and technology.⁸⁸This had functional similarities with the European Union where the beginning of the process included cooperation in technical areas; and in accordance with the functionalist theory of integration, increased cooperation into other areas by secondary priming: unification in one area triggering unification in others; this should have been expected to be the case with the EAC 1. The community instead collapsed at the time it seemed to have developed a strong functional foundation for expansion. Important lessons should therefore be drawn from this case for any new and even old integration initiatives in Africa, especially the new initiative in East Africa, the EAC 2, and others elsewhere in the world.

Which factors prevented the spillover effect and the making of further progress in this East African experience when in contrast a near similar

⁸⁶ Mangachi M W, Regional Integration in Africa: East African experience, Safari books Ltd, Ibadan, Nigeria, 2011, p 15

⁸⁷ Ibid p 16

⁸⁸ Mazzeo D, 'The experience of the East African Community: implications for the theory and practice of regional cooperation in Africa' in Mazzeo D (editor) op cit, p 151

experience in Europe evolved into what can be counted as a successful integration case? Mazzeo advances the view that mal-distribution of benefits within common markets of partner states which results from different levels of development of the states is a source of conflict between members, and is one of the factors responsible for the collapse of the EAC 1 integration initiative.⁸⁹ According to him Kenya was considered the most developed and Tanzania the least; this resulted into dissatisfaction, frequent complaints and claims by Tanzania and Uganda about high relative gains from the Community in favor of Kenya. It has been observed that between 1969 and 1978 Kenya ran a trade surplus of 5.6 million US dollars with Uganda, and 25.6 million US dollars with Tanzania on average. The result of this asymmetry was that gains from the cooperation were concentrated in only one member state instead of the 'spread effects' in which gains from cooperation are spread evenly among member states of a scheme.⁹⁰ The following measures were put in place to address this development imbalance: the use of transfer tax, the use of the East African Development Bank to invest a greater amount of its resources in the less developed member countries, and harmonization of industrial licensing system to control the allocation of certain types of industries selectively in favor of the economically weak. In practice the various measures were ineffective in correcting this problem. Institutional weakness is also cited as one of the causes of lack of spillover and eventual collapse of the Community. The East African Community (EAC 1) lacked an effective supra-national authority to harmonize the national interests of the member states. As a consequence, important decisions were left to the individual heads of state whose personal differences were transformed into state rivalries.

⁸⁹ Ibid p 153

⁹⁰ Mangachi M W, op cit p 110

The Heads of state were for instance unable to meet for over seven years because of the differences between President Nyerere of Tanzania and Idi Amin of Uganda paralyzing operations of the heads of state summit which was the supreme decision making organ of the Community.⁹¹ The EAC I contrasts sharply with the European Union. Susan Strange notes that the member states of the later have institutionalized policy coordination and dispute resolution among themselves by moving authority on crucial Union matters from national governments to central European Union institutions.⁹² As one of the examples Strange cites the EU member states courts which have gradually become subordinate to the supranational European Court of Justice on not only general issues but more importantly on Union matters. Increasingly, the respective state courts adjudicate and decide cases in light of European Community law as determined by the European Court of Justice.⁹³

Another reason cited for collapse of EAC I was ideological differences between the Community member states particularly between Kenya and Tanzania. The two countries differed on the role of the state in the economy, and consequently the role of public and private enterprises with Kenya opting for capitalist practices which contrasted with Tanzania's socialist ones.⁹⁴

Earlier literature on reasons for collapse of EAC I concentrates on ideological differences, institutional weakness, and different development levels; a different reason is added to these three in later analyses. Lack of popular participation and

⁹¹ Mazzeo D, 'The experience of the East African Community: implications for the theory and practice of regional cooperation in Africa' in Mazzeo D (editor) op cit p152

⁹² Strange S The Retreat of the State, Cambridge University Press, 1996, p171

⁹³ Ibid p172

⁹⁴ Mazzeo D, 'The experience of the East African Community: implications for the theory and practice of regional cooperation in Africa' in Mazzeo D (editor) op cit p 155

input of the East African population, civil society and private sector in the integration process at both policy formulation and implementation is added to the reasons. This featured clearly during the proceedings of the first Ministerial Seminar on East African Cooperation, Arusha, Tanzania on 25-26 March 1999 which was held to work out modalities of reviving the Community.⁹⁵The Treaty for re-establishment of the Community recognizes the non-state actor participation in the integration process as crucial and provides for the creation of an enabling environment for the sector and the business community and its strengthening to ensure it plays an important role in the process.⁹⁶The role it is expected to play however is not stated, and the question of whether or not this role will be performed independent of the state is not raised and addressed.

In an attempt to identify reasons for the revival of the East African integration Mwesiga Baregu has come up with four main imperatives or factors that give rise to and create the impetus for integration, namely, the affection, the gain, the threat and the power imperatives.⁹⁷According to him the affection imperative is a situation where countries come into an integration arrangement because they have a lot in common and feel some bonds of affection. The countries of East Africa have a common colonial heritage, language affinity, and cross border ethnic communities. He however observes that if this affinity was sufficient the 1977 collapse of the first EAC would not have come about. On the gain imperative he notes that gain and loss are the central tenets of the rational

⁹⁵ EAC Secretariat, Perspectives on Regional Integration and Co-operation in East Africa, proceedings of the 1st Ministerial Seminar on East African Cooperation, Arusha, Tanzania, March, 1999

⁹⁶ EAC Secretariat The Treaty for the establishment of the East African Community Article 128-129

⁹⁷ Baregu M, 'The African Community and the EAC: any lessons from the EU ?' in Ajulu R (editor) The making of a Region, Institute for Global Dialogue, South Africa, 2004, 46-47

choice theory, which contends that individuals and states tend to behave in a manner which maximizes their gains while minimizing their losses. If gains and losses are therefore not carefully addressed they can be a source of potential discontent between the states involved. One is tempted to use this to explain the problems associated with relative gains and losses in the first EAC initiative. Baregu's position on this is that pre-occupation with material gain reduces the dynamics of integration to economic motives alone and purely on trade as such, while ignoring other imperatives like security. He elaborates on the threat imperative as a situation where two or more countries find themselves in a mutually threatening relationship and have to reach some compromise leading to peaceful coexistence. This, he considers the most important as was seen in the initial stages of formation of the EU by countries driven by the desire to cooperate in order to avoid future wars between them, and should inform regional integration initiatives in the third world. This cannot however apply to the EAC case as there were no mutually perceived threats between the states in the region to the magnitude of serious armed conflict as was the case in Europe during formation of the EU. The power imperative where a regional hegemonic power forces countries in a region into a union by military means is dismissed as a model for East Africa as there is no country in the region that could perform this role and marshal sufficient resources for the purpose.⁹⁸ Looking at the four imperatives as listed by Baregu, the position held in this research project is in agreement with his contention that that the imperatives underlying the renewed EAC are not very explicit. The Treaty for the establishment of the East African Community does not indicate which of the imperatives outweighs the rest. The

⁹⁸ Ibid p 48

preamble of the Treaty invokes the affectionate factor; later on it indicates inspiration for integration as deriving from the gains imperative. The gain imperative is nothing other than focus on economics and actors in the economic production process. Among reasons it identifies as responsible for the failure of the first integration initiative in East Africa which should be avoided in the second initiative is lack of participation of the private sector as a non-state actor participant in economic activities and therefore in the integration process. The Treaty is a general guideline and is not expected to bear every detail of what should be done by all actors in the process. This notwithstanding, it is an omission for it not to have provided direction as to what the private sector is and what it was expected to do in driving the process.

Article 127 of the Treaty for Establishment of East African Community provides for a people driven process, with non-state actor participation, though it is unclear on details about the sector's involvement. In line with the Treaty, though vague on private sector as it is, Kenya's Ministry of East African Community's strategic plan shows commitment of the Kenya government to creation and promotion of an enabling environment for participation of non-state actors in the process, and it gives prominence to the private sector as one of the crucial actors.⁹⁹ The case for non-state actor participation is further reinforced by Godfrey Okoth who while commenting on the need for a regional approach to security and a broad view of the concept of security in the Inter-Governmental Agency on Development (IGAD) and the East African Community Regions, he argued that the main focus should be on social, political, economic and military aspects of security with more popular participation in decision making, and a

⁹⁹ GOK, MEAC, Strategic Plan-2008-2012(popular version) p 2

departure from the traditional focus of the state alone as the sole determinant of international affairs.¹⁰⁰ He argues for inclusion of actors from the non-state sector in security and regional ventures where he sees member states increasingly becoming unable to control transitional movements and influences across borders. The economic sphere which is crucial in integration ventures has the private sector as part of actors separate from the state. By implication therefore, analysis of relevance of this sector should not be ignored.

2.8 Non-state actors in regional integration

As a background to the analysis and conclusions on the Kenya private sector as a non-state actor in chapter three and four it is important to briefly define non-state actors in general, and examine examples of regional organizations where their role has been acknowledged as is the case with the East African Community.

States and non-state actors form broad differing categories, yet defining non-state actors mainly by their independence from states and state authority would be misleading. Both in domestic and international politics, the theoretical purity of these differing ideal types gets blurred by the complexities of practice. Business networks are known to have links with governments, from funding to participation in government processes. In practice therefore it is sometimes difficult to single out activities that are exclusively state concerns without non-state actor participation and vice-versa. If the state is providing general direction and control, or policy direction, the private sector on the other hand may be

¹⁰⁰ Okoth P G ' Regional Institutional Responses to Security in the Era of Globalization' in Mwangi M (editor), African Regional Security in the age of Globalization, Hinrich Boll Foundation, Nairobi 2004, p51

actively involved in implementation; or the state and the private sector may be partners right from policy formulation to implementation. In functional terms non-state actors cannot always be distinguishable from states as they at times may form quasi-government organizations. There are therefore many functional overlaps between what these actors do and state activities. Some authors distinguish non-state actors according to their place in the three sector model of state, private sector and civil society, and see them as bodies that are non-governmental in the sense that they are not established by governments, are formally free from government interference and do not wield governmental powers.¹⁰¹ As established under the Cotonou Agreement, each African, Caribbean and Pacific (ACP) country can define, according to its national context, which categories or organizations enter the category of no-state actors.¹⁰² Business organizations without state support in their core activities have thus been classified as non-state actors. Such organizations in Kenya and East Africa through their umbrella bodies referred to in the Treaty for the Establishment of the East African Community as the private sector are therefore classified and regarded as important non-state actors in the integration process. In the Treaty, the partner states commit themselves to adopt programs that would strengthen and promote participation of the private sector in formulation and implementation of the integration process policies.¹⁰³

According to the Kenya Private Sector Development Strategy, private sector can broadly be defined to include all actors involved in commercial productive activities in the Kenyan economy, (both formal and informal) as well as on-farm

¹⁰¹ Peters A, Koechlin L, Foster T, Zinkernagel G F, (Editors), Non-State Actors As Standard Setters, Cambridge University Press, 2009, p 14

¹⁰² Cotonou Agreement, Article 6

¹⁰³ EAC Secretariat, The Treaty for the Establishment of the East African Community, Article 127

and off-farm activities.¹⁰⁴ By their very nature as participants in the national economy which forms part of the basis of Kenya's relations with other nations, they are therefore participants in the country's international relations. It has been argued that the state is increasingly sharing its determination of international relations with non-state actors of this category, whether willingly or unwillingly. Daphne Josselin and William Wallace for instance have generalized that since the end of the cold war state power is in retreat across the globe with increasing evidence of influence of actors of this category.¹⁰⁵ The Kenya private sector as an actor in this category can therefore be considered an actor in the political process. While complexities of practice and function make definition difficult it is clear that there are actors that are autonomous from the structure and machinery of the state. In this research therefore, non-state actor refers to an actor emanating from the market economy or, entirely autonomous from state funding and control in its core business and acting in ways which affect political outcomes either purposefully or semi-purposefully.¹⁰⁶ While the focus of this research is on non-state actors' role, and the Kenyan private sector in particular in regional integration, a brief examination of the role of non-state actors in the Association of South East Asian Nations regional integration is done below as one of the illustrations of the extent to which these actors can participate and influence regional integration.

¹⁰⁴ GOK Private sector Development Strategy, 2006-2010

¹⁰⁵ Josselin D and Wallace W, 'Non-state Actors in world Politics: A Framework' in Josselin D and Wallace W (editors), Non State Actors in World Politics, Palgrave Macmillan, London ,2001 p 1

¹⁰⁶ ibid p11

2.9 Non-state actors in ASEAN

The Association of South East Asian Nations began as an organization with elitist tendencies which did not regard non-state actors as important in the regional integration process. Alexander C Chandra argues that since its establishment in 1967, the Association had little interest in facilitating the participation of non-state actors in its decision making process.¹⁰⁷ He further contends that the non-state actors overtime however, have gained importance in the region's integration process. The business community, the academic community, and non-governmental organizations have got increasingly recognized as critical participants in the creation of the regional community and identity, though participation of many of them has been limited to conferences, symposia, and seminars focusing on various regional issues. During the 1980s and 1990s a regional production network, ethnic business network, and regional economic zones have emerged, all of which have helped initiate a bottom-up approach to regional integration in the region.¹⁰⁸ Within this period the idea that other actors other than states were crucial in the regional decision making and integration process emerged and got strengthened among the elite group that had originally been singly spearheading the integration process. This elite acknowledgement can be illustrated in the words of Adam Malik, a former Indonesian Foreign Minister, who stated that 'the shaping of a future peace, friendship and cooperation of ASEAN is far too important to be left to

¹⁰⁷ Chandra A C, ' The role of non-state actors in ASEAN' in Revisiting South East Asian Regionalism, A publication of Focus on the Global South, December, 2006, p 71

¹⁰⁸ Ibid p 73

governments alone. There was need for ever-expanding involvement of non-state actors.¹⁰⁹

The recognition of the non-state actors in the affairs of the regional body formed ground for involvement of the private sector as a non-state actor in regional economic integration initiatives, which resulted in the establishment of the ASEAN Chambers of Commerce and Industry (ASEAN-CCI). According to Alexander C Chandra ASEAN-CCI became an important vehicle through which the private sector channeled its inputs and concerns on regional economic issues to ASEAN.¹¹⁰ ASEAN-CCI has played a key role in the creation of the regional body's Free Trade Area to which increased regional interactions in trade, production diversity and complementarity of the ASEAN economies is associated.¹¹¹ By the year 2011 the regional body regarded the private sector as crucial in realization of its objectives. It has become 'the cornerstone of the new architecture of interdependence among the regional economies and its contribution will be important in the realization of the ASEAN Economic Community by 2015.'¹¹² The regional organization has opened up regular interactive avenues with the private sector representatives and apex bodies with the organization's Economic Ministers holding annual meetings with the ASEAN Business Advisory Council and with individual business councils within the region. The ASEAN Federation of Textile Industries and the ASEAN Automotive Federation have been actively engaged in the process of regional

¹⁰⁹ Ali Alatas, 'ASEAN: An Association in search of people or the people's search for an association', in Jakarta Centre for strategic and International Studies, Report of the first ASEAN People's Assembly 2001, p 20

¹¹⁰ Chandra A C, op cit, p73

¹¹¹ Tongzon J L, The Economies of Southeast Asia, Edward Elgar Publishing(2nd edition),2002, p182

¹¹² The ASEAN Secretariat, ASEAN Economic Community: Handbook for Business, Jakarta, Indonesia, 2011, p 99

integration.¹¹³ ASEAN regional body in collaboration with the private sector has developed a common voice during negotiations with other countries and bodies outside the region, which include discussions with the US-ASEAN Business Advisory Council, EU-ASEAN, UK-ASEAN and the Federation of Japanese Chambers of Commerce and Industry.¹¹⁴ While there has been increased realization of the importance of the private sector in the region's integration process the ASEAN secretariat argues that the enormous potential of public-private partnership in ASEAN regional affairs has yet to be fully tapped. It has therefore made public-private sector consultations and dialogue a permanent agenda in the ASEAN Ministers and Senior Officials meetings to ensure greater synergies in implementation of regional integration measures.¹¹⁵ Private sector involvement in ASEAN regional integration is a case of state initiation and involvement of private sector participation in regional integration policy formulation. The regional states have taken the lead in the process, but realizing the limited extent to which they can go without other actors' involvement, have ensured active participation of the private sector.

2.10 Conclusion

Global experience in regional integration is highly diversified in terms of the models employed in the processes. There are no two regions in the world which are complete replicas of each other and therefore where a single model can be applied with uniform measures of success expected. There are however similarities in experiences and conditions in some regions making it necessary for one integration initiative to provide important lessons for others with similar

¹¹³ Ibid p 9

¹¹⁴ Ibid p100

¹¹⁵ Ibid p 101

conditions. The institutional arrangements of the EU for instance bear similarities with the East African Community ones. If the European Union can be acknowledged as a successful experience can it be used as a model to provide appropriate lessons for the new East African initiative? It has been argued that it is the imperative rather than institutional or organizational arrangement that determines integration goal attainment and sustainability in Regional Integration arrangements.¹¹⁶ The imperative has a bearing as to who the actors in the initiative will be and to what extent they will be able to play their respective roles. It is one issue to declare an actor important in the process, and a different one for the declared actor to be relevant or useful in the process as declared. When the East African Community Treaty declares the EAC integration process people and market driven, and resources used to mobilize participation of these non state-sectors, this raises the need to inquire into the effectiveness of these players in the process. It is over one decade since the private sector as an actor was declared crucial. To what extent has it been involved and able to influence events in the process as an independent actor, and how has it related with the state? Can the state willingly cede some of its power to a non-state actor in an international affair? These questions are the main concern of this research.

¹¹⁶ Baregu M, 'The African Economic Community and the EAC: Any lessons from the EU' in Ajulu R (editor), op cit p 49

CHAPTER THREE

KENYA PRIVATE SECTOR IN REGIONAL INTEGRATION

3.1 Introduction

This chapter reviews the activities of the East African Community since the coming into effect of The Treaty for the Establishment of the East African Community on 7th July 2000. The status of the process on the Community's agreed integration milestones of the Common Market, Customs Union, Monetary Union and political federation is examined. The chapter also investigates for evidence of the Kenya private sector's role in the process as an actor recognized by the Community member states as crucial in the success of the process. It contains data on the profile of the Kenya private sector in general and focuses attention on the integration areas in which it is involved.

Before examining the Kenya private sector profile in the East African Integration process the EAC integration status is presented to provide the background against which the activities of the sector in the integration process is examined. The ultimate goal of the East African integration process as envisaged in the Treaty for the establishment of the Community is political federation. The process is therefore, to be assessed on the basis of the extent to which the following milestones leading to the end result are being successfully pursued: formation of a Customs Union in the region, a Common market, Monetary Union and ultimately, Political federation, and the extent to which these achievements help in realization of the objective of developing policies and programs aimed at widening and deepening cooperation among partner States in political, economic, social and cultural fields, research and technology, defense, security and legal

and judicial affairs, for their mutual benefit as spelled out in the Treaty establishing the Community.¹¹⁷

3.2 The status of EAC integration

Using the Treaty as a guide the Community commenced the process by coming up with protocols on the respective milestones except on political federation. The protocol for the establishment of the East African Community Customs Union was signed in 2004 and launched on 1st January 2005. According to the interview with the Permanent Secretary, Ministry of East African Community¹¹⁸, the protocol has provided for elimination of internal tariffs and a Common External Tariffs structure of 0% for raw materials, 10% for intermediate goods and 25% for finished goods. It also provides for Rules of Origin which govern which goods are accorded tariff-free status for the case of intra-EAC trade. Since its establishment Kenya's exports to the EAC which constitute manufactured products has been on an upward trend. The government of Kenya however, is not a direct participant in manufacture and trade but only performs a regulatory role and creation of a suitable environment for participation of its private sector in trading with the other East African Community economies. The table below illustrates the upward trend of Kenya's exports to the Community member States in seven years following the coming to effect of the Common Market Protocol.

¹¹⁷ EAC, The Treaty for the Establishment of the East African Community, Article 5

¹¹⁸ Interview with Permanent Secretary, Ministry of East African Community, Kenya, 17th March 2012

Table 1: Kenya's exports to the EAC, 2004-2009 (kshs. Billion)

	2004	2005	2006	2007	2008	2009	2010
Uganda	37.059	42.679	27.892	33.571	42.285	46.24	52.11
Tanzania	17.921	19.954	18.288	22.326	29.224	30.087	33.21
Rwanda	6.19	7.282	4.765	5.801	8.953	9.536	10.54
Burundi	2.972	3.714	2.184	2.424	3.479	4.597	5.46
Total EAC	64.142	73.629	53.05	64.122	83.942	90.46	101.32
Total global	214.793	260.422	250.993	274.658	344.947	344.949	409.79
% of global	29.9	28.3	21.1	23.3	24.3	26.2	24.7

Source: Ministry of East African Community, Kenya, April, 2010

The Protocol for the establishment of the EAC Common Market was signed in November 2009 and came into effect on 1st July 2010. It provides for free movement of people of EAC across the borders, right of establishment for the East Africans within East Africa, free movement of services and capital, and right of residence. Under this arrangement professionals, business people and workers will access opportunities available across borders without discrimination. Work already done to ease cross border movement of persons include issuance of the East African Passport, setting up of separate counters to serve East African nationals in all international airports and border crossing points, and adoption and use of a single immigration Departure/Entry card at entry points for East Africans in all member states.¹¹⁹

The East African Monetary Union is the third step in the EAC integration process. A task- force spearheading negotiations on the protocol for the

¹¹⁹ Interview with the acting Permanent Secretary, Ministry of East African Community, Kenya, 17th March 2012

establishment the East African Monetary Union has been carrying out its work since the year 2010. The 12th summit of the EAC Heads of state in 2010 gave a target of finalizing the protocol by April, 2012.¹²⁰

Political federation is the ultimate integration level. There is no mode of political federation specified in the East African Community Treaty nor a protocol signed and ratified to this effect. The Special Summit of Heads of State of the Community member states in the year 2004 raised their concern about the slow pace towards achievement of this objective. The Summit therefore set up a committee to examine ways to fast track the process. While the Committee report¹²¹ submitted to the Heads of state proposed establishment of a commission to drive the political federation process, it was silent on the timelines and did not mention the need for a protocol binding member states to work towards the federation. A team of experts was later set up to consult the East African public on the federation. The team undertook detailed studies on fears, concerns and challenges identified by citizens of EAC on political federation and presented their report to the summit, which adopted it and directed that the recommendations made by the experts be implemented. The Community however has succeeded in establishing three key institutions of a political system: the East African Legislative Assembly- Legislature, East African Court of Justice- Judiciary, The Council and Secretariat- Executive. These organs however do not have supranational authority. The political federation milestone therefore, has not been realized, nor is there agreement on the form it shall assume and the roadmap towards its attainment.

¹²⁰ Ibid

¹²¹ EAC, Report of The Committee on Fast Tracking East African Federation

From the interview with the same acting Permanent Secretary, development of an integrated road and communication network is being undertaken. The East African Road Network Project has been classified into the following corridors which form priorities in the sub-sector, with work going on in various parts of the corridors on funding from EAC partner states and development partners:

Corridor 1: Mombasa-Kampala-Kigali-Bujumbura-Gatumba (Burundi/Democratic Republic of Congo border);

Corridor 2: Dar-es-salaam-Dodoma-Isaka-Musoma-Masaka-Kigali-Gisenyi (Rwanda/Democratic Republic of Congo border);

Corridor 3: Biharamulo-Mwanza- Musom-Sirari-Lodwar-Lokichogio;

Corridor 4: Tunduma-Sumbawanga-Kasulu-Nyakanazi-Bujumbura-Gisenyi (Democratic Republic of Congo border);

Corridor 5: Tunduma-Arusha-Nairobi-Isiolo-Moyale.¹²²

In the energy sector the formulation of the East African Power Master Plan was completed in 2005. It recommended the establishment of an East African Power Pool. On this basis Lungu-lunga, Kenya, has been connected to the power grid from Tanzania; Namanga Tanzania connected from Kenya; and Isebania Tanzania connected from Sirari, Kenya. The partner states are also developing the Dar es salaam-Mombasa gas, and Eldoret-Kampala oil pipelines.¹²³

Other programs and projects being undertaken are: Harmonization of East African Education and Training curriculum aimed at providing uniformity of content and skills acquired at the end of each education cycle and development of

¹²² Interview with acting Permanent Secretary, Ministry of East African Community, Kenya, 17th March 2012

¹²³ Ibid

the Inter-University Council for East Africa to promote regional quality assurance framework in order to build and maintain high and compatible academic standards in higher education in East Africa, and facilitate mobility of students and academic staff across the region.

Articles 127 and 128 of the Treaty for the establishment of the East African Community acknowledge the importance of the private sector in the integration process while article 129 acknowledges the symbiotic partnerships between the public and private sector during policy formulation and program prioritization in the integration process. In 2004 the Committee on Fast tracking East African Federation observed that already a number of private sector bodies existed that could be effectively involved and harnessed during both the customs union and common market stages to form a solid and firm foundation for the political federation.¹²⁴The government of Kenya's Ministry of East African Community's strategic plan 2008-2012 expresses the intention of the government to enhance and strengthen private sector participation in the integration process.¹²⁵

Given the above status of the Community, where various degrees of achievement have been recorded, and given the recognition of the private sector by the Community as a crucial actor in the process, it is expected that there will be evidence of its influence on the policy driving the process. The Kenya private sector is expected to have influenced Kenya's policy choices on integration issues in the areas mentioned. What then is the profile of the Kenya private sector as a participant in the economic process in Kenya and in the East African Integration process?

¹²⁴ EAC Secretariat, Report on Fast tracking East African Federation, Arusha, 2004 p33

¹²⁵ GOK, Ministry of East African Community, Strategic Plan, 2008-2010 (Popular version) p 2

3.3 Kenya private sector profile

The Private sector in Kenya can be divided into two broad categories, or characterized as dualist in nature. There is a small proportion of large enterprises and a large proportion of medium, small and micro enterprises that operate parallel to each other with limited linkages. The micro enterprises are largely informal operating outside the realm of legal and institutional support infrastructure. The table below is a summary of this distribution.

Table 2 Size contribution to GDP of enterprises in Kenya

Size	Estimated number of enterprises	Estimated contribution to GDP
Large	1000	30%
Medium	34,000	30%
Micro and small	1,679858	20%
Total	1,735000	80%

Source: Records at the Ministry of Trade, Kenya, June 2008

As shown in the table, Kenya's private sector is a mixture of different firm sizes. Large firms form a minority with many functioning as subsidiaries of multinational corporations. These firms network among themselves, are active in business associations and lobby the government directly for reforms specific to their interests. As will be shown later, these are the firms mostly involved with the Kenya government on matters concerning the East African integration process.

Kenya's Ministry of trade classifies the country's private sector into three broad categories, namely: agriculture, manufacturing and trade, with their

combined contribution accounting for 80% of the country's GDP. Of the total national figure, agriculture which is largely under private ownership and has been the mainstay of the economy accounts for 24%, while manufacturing and trade, where large firms are, contribute 10.5% and 10.8% respectively. The agricultural sector therefore forms a crucial part of the private sector.¹²⁶

One other important private sector actor is the private media which is expected to play a crucial role in shaping, and at times directing public opinion. The media in this context refers to radio, television and print, with the dominant firms in this sector being the Nation and the Standard media houses. The private media firms as embodied in the Kenya Private media Association as their apex body have not been represented at the Kenya policy making forum on integration activities.¹²⁷

The role and effectiveness of the Kenya private sector in the East African integration process is dependent upon its positioning in the entire process. The Kenya Government initiated formulation of the Private Sector Development Strategy with a specific component on the role of the sector in the integration process. According to the Kenya Private Sector Development Strategy, 2006-2010, the sector was expected to play an important role in implementation of the process.¹²⁸ It was therefore to be encouraged through its umbrella Associations to participate in Kenya's policy choices in the integration process.

The Kenya Private Sector Alliance (KEPSA) is the apex body and single voice of the private sector, with a membership that comprises more than sixty business membership organizations, and in excess of 180 corporate organizations.¹²⁹ According to the organization's mission its strategic focus is

¹²⁷ Interview with the Integration Secretary, MEAC, 8th May, 2012

¹²⁸ Government of Kenya, (Ministry of Trade), Private Sector Development Strategy, 2006-2010

¹²⁹ Interview with Chief Executive, KEPSA, 16th march 2012

advocacy on behalf of the private sector on high level cross-cutting areas, and the coordination of private sector engagement in private-public sector dialogue.¹³⁰ It also has a role to play in identifying gaps in sector representation on national issues and capacity development of business membership organizations, where this has been identified as an opportunity for improving advocacy. KEPSA's strength is in its diversity, with its member associations representing both large and small enterprises, and all parts of the country, and its membership in the East African Business Council. KEPSA brings the private sector under one umbrella, positioning the sector as a partner with the government in national and regional matters where the organization has interests. While the influence of the private sector could be seen from its direct engagement with the Kenya government, it can also further be seen in the wider East African context.

The East African business council to which KEPSA is a member is the apex body of business associations of the private sector and corporate bodies from the five East African Community member countries. It was established to foster interests of the private sector in the East African Community. Originally comprising members from Tanzania, Kenya and Uganda, its membership expanded to include private sector organizations in Burundi and Rwanda. Currently the organization has fifty-four associations as members and 102 corporate members; among them are the national private sector apex bodies. Business associations at national level include manufacturers and employer associations, chambers of commerce and private sector apex bodies. Associate members include government institutions which facilitate the private sector like the export promotion boards, investment promotion agencies, National bureaus of

¹³⁰ Ibid

standards and port authorities, while corporate members are individual companies in their own right including multinational companies and their regional companies. According to the interview with the Deputy Chairman of the East African Business Council, the council enjoys unique relationship with the East African Community Secretariat.¹³¹ It is invited and participates in various technical, sector, Council and senior ministerial meetings at the EAC where it articulates private sector interests. The council enjoys observer status in all relevant activities and institutions of the Community. There is however, no established legal framework for private sector participation in the EAC policy making organs other than the mention of the private sector in the Community Treaty. The provision for its participation has not been elaborated for operation purposes by a protocol or national legislation. Despite this limitation however, the Chairman of the Council contended that the East African Business Council provides a regional platform through which the private sector can present their concerns at the EAC policy level.¹³²

While the Kenya Private Sector Alliance is an umbrella body bringing together many private sector associations, farmers' and media associations are not members of the alliance. The proposal by Kenya for granting of observer status to Kenya farmers association together with its counterpart bodies from the other member countries was rejected. This rejection was spearheaded by Tanzania on the argument that it did not have a strong registered farmer's organization equivalent to the Kenya farmers' Association of Kenya. As the EAC member countries are still predominantly agricultural, exclusion of farmers' associations from the Community's decision-making forum, and lack of media participation at

¹³¹ Interview with Mr Kely kiiru, Deputy Chairman, East African Business Council, 23 March 2011

¹³² Ibid

the same forum leaves out crucial segments of not only the Kenyan private sector but that of the entire East African Community region. This leaves the respective states of the member countries as the sole determinants and formulators of the agricultural policy without direct non-state actor participation.

The Kenya Private Sector Alliance however, forms part of the Kenyan technical team at the Community headquarters and fully participates in development of the country's position papers on crucial matters of their interest. While the Kenya private sector through its membership in the East African Business Council and association with the Kenya government is able to articulate interests of its members on policy matters at the Community, it is however handicapped in ability to independently finance its activities at the East African Community Secretariat.¹³³ Its activities are partly financed by donors. Trademark EA of Britain is an important sponsor of their operations at the Community. The Community also has a budget line for sponsoring the participation, and houses the private sector apex body officials at the Community Secretariat at Arusha. Effectiveness of the private sector in influencing formulation of integration policy is best seen in examining the role it has played in attainment of the key integration milestones namely: customs union, common market, and monetary union.

3.4 Influence on policy

From interviews with the chief executive of the Kenya private Sector Alliance and the Integration Secretary at Kenya's Ministry of East African Community and from records of the proceedings of East African council of Ministers meetings on the key integration pillars key observations are made on the activities

¹³³ Interview with Mr Barack Ndegwa, the Integration Secretary, Ministry of East African Community, Kenya, 8th May 2012

of the private sector. Indicated below are the observations on the role of the private sector in the integration process milestones, and other areas of cooperation that have spread into new areas through the spill-over effect.

3.4.1 Customs Union and common market

The customs Union protocol was signed in the year 2004 and launched on 1st January 2005, while the Common market protocol was signed in 2009 and came into effect on 1st July 2010. The Kenya private sector alliance participated in coming up with Kenya's positions that were incorporated in the two protocols which on implementation provided for elimination of internal tariffs and establishment of a common external tariff structure; free movement of East Africans across borders; free movement of goods originating within the region and right of residence and establishment for East Africans within East Africa.¹³⁴

Long after the coming into effect of the two protocols however, there were non-tariff barriers hindering free movement of people and goods within the region. According to the interview the Kenya Private Sector Alliance in collaboration with its counterpart associations in East Africa through the East African Business council was actively involved in identification of the non-tariff barriers to free movement of people and goods as provided for in the protocol, and lobbied the East African governments for elimination of the barriers.

The barriers identified included the Kenya electronic cargo tracking system requirement. This involved the completion of the import declaration form which amounted to 2.5% of Freight On Board value for all imports into Kenya, making it difficult for exporters from other East African countries to access the Kenyan market. There was no such requirement for imports into Uganda, Tanzania

¹³⁴ Ibid

Rwanda and Burundi. The Kenya private sector lobbied for elimination of this for fear of Kenyan traders being subjected to different non-tariff barriers by the other member countries in response. Other barriers identified were the local government fee for transit cargo in Kenya and Tanzania at Namanga and Longido respectively. The local councils at the two places instituted the charges using old legislations that mandated them to levy fees and too many weigh bridges and differential gross vehicle mass requirement at the bridges, and roadblocks that acted as illegal money collection points often from transit tracks. On the initiative and lobbying by the private sector the East African council of ministers' meeting directed the EAC Secretariat to prepare a draft program and timetable for elimination of identified non-tariff barriers.¹³⁵ This program was prepared and approved for implementation. The countries also set up the non-tariff barriers elimination committees. In an effort to track presence of trade barriers within the East African Community, the East African Business Council monthly publishes barriers to free movement encountered in East Africa. The private sector has thus been able to influence decisions on enhancement of implementation of the Common Market and Customs Union Protocols.

Under the Customs Union Protocol a common external tariff of zero-rate for raw materials, ten percent for intermediate products, and twenty-five percent on finished products has been agreed. In determining products in the three bands the Kenya Private Sector Alliance guided the Kenyan team of experts on what to include in the respective bands as they were part of the Kenyan delegation with full powers. Apart from their input in the Kenyan position paper on the common external tariff the alliance representatives are part of the inter-ministerial

¹³⁵ Ministry of East African Community, Kenya, Record of deliberations of The East African Council of Ministers meeting held on 13th September, 2008

committees that prepare Kenya's position papers on all other issues. It is also represented at the East African Council of Ministers' meetings. According to the Treaty for the Establishment of the East African Community the Council of Ministers is the policy organ of the Community. It makes policy decisions for the efficient and harmonious functioning and development of the Community, including submission of Bills to the East African Legislative Assembly; promotion, monitoring and keeping under constant review the implementation of programs of the Community and ensuring the proper functioning and development of the Community in accordance with the Treaty.¹³⁶ The Community Sector Committees to which the private sector is a member on the other hand is responsible for preparation of a comprehensive implementation program and setting out priorities with respect to the sectors and keeps under constant review the implementation of the programs of the Community with respect to the sectors.¹³⁷ The Council and the Community Sector Committees are therefore crucial policy organs where the private sector participation and influence may be felt.

3.4.2 Monetary Union

The East African Community monetary Union is the third critical pillar in the Integration process after the establishment of the Customs Union and the Common Market. This involves change from national currencies to a single common currency for the entire region. For partner states to embrace a monetary union and common currency, they will completely abandon their separate national currencies and pursue full centralization of monetary authority in a single institution. This is a process that needs extensive negotiations and consultation.

¹³⁶ EAC, The Treaty for the Establishment of the East African Community, 1999, Article 13

¹³⁷ *Ibid*, Article 20

Commencement of these negotiations in the East African Community was directed by the Community summit and Council of Ministers in 2007.¹³⁸ The negotiations are spearheaded by a high level task force with members drawn from Central Banks, Regulatory authorities, capital market authorities, ministries of finance and departments or ministries responsible for legal matters. According to the interview with the Integration Secretary of Kenya's Ministry of East African Community the private sector is involved in the negotiations through the Associations of Bankers. It is however involved only in selected areas, and on ad-hoc basis.¹³⁹

3.4.3 Private sector in EAC cooperation spill-over

The spillover effect in cooperation and integration is more noticeable in the transport and communications sector infrastructure and legal framework development. The need for enhancement of trade in the East African Community region was the basis for development and improvement of the road networks indicated in paragraph 3.2 above and other areas of communication. The sub-components of this sector include construction of one-stop border posts, formulation of one-stop border Act, development of a legal instrument to govern uniform operations of weigh bridges and harmonization of road construction standards. There is also cooperation in the formulation of the East African Community Railways development Master plan with the objective of constructing and upgrading the narrow gauge railway to standard gauge level.

Member states are collaborating in enhancement of aviation safety through efficient air navigation controlled from one area and control centre. The

¹³⁸ Ministry of East African Community, Report on proceedings of the 6th extra-ordinary summit of the EAC Heads of State, 20th August, 2007.

¹³⁹ Interview with Integration Secretary, Ministry of East African Community, Kenya, 8th May, 2012.

development of an East African Ports Development Master Plan which provides for a regional maritime patrol unit in collaboration with the international community to stem incidences of sea piracy in the Indian Ocean is being jointly undertaken by the Community member states. Cooperation has also expanded to include the East African Broadband infrastructure network project to enhance connectivity of the region to the maritime cables landing at the East African coastline. There is development of harmonized communications regulatory strategy for the region and implementation of the regional environmental e-government framework, including EAC cyber laws.

The expanding cooperation in these technical areas particularly in formulation of policy has however, remained a matter of the East African member countries' states and their state agencies without much private sector involvement. The Kenya private sector in particular has not been involved in the country's position on policy matters in these areas.

As the East African States expanded cooperation in the various technical areas, the expectation was that ultimately the region will be closely networked climaxing into the East African political federation by the year 2015 as cooperation and integration solidified further. In this respect the Community established two institutions to serve as building blocks to the political federation, namely: the East African Court of Justice; and the East African Legislative Assembly.¹⁴⁰ The Community has also come up with the East African Community Protocol on Peace and Security which binds member states to collectively protect the people, and safeguard the Community against instability

¹⁴⁰EAC, Report of the Committee on Fast Tracking East African Federation, Arusha, Tanzania, 2004 p36

arising from the breakdown of law and order, intra and inter-state conflicts and aggression.¹⁴¹

By 2004 a number of private sector Professional Associations and corporate bodies had formed alliances across borders and were expected to play critical roles in civic education on the need for federation in specific target groups among the East African populace. The Nation Media in Kenya for instance had partnered with Monitor Newspapers in Uganda and Citizen Newspapers in Tanzania.¹⁴² The Kenya government collaborated with the Media owners Association as part of the sensitized group to participate in public awareness campaign on integration matters.¹⁴³ The Kenya Media houses however, have not been part of the private sector groups involved in the country's activities at the Community secretariat. They only cover Community matters as their usual professional exercise. They have not as such come up with a publicity program as part of the Kenyan position.¹⁴⁴ While public awareness and education is not an exclusive concern of the media, media houses are however important in mobilization, and shaping of public opinion. A measure of the level of public awareness and perception on integration therefore could indicate the extent to which the government and the media have succeeded in their public awareness campaign.

The Government of Kenya in this respect formed the National Consultative Committee to consult Kenyans and inform them about the activities of the East African Community. The committee was specifically mandated to sensitize the general population about the East African Political federation and to collect their

¹⁴¹ EAC, East African Community Protocol on Peace and Security, Arusha, Tanzania, 2010, Article 3

¹⁴² EAC op cit p 34

¹⁴³ Kenya Government, Report of the National consultative Committee on Fast Tracking East African Political Federation, Vol. 1, Nairobi, June 2007, p 9

¹⁴⁴ Interview with the Integration Secretary, 11th May, 2012

views as to whether or not they accept fast tracking the East African Political federation. It therefore carried out the task in collaboration with the National Bureau of statistics by conducting a qualitative and quantitative survey involving visits to all provinces of the country. The results showed enthusiastic support by Kenyans for fast tracking East African Political federation. Nearly 70% of those interviewed supported the federation and 65% supported its fast tracking so as to realize it by 2013.¹⁴⁵ From the Committee findings report, participation of the media houses in public education and awareness before the exercise was conducted and even after as part of collaboration with the government and deliberate program, is not evident. The media houses as part of the private sector were in fact among those that were sensitized together with the public they were supposed to be educating and sensitizing.¹⁴⁶ While the survey showed enthusiastic support for the political federation it also revealed major misperceptions and concerns among sections of the Kenyan population about the community. These included fear of spread of communicable diseases for both human and livestock due to free movement of people across borders and increased crime rate due to infiltration of firearms in the event of political federation, likelihood of higher taxation, increased cost of running a federal government leading to reduced budgetary allocation to local devolved funds, and increased competition leading to unfair trading practices such a smuggling and hoarding of essential commodities.¹⁴⁷ While the private media in Kenya should not be assumed to be a magic multiplier stimulating senses of East Africans to favor integration, it is an important shaper of opinion if its effort is deliberately

¹⁴⁵ Kenya Government, op cit p xii

¹⁴⁶ Government of Kenya, Report of the National Consultative Committee on Fast Tracking East African Political Federation, Vol. 1, 2007, p 9

¹⁴⁷ Ibid p 30

directed on a specific course. This is only possible if the government and the private media develop a common agenda. This is why government collaboration with the private media is important if public awareness on integration is to form a common agenda between the government and the private media. This has not been the case between the government of Kenya and the private media.

The East African Community's main organs as provided for in the integration Treaty have been established and are working towards reaching the agreed integration milestones. The private sector has been invited by the respective states of East Africa to participate in the process in conformity with the Treaty which has recognized the sector as crucial to the success of the process. Participation of the Kenya private sector apex bodies in the affairs of the Community is partly financed by the government of Kenya. The level of success towards attainment of the agreed milestones is as outlined above in this chapter. It is observed that while there are achievements recorded on what was agreed, there are still a number of unfulfilled objectives. The Customs Union and Common Market protocols have been signed and ratified and are being implemented. The political federation milestone on the other hand is far from realization despite the formation of the East African Legislative Assembly-(Legislature), East African Court of Justice-(Judiciary), and the Council of Ministers and the Secretariat-(Executive). None of these organs has supranational authority as this requires surrender of some sovereignty to them by the respective states forming the Community, which has not materialized. Lack of this ceding of some powers to these organs will always remain a challenge and an impediment to attainment of political federation. The Community has nevertheless materialized as is attested to by its established and functioning institutions.

Integration is a matter of foreign policy decision making. Recognition of the private sector by the Treaty and invitation of the sector by the government of Kenya and other East African member states to participate in the process is invitation of the sector into the foreign policy decision making process. As the treaty has hinged success of the process on participation of the sector, it is vital to examine and analyze its participation and the extent to which it has influenced policy on the process. It is therefore important to subject the process to foreign policy decision making models' standards to enable conclusion on its effectiveness. This forms the theme of the next part of this chapter.

3.5 An Evaluation of the Kenya Private Sector in EAC.

In order to ascertain the role of the private sector in regional integration an evaluation process is carried out in this section, based on the assumption that the East African integration process is a matter of foreign policy since it involves relations and activities between the people and economies of the member countries as facilitated and determined by the respective states. The conduct of Kenya's policy over the process therefore, consists of decisions and actions which involve relations between Kenya and the other member states. These decisions take place in the decision makers' minds while the actions take place in the environment. The environment is the total combination of all outcomes of activities of actors, both state and non-state, in the political process. The actors in the environment which in the case of Kenya include the private sector therefore, are expected to form an important input in foreign policy decision making.

This section analyzes the effectiveness of the sector in Kenya's policy choices in the integration process. It therefore tests the propositions that: 1. East

African integration process is a function of private sector participation in the process; 2. the Kenya private sector has played an independent role in influencing Kenya's policy on the integration process; and

3. The Kenya private sector participation in the East African integration process has been facilitated by the government of Kenya. It seeks the answers to the following questions: Is there correlation between success in regional integration and private sector participation in the process? To what extent has the private sector in Kenya influenced the country's policies on the integration process? To what extent has the Kenya private sector participation in the integration process been facilitated by the government of Kenya?

The evaluation of participation of the Kenya private sector is done on the basis of derivatives of Graham Allison's decision making model as outlined in section 1.7 of chapter one, while effectiveness of this participation is measured by assessing the extent to which the sector has been involved in achievement of agreed integration milestones.

3.5.1. Rational actor (Model 1) and EAC and Kenya institutions

If Choices on the integration process by the government of Kenya are seen within the framework of model 1 where decisions are conceived as actions chosen by a unitary, rational leader sitting formerly on top of the organization, but of course without disregarding the fact that a government consists of a conglomerate of loosely allied organizations, each with a substantial life of its own, assessment of effectiveness of actors in the process including the Kenya private sector can be observed by focusing on the institutions involved in decision making in the Community. Article 9 of the Treaty for the establishment of the East African community discusses the organs and institutions of the community with the main

ones involved in policy formulation listed as: The Summit of Heads of Government; the Council of Ministers; the Coordinating Committee of Permanent Secretaries responsible for East African cooperation; Sectoral Committees; the East African court of Justice; the East African Legislative Assembly, the Secretariat and such other organs as may be established by the Summit. These organs by virtue of their clear and elaborate inclusion in the Treaty are endowed with considerable constitutional or legal powers. These powers however, are subject to consensus by the summit which consists of heads of government of the member states. The Summit therefore is still the final decision making organ even if the other organs provided for in the Treaty may be involved in policy formulation as organizational censors upon which the Summit depends for information in order to arrive at rational decisions. Although article 127 of the Treaty also provides for private sector participation in the process, the private sector as an actor is not defined, nor its role specified. If therefore, the decision making process is understood within the conceptual framework of **model 1** the role of the private sector is not distinctly clear as even those institutions that are clearly provided for in the treaty are concealed in their decision making contribution by the Summit consensus practice, which makes it difficult for a policy position to emerge without the heads of government approval. In this respect then Kenya's choices in the integration process can be argued to have been arrived at without clear private sector participation.

3.5.2 Organizational process (Model 2) and EAC operating procedures

The government of Kenya has been inviting representatives of the private sector apex bodies to form part of the Kenya team to the Community's sector meetings; and the private sector representatives through the East African business

council attend ministerial meetings as observers. According to the interviews held with the integration secretary at Kenya's Ministry of East African Community, involvement of the sector representatives has become Kenya's standard procedure and practice. Recognition of the private sector in the Treaty as a crucial actor has however not been spelled out in operation terms by a specific national legislation in Kenya or by the East African Legislative Assembly specifying the position the sector is to assume in the process. There is thus absence of a comprehensive legal framework for Kenya's and Regional Private Sector participation in EAC policy making organs. Rules on actor participation other than state organs have therefore not been developed along the framework of model 2, where policy decisions are made on the basis of standard operating procedures. As a result of this there have been agreements signed on major issues in accordance with only general rules, but without legal framework of private sector participation only for difficulties to emerge at implementation. A good example of this is the signing and ratification of the East African Common Market Protocol which was processed in accordance with general agreed procedures on protocols. It provided for free movement of goods within the Community region originating from member countries. It was during implementation of the protocol that the existence of non-tariff barriers that hindered free trade were raised by the private sector apex organizations.

The outcome of lack of a legal framework for the Kenya private sector participation to define the sector's bodies that are to be involved is responsible for omission of crucial actors in the sector: the agricultural sector representatives and the private media associations do not form part of the Kenya's delegations to the East African integration meetings. Media refers to private radio, television and print modes of public information, education and entertainment on the basis of

the profit motive. It should not be assumed however, that media's inclusion in the Kenyan team would automatically strengthen the country's position in the process. Media effects are neither direct nor immediate. It performs functions which are a necessary part of the political process and which it sometimes performs well and sometimes badly. The audience or public on the other hand is neither altogether passive nor helpless, since members of the same demographic group often get different messages from the same source. What people make of particular media contents depends on where their vested interests are; interests which are not fixed. The media however, is a powerful tool of communication with the public. If the integration process is to be people driven as is the desire of the East African Community, then it must be democratic, calling for expression of public will in the process. This is where the media's role is important. People can only participate and make their wishes known if public communication is made an integral part of political democracy. Nyamnjoh F B (2005) has rightly observed that effective democracy demands a system of constant interaction with all the people, accessibility at all levels, public ethos which allows conflicting ideas to contend, and which provides for full participation in reaching consensus on socio-cultural and political goals. The media offers a powerful avenue for this interaction.¹⁴⁸ Since the private media in Kenya has not been invited as a participant in forming Kenya's position on the integration process, it only takes part on the principle of the profit motive for its benefit. There is no common government-media partnership for development of a common integration agenda. Its power and potential to shape public opinion in Kenya as a deliberate collaborative activity has not been adequately utilized.

¹⁴⁸ Nyamnjoh F B. Africa's Media: Democracy and the Politics of belonging. UNISA Press, Pretoria, 2005, p 2

Private sector firms of all categories, namely: agriculture, manufacturing and trade have a combined contribution of 80% to Kenya's GDP (**Table 2**). Of this total the agricultural sector contributes 24%, while manufacturing and trade contribute 10.5% and 10.8% respectively. The agricultural sector therefore forms a crucial part of the private sector, yet it has not been included in the Kenyan team on East African Community policy formulation. Kenya's argument for inclusion of farmers' Associations at the Community forum was resisted by Tanzania as indicated above in this chapter. The Community's policies on agriculture are therefore formulated without direct agricultural sector representation.

3.5.3. Governmental bargaining (Model 3) and Kenya's Regional Integration Policy formulation process

If foreign policy decision making is viewed as an outcome of governmental bargaining or bureaucratic politics (**model 3**), with decisions resulting from the bargaining process among various government agencies, it may provoke expectation that it is only the government agencies or departments involved in the process. It is however, a familiar fact that many more people or agencies are involved, or capable of involvement in government process and decision making than merely those who hold the duly constituted official positions. The media as indicated for instance plays a role; there are also lobbies and spokesmen of special interests who work in many ways to influence government decisions. In Kenya there are many more people and agencies involved or capable of involvement in policy than those who hold official positions. If they have to effectively influence policy as non-state actors they require an element of autonomy from state influence in their core business.

The Kenya Private Sector Alliance is one of the key participants in Kenya's affairs at the East African Community. It has been involved in the country's Community sector committees and as part of the country's delegation to the Community policy meetings. As indicated in the first part of this chapter it participated in preparation of the country's position during preparation of the Customs Union and Common Market Protocols. The Alliance in collaboration with its counterpart organizations in the other member states was involved in identification of non-tariff barriers to implementation of the protocols, and lobbied the governments of the member countries to come up with a policy and program on elimination of the barriers. As a result all the five economies making up the East African Community instituted and implemented 10 regulatory reforms in the year 2011 to improve the business environment for local businesses and encourage entrepreneurship in the region.¹⁴⁹

While the private sector in Kenya as represented in KEPSA, its apex body is free from government influence in its core business of advocacy on high level cross cutting areas and coordination of their engagement in private-public dialogue, and therefore qualifies as a non-state actor, its participation in East Africa integration activities is financed by the government of Kenya in collaboration with Trademark E.A, a British organization. The general organization of the private sector in Kenya into strong lobby groups to advocate for their interests is noticeably weak as is attested to by formulation of the Private Sector Development Strategy 2006-2010 to strengthen the sector. The implementation framework for the strategy has a heavy government role. The Kenya government cabinet is supposed to provide political leadership and

¹⁴⁹ The World Bank and The International Finance Corporation, Doing Business in The East African Community 2012, P 1

direction for the strategy's implementation, while the coordinating committee is headed by the Head of the Public Service with members comprising Permanent Secretaries of ministries of trade and industry, finance and planning.¹⁵⁰ KEPSA therefore is not able to exercise free will as it depends on the goodwill of the government of Kenya. It therefore engages in the governmental bargaining process from a weakened position.

The position of the private sector in East African Integration process is further weakened by the status which it has been accorded by the Community. Participation of the Kenya private sector through the East African Business Council in Community affairs may be viewed as fulfillment of the requirement of article 127 of the Community Treaty which provides for private sector participation in the Community affairs. According to the chairman of the East African Business Council EABC's 'Observer Status' does not allow the business community to generate agenda for discussion by EAC Policy Organs. Its effectiveness is thus reduced by this observer status handicap.

3.5.4 EAC 2 integration success score-card and Private Sector participation

The main measure of success of the East African integration process is political federation as the declared final goal of the Community. The Treaty for the establishment of the East African Community however, does not specify the kind of federation envisaged nor the path to follow towards its attainment. According to the oxford guide to the US government¹⁵¹ political federation as an integration process may involve creation of a new state, with the former states being entirely fused or dissolved into a new state with centralization of power,

¹⁵⁰ Government of Kenya, Private Sector Development Strategy 2006-2010, p xxi

¹⁵¹ Patrick J J, Pious R M and Ritchie D A, The Oxford Guide to the US Government, Oxford University Press, USA, 2001.

and arrogation of the power to a central authority or institutions. It may also involve a union in which the states continue to exist but place themselves under a new federal authority, with the federal state becoming a subject in international law. A federal system may also involve a national government with semi-autonomous sub-national governments but allows each to retain some degree of its own identity and distinctiveness. It can also be the coming together of existing polities to form a common government for strictly limited purposes like foreign affairs and defense. Whatever the case, it involves ceding of sovereignty to supra-national institutions. There is no evidence from the interviews conducted and the documents availed at the Ministry of East African Community that milestone activities have been initiated to achieve this objective in any of the forms of federation indicated above. Apart from commitment of the East African Community member states to political federation contained in the Treaty, the only indications of efforts towards the objective are contained in the report of the Committee to fast track the process and that by the Team of Experts appointed to undertake the study on the fears and concerns raised and challenges identified on the EAC political federation.

The functioning institutions that have the features of a common government for East Africa are the Summit, the Council of Ministers and the Secretariat (executive); East African Legislative Assembly (Legislature); and the East African Court of Justice (Judiciary). These institutions however do not have supranational powers nor is there evidence that there are measures to have them acquire these powers. The special Summit meeting of 27th-29th August 2004 declared that the political federation of East Africa be fast tracked, with its

consequently appointed committee programming its realization by 2013.¹⁵² While there was commitment for political federation by that year, it is unlikely that this will be realized by then in view of the complications of ceding sovereignty which this involves. Kenya promulgated a new constitution in the year 2010.¹⁵³ Having done so two years ahead of the target year for the East African Community political federation, the document was expected to have provisions on the federation as a legal foundation for the Country's commitment. The Constitution has no provision on the process, nor any mention of federation. The process of political federation at the moment therefore, cannot be viewed as a success yet. There has therefore been no role played by the Kenya Private sector on the political federation milestone.

According to Karl W Deutsch another indicator of regional integration success is the level of communications and transactions in the economy.¹⁵⁴ These transactions include trade, postage of letters and immigrations within a region. The author however, argues that high level transactions alone are not an indicator of success; rather successfully integrated communities require a fairly wide range of different common functions and services, together with different institutions and organizations to carry them out. The record of the trend of trade in the East African Community Region can be regarded as one of the measures of integration success since trade involves many institutions including those handling road networks, manufacture, telephone and internet communication, plant and animal health and many others. Kenya's trade trend figures can therefore be used as one of the measures of success. The country's exports to the EAC member countries

¹⁵² Kenya Government, Ministry of East African Community Strategic Plan 2008-2012, p 24

¹⁵³ Kenya Government, The New Constitution of Kenya, 2010

¹⁵⁴ Deutsch K W, Political Community and North Atlantic area, Princeton University Press, Princeton, New Jersey, 1968, p 54

combined for the period between 2004 and 2010 has shown an upward trend: The figures in Kenya Shillings are 64.142 billion, 73.629 billion, 53.05 billion, 64.122 billion, 83.942 billion, and 90.46 billion for the years 2004, 2005, 2006, 2007, 2008, 2009, 2010 respectively (Table 1). The figures are a reflection of success as they are about transactions which involve numerous Community institutions. They also reflect private sector involvement since trade transactions in Kenya are private sector activities. If this is counted as success it can be attributed to the private sector to the extent of the sector taking advantage of the suitable environment created within the region by the Community member states for trade, rather than the sector's direct influence on trade policy. The Kenya private sector apex bodies are recorded to have influenced policies on elimination of non tariff trade barriers, but this upward trend in Kenya's trade within the region does not depend on elimination of trade barriers alone as the sole determining variable.

The other measures of regional integration success can be seen in the extent to which the member countries have attained the agreed targets of setting up the Customs Union, Common Market, and Monetary Union. The Customs Union protocol was signed in the year 2004 and came into effect in 2005 leading to attainment of the target of setting up a Common external tariff in the region. The Kenya private sector alliance was involved in formulation of the country's position on the protocol. It however lacked autonomy to influence the government because of its dependence on the government for financial support to participate in the Community processes; and the limiting effect of the observer status accorded to the East African Business Council, the umbrella body of private sector organizations to which the Kenyan body belonged. Attainment of the customs union milestone had minimal influence from the Kenya private

sector. Kenya's ministry of East African Community even acknowledged that by the year 2008 when it launched its four year strategic plan it still had to conduct a national campaign for awareness creation among Kenyan nationals and the business community since their level of knowledge and involvement in activities pertaining to the achievements being made by the Community was still low.¹⁵⁵ This was therefore a milestone reached without influential participation of the Kenya private sector.

The private sector was involved in formulation of the Common market protocol, but its effectiveness was limited by the same reasons that restricted its influence on formulation of the Customs Union policy and protocol. The sector's influence however, became more pronounced at the implementation stage of the Common market protocol when the representative bodies were active in identifying non-tariff barriers hindering operations of the free market envisaged in the Protocol, and lobbying the East African states to come up with a policy and program to eliminate the barriers. As the barriers get eliminated and the market begins operating freely and efficiently as envisaged this will be achievement of another integration milestone with active private sector participation, though more at implementation than at policy formulation level.

The state in Kenya is the signatory to the Treaty for the establishment of the East African Community which has recognized the private sector as one of the crucial actors in the integration process. The state has involved the private sector's participation in its activities in the Community by inviting representatives of the private sector apex organizations. These organizations exclude agriculture and the private media which are crucial elements of the private sector.

¹⁵⁵ Ministry of East African Community, Strategic Plan, 2008-2012, p 21-2

Representation of the sector is therefore inadequate. The private sector however, is dependent on the state for financial support for its participation, hence limiting its autonomy to make independent contributions to community affairs, and influence state choices on Community matters. This autonomy is diminished further by the observer status accorded the East African Business Council, the umbrella body to which the Kenya private sector is affiliated, which prevents the private sector representatives from participating in drawing up the agenda for the Community. The achievements the Community has made have had minimal direct Kenya private sector influence. This has left the Kenyan state as the dominant actor in determining the country's agenda in the East African integration process. The state however, is not in control of outcomes of its policy choices or overall East African Community policy choices, since the choices cannot be understood without an appreciation of their implementation phase, which is at least as important as that of making the choices, given that outcomes are so often markedly different from originating intentions. This is where the private sector becomes important since it is crucial at policy implementation stage. The state therefore has had to factor in private sector roles in making its choices since it is the private sector that is eventually involved in implementation, hence the state's awareness and publicity campaigns among its public, including private sector actors in the economic process, for popularization, acceptance and implementation of the decisions made.

CHAPTER FOUR

CONCLUSION AND RECOMENDATIONS

This chapter contains the conclusion of the study and recommendations on the way forward for Kenya and other East African member states in the East African integration process.

The main concern of this research is the participation of the Kenya private sector in the East African integration process, and the extent to which the government of Kenya has facilitated this participation. The concern arises from the declared intention by the East African Community member states to give the private sector a bigger role in the affairs of the Community. From this declaration the Community member states expected the success of the Community to be dependent upon participation of the private sector as one of the prime movers of the process. The government of Kenya in particular has demonstrated this intention by involving the sector in its activities which are intended to shape its regional integration policy. Regional integration policy and decision making is a question of relations between states. It is tempting from this perspective to view the integration process as a matter of states and therefore to expect the private sector to have minimal or no role in the East African integration process. This study has however, demonstrated that the process has involved more actors other than the respective states of the member countries.

The state in the first place is not a unitary actor, nor is it a single conscious being; 'its actions are a composite of individual human choices: by its citizenry and all participants in the economic and social process; its political leaders; its diplomats and bureaucrats, all aggregated through the state's internal

structures'.¹⁵⁶ Secondly, there is observed declining power of states as is rightly argued by Susana Strange that power over outcomes in international relations is exercised impersonally by markets and often unintentionally by those who buy and sell and deal in markets rather than by states as dominant actors contrary to the realist conception of international relations. The author further argues that authority in society especially over economic transactions, is legitimately exercised by agents other than states, and has come to be freely acknowledged by those who are subject to it.¹⁵⁷

While state power is evidently in retreat, and other actors' roles in areas that were traditionally a preserve of states increases, these non-state actors do not assume prominence overnight to start influencing state activities, nor do these actors have influence on all issues. There are issues over which states still have dominance, and will continue to play a leading role. The state for instance is expected to actively continue maintaining peace and security and in development of other public goods such as the environment, energy, communication and water management.¹⁵⁸ The state in Kenya has invited the private sector to participate in its policy formulation on East African Community integration choices, through involving the sector's representative organizations like the Kenya Association of Manufacturers, and the Kenya Private Sector alliance by financing and facilitating the participation. Part of this finance is from Trademark East Africa, a British organization, under collaboration arrangements with the government of Kenya. These organizations however, lack adequate representation since the agricultural sector and the private media are not included, yet they form a crucial

¹⁵⁶ Goldstein J S International Relations. Longman, New York, 2001, p163

¹⁵⁷ Strange S The Retreat of The State. Cambridge University Press, 1996, 12th printing, p 12-13

¹⁵⁸ Mangachi M W, Regional Integration In Africa: East African Experience. Safari Books Limited, Ibadan, 2011, p 198

part of the private sector. Agricultural is still the country's economic lifeline while the private media is important in influencing public opinion that is vital in publicity and communication with the public on the Community activities. The Kenya private media is already collaborating with its counterpart associations in the other member countries and therefore offers an opportunity of a wide coverage in terms of area and issues it is capable of handling. These two sectors cannot be ignored given their importance if the contribution of the critical mass of the private sector is the main focus, and if the sector is to have effective influence on the process.

The private sector in Kenya is handicapped in its influence because of lack of a legal framework spelling out details on how it should participate; its observer status at the Community has also prevented it from participating in drawing up the agenda. This lack of a legal framework has its origin in the limitations of the Kenyan Constitution on The East African integration. The Constitution of Kenya promulgated on 27th October 2010 does not mention the East African integration process, though it states that any Treaty or Convention signed and ratified by Kenya shall form part of the law of Kenya.¹⁵⁹ This provision making international conventions and treaties one of the sources of the law of Kenya automatically implies that the Treaty for the Establishment of The East African Community is part of the law of Kenya. Since the Treaty provides for private sector participation it could be easily assumed that this participation is well covered in the Kenyan law. The role of the private sector and other non-state actors in the integration process however, would have been clear if either the constitution of Kenya or the Treaty was specific in its definition. Neither of them has covered this. The Kenya

¹⁵⁹ Republic of Kenya, The New Constitution of Kenya, 27th August, 2010, article 2 (6)

private sector has therefore remained inadequately catered for in the law, and thus had minimal influence on Kenya's policy on the East African integration. Despite this restricted influence by the sector, the Community has recorded successes in some of the crucial agreed targets like the Common market and Customs Union without much influence from the private sector. It has however, not achieved much towards political federation that was targeted for the year 2015 and revised to 2013.

The following conclusions are therefore made from the foregoing:

- i) The state in Kenya is still the dominant actor in determining the country's East African Community integration agenda and policy position;
- ii) The Kenya private sector involvement in the process is vital for the success of the integration initiative, but the state still has to determine the pace of Kenya's involvement since the private sector in Kenya is dependent on state support for its involvement in the process;
- iii) The private sector in Kenya is still weak and dependent on government support for its participation in Community affairs and has to expand and gain strength before it can have greater influence;
- iv) The government of Kenya has not taken advantage of the private sector potential to determine and enhance success of the process;

In view of this, how far can regional integration go without increased and more vibrant private sector participation? Since private sector participation is crucial for success of the process it cannot be ignored. This is attested to by the case of Tanzania, where it has been observed that the loudest forces against

deeper integration in the country has been the business and industrial community, attributed to the misperception that Tanzania might continue being a market for Kenyan goods, hence furthering the exploitation which the complaining groups claim caused the collapse of the first East African Community initiative.¹⁶⁰ The private sector however, should not be expected to take the lead in the integration process since it is not the only actor. There are other actors that include civil society, religious organizations and private individuals who may also influence the process. The activities of these organizations need to be regulated and harmonized. The state also is another obvious actor that the private sector may not easily control as it has no powers to do so and can only exert limited influence.

Regional integration is a process that largely depends on the goodwill of the cooperating states since it has a bearing on the sovereignty of the states. While the role of the private sector and other non-state actors is crucial for the success of regional integration, the state in Kenya and the other Community member states must take the lead if the process is to succeed because integration implies ceding elements of state sovereignties to regional supranational organs and institutions. This will require commitment of the member countries' political leaders to the integration course especially political federation which is a question of state sovereignty. While authors concerned with success of the integration process hold the position that as the states take the lead, this success will depend on private sector participation and support of the East African Community member states' public, the position held in this research is in agreement with

¹⁶⁰ Ibid p 196

Mangachi that non-state actor participation in the process especially the public has not been discussed¹⁶¹. This area will therefore require further research.

It is also observed that the decision for a state to join a regional integration arrangement is a political choice to interact with other states in collaborative venture. This is therefore a matter of foreign policy which is sequential: it does not have a beginning, an existence and an end just like all other political processes. It is constantly unfolding and at any given time is partly a function of what it was previously and what it may become in future. In view of this the East African Community process as is being pursued now cannot avoid influences of the choices made during the first attempt to integrate (EAC 1) where the state dominated, leaving out the private sector and other actors in decision making on integration. At the same time the future of integration in East Africa will depend on the extent and manner of involvement by the states of East Africa of the private sector and other non-state actors in the process at the moment.

Recommendations

The Treaty for the establishment of East African Community has not defined the private sector, nor specified how it should be involved in the East African Integration process. The impact of this has been the failure by the Community member states to include all crucial private sector organizations and bodies in the process. Direct participation of the agricultural and private media sections of the private sector is for instance missing from the process, yet these are important to the success of the process. Any research therefore done on private sector involvement in the East African integration process is likely to focus only on the

¹⁶¹ Ibid p12

part of the sector that the respective states in the Community have chosen to involve in the process; this carries the risk of leaving out a critical mass of the private sector, hence may lead to wrong conclusions.

It is therefore, recommended that in order to strengthen private sector and other non-state actors' participation and effectiveness in the East African Regional Integration process, the Community member states should come up with a legal framework to define the private sector and the manner in which it should be involved in the process; this will enable inclusion of all crucial sub-sectors of the private sector so that its full potential is consolidated and exploited. It is also recommended that further research be conducted to determine the relationship between the state and non-state actors, specifically, the private sector in its entirety in the East African regional integration, and the bearing of the relationship on the success of the process. This should also focus on how the state and state sovereignties in East Africa hinder or enhance the regional integration process.

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APPENDICES

The appended questionnaires on private sector participation in the East African integration process were administered as follows:

Questionnaire 1 (appendix 1)- To the following:

Mr Chiboli Shakaba, ag. Permanent Secretary, Ministry of East African Community, Kenya;

Barrak Ndegwa, Integration Secretary, Ministry of East African Community, Kenya;

David Njoka Director, Political Affairs, Ministry of East African Community, Kenya;

Mr Raphael Kanothi, Deputy Chief Economist, Ministry of East African Community, Kenya;

Peter Kasango, Deputy Chief Economist, Ministry of East African Community, Kenya;

Mr Kamau Chege, Senior Economist, Ministry of East African Community, Kenya;

Francis Ongaki, Senior Deputy Secretary, Ministry of East African Community, Kenya;

Questionnaire 2 (appendix 2)- To the following:

Betty Maina, Chief Executive, Kenya Association of manufactures;

Patrick Obath, Chairman, Kenya Private Sector Alliance;

Kelly Kiilu, The Deputy Chairman, East African Business Council.

APPENDIX 1

PRIVATE SECTOR PARTICIPATION IN THE EAC INTEGRATION PROCESS

QUESTIONNAIRE I

Q1. What has been achieved in the East African Integration process and what is still pending?

Q2. When was the private sector engaged in the EAC integration process, and through which bodies was it engaged?

Q3. What role was the private sector expected to play in the process?

Q4. What is the link between KAM, KEPSA and EABC with the Ministry of East African Community?

Q5. What is the link between KAM, KEPSA, EABC and East African Legislative Assembly?

Q6. Which measures are in place to ensure private sector participation in the EAC integration process?

Q7. How does the private sector participate in drawing up Kenya's position papers at the East African Community?

Q8. State examples of private sector influence on Kenya's agenda at the East African Community.

Q9. How does the private sector participate in deliberations at the East African Community?

Q10. How are the activities of the private sector at the EAC financed?

Q11. Which issues has the private sector pursued at the EAC so far?

Q12. State the achievements of public-private partnership in the East African Integration process

Q13. What is the status of implementation of the EAC Private Sector Development Strategy of 16th June, 2006?

APPENDIX 2

PRIVATE SECTOR PARTICIPATION IN THE EAC INTEGRATION PROCESS

QUESTIONNAIRE 2

Q1. When was the private sector engaged by the Kenya government and the East African Community in the EAC Integration process?

Q2. What role was the private sector expected to play in the integration process?

Q3. What is the link between KAM, KEPSA and EABC with and the East African Legislative Assembly?

Q4. What is the link between KAM, KEPSA and EABC with Kenya's Ministry of East African Community?

Q5. What measures are in place to ensure private sector participation in the East African Community integration process?

Q6. How does the private sector participate in drawing up Kenya's position papers on the East African Integration process?

Q7. State examples of private sector influence on Kenya's agenda at the EAC.

Q8. How does the private sector participate in deliberations of the Community with regard to the integration process?

Q9. How are activities of the private sector financed?

Q10. Which issues has the private sector pursued at the EAC so far?

Q11. State the achievements of public-private partnership in the EAC Integration process.

Q12. What is the status of implementation of the EAC Private Sector Development Strategy of 16th June 2006?

Q13. What role has the private sector played in the implementation of the East African Common Market and Customs Union Protocols?

Q14. Is the private sector engaged by the Kenya government and the EAC in deliberations on the Monetary Union, and the anticipated East African political Federation?