

“DANCING WITH THE WOLVES”

A critical examination of the increased role of the Non-Governmental Organisations (NGOs) in Multilateral Trade Negotiations and Institutions; their agenda and the interests of the poor countries.

**A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS OF THE DEGREE OF MASTER OF LAWS OF THE
FACULTY OF LAW OF THE UNIVERSITY OF NAIROBI**

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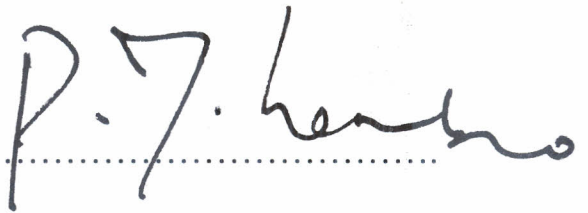


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After many years out of class, it was a whole new world for me to undertake the studies for the LLM degree. Everyday was a new challenge. The writing of this thesis was even a greater challenge.

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DEDICATION

To Anne, George, Rochelle and all my friends.

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ACRONYMS

ACP	-	Africa, Caribea & Pacific
CBO	-	Community Based Organization
COMESA	-	Common Market for East and southern Africa
CONGO	-	Conference of Non Governmental Organizations
EU	-	European Union
GATS	-	General Agreement on Trade in Services
GATT	-	General Agreement on Tariffs and Trade
IASC	-	Inter Agency Standing Committee
ICVA	-	International Council of Voluntary Agencies
IMF	-	International Monetary Fund
IF	-	Integrated Framework
INGO	-	International Non-Governmental Organization
ISO	-	International Standards Organization
NEPAD	-	New Partnership for African Development
NGO	-	Non-Governmental Organization
ODA	-	Official Development Assistance
SADC	-	Southern African Development Community
SAPs	-	Structural Adjustment Programmes

- SCHR - Steering Committee for Humanitarian Response
- TRIPS - Trade on Related Intellectual Property Rights
- UN - United Nations
- USAID - United States Agency for International Development
- WTO - World Trade Organization

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND

International and local organizations all have the power to affect the lives of millions of people around the world. Both the governmental and non-governmental organizations (NGOs) have long had influence above and beyond their participation in national and global issues. Their prominence as an important dimension of international society has increased in the twentieth century with as the organizations have emerged as active participants in certain international organizations and supranational political debates.¹

The emergence of these organizations in the global and local scene has produced both comfort and discomfort in both scenes. Cases for and against the role played by these organizations have been highlighted by different writers depending on the relevance of an organization in addressing specific issues.

1.0.1 Definition of Non-Governmental Organizations (NGOs)

The phrase "non-governmental organization" (NGO) came into existence with the establishment of the United Nations (UN) in 1945 with provisions in Article 71 of Chapter 10 of the United Nations Charter for a consultative role for organizations that neither are governments nor member states.² The vital role of NGOs and other

¹ Esty, 2003, Why the World Trade Organization Needs Environmental NGOs

² Willets, 2002, What is a Non-Governmental Organization?

"major groups" in sustainable development was recognized in Chapter 27 of Agenda 21³, leading to revised arrangements for consultative relationship between the United Nations (UN) and NGOs.

At the UN, virtually all types of private organs/agencies can be recognized as NGOs. Fundamental features of an NGO include independence from the direct control of any government, do not seek to challenge governments either as political parties or by a narrow focus on human rights, non-profit-making and not engaged in illegal activities. However, these boundaries can sometimes be blurred as some NGOs can in practice be identified with certain political parties or violent political protests and generate income from commercial activities notably consultancy contracts. Thus an NGO can be defined as an independent voluntary association of people acting together on a continuous basis for some common purpose other than achieving government office, making money or illegal activities.⁴

NGOs can also be defined as private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development.⁵ In wider usage, the term NGO can be applied to any non-profit organization which is independent from government. NGOs are typically value-based organizations which depend, in whole or in part, on charitable donations and voluntary service. Although the NGO sector has become increasingly professionalized over the last two decades, principles of

³ Ibid

⁴ Ibid

⁵ The World Bank, 2001, Nongovernmental Organizations and Civil Society/Overview

altruism and voluntarism remain key defining characteristics. The term NGO encompasses many different types of organizations. The NGOs range from the field of development to research. The World Bank categorizes the NGOs into two main categories, namely:⁶

- a) Operational NGOs whose primary purpose is the design and implementation of development-related projects;
- b) Advocacy NGOs whose main purpose is to defend or promote a specific cause and seek to influence the policies and processes of the World Bank.

However, these two categories are not mutually exclusive as a growing number of NGOs engage in both operational and advocacy activities, and some advocacy groups, while not directly involved in designing and implementing projects, focus on specific project-related concerns.

The operational NGOs are further classified into three main groups, that is:⁷

- a) Community based organizations (CBOs) that serve a specific population in a narrow geographic area.
- b) National organizations that operate in individual developing countries.
- c) International organizations that are typically headquartered in developed countries and conduct operations in more than one developing country.

⁶ Ibid

⁷ Ibid

The operational NGOs vary enormously in terms of whether they are more relief or development-oriented, religious or secular, stress service delivery or participation and whether they are public or private-oriented.

NGO advocacy can be further be defined as an act of organizing the strategic use of information to democratize unequal power relations, aimed at influencing policy or reality itself.⁸ Apart from the function of representing people by acting of their own volition NGOs have other defining characteristics:

- They are formal organizations (as opposed to *ad hoc* entities).
- They are or aspire to be self-governing on the basis of their own constitutional arrangements.
- They are private, in that they are separate from governments and have no ability to direct societies or to require support from them.
- They are not in the business of making or distributing profits.
- International NGOs have transnational goals, operations or connections, and active contacts with the UN.⁹

Notably the local NGOs are branches of the INGOs. INGOs are defined as any international organization that is not founded by an international treaty. The source of funds of INGOs and local NGOs are foreign donors and governments. Their activities are founded on the stated lack of capacity among the host country in

⁸ Steinberg, 2001, Background Paper on GONGOs and QUANGOs and Wild NGOs
<http://www.wfm.org/WFM-NEWS/wfmpubs.html>

⁹ Ibid

addition to the perceived corruption and other vices allegedly perpetrated by the leadership in the said countries.¹⁰

The NGOs thus offer themselves as benefactors of the poor and hold themselves to possess the requisite expertise and capacity to extend assistance to the poor. This assistance is targeted to the poor countries by the donor communities and it is these funds the NGOs aim to secure and utilize to “ameliorate” the wretchedness of these afflicted by poverty.¹¹

1.0.2 Historical Development of NGOs

NGOs as they are presently constituted are recent phenomena. Consequently there is a dearth of literature on their origin. However, for this research, the history of the NGOs is traced to the development of charitable organizations that were formed to mitigate the increased poverty and marginalization of the poor as a result of the industrial revolution. The development of these organizations and the subsequent mutations and transformations gave rise to the civil society of which NGOs constitute a significant part. This section traces the origins of the NGOs.

¹⁰ “Taking Civil Society”, By Jonathan Schell, Tom Dispatch, April 6 2005

“Help that Hinders”, By Amndhati Roy, Le Monde diplomatique, Nov. 2004, www.iltsd.org

¹¹ Graham Hancock, Lords of Poverty, Canerapix Publishers International, 2004 writes at Pg 3. “Charities established to do good works amongst the poor know that they can benefit from this powerful but transitory altruism and go into public relations overdrive when there is a relief operation in prospect. It is a simple fact in the voluntary sector: with appropriate media hype, famines, dramatic influxes of refugees, floods, earthquakes and other such catastrophes can be real money spinners.”

Arndt¹² states that throughout the centuries of European colonialism, the primary concern of metropolitan governments was their countries national interests.¹³ Others have offered motives which have ostensibly had the welfare of the native populations in mind and the salvation of souls in the 16th Century, restoration of law and order in the 18th century and the blessings of Western civilization and economic progress in the 19th century. However, all these were mere rationalization. The real motive was the exploitation of the economic resources of the colonies. As Francis Bacon¹⁴ observed, for three centuries the main economic motive of Western expansion was the lure of gold and silver and profit from trade in tropical products, and the religious motive. Thus there was a convergence of interests between mercantilism and religion.¹⁵ This was also observed by Charles Grant¹⁶ in the essence that the Western countries would not only draw profits from trade with their colonies but also improve the economic and social well-being of the societies.

Manji and O'coill¹⁷ trace the origin of NGOs to the period of industrial revolution that began in the early years of the 19th century resulting in enormous disparities in income between the bourgeoisie and the increasing population of urban proletariat. This resulted in an emergence of charitable activities throughout the British Empire

¹² Economic Development, "The history of an idea", by H.W Arndt, University of Chicago Press; Reprint edition, (1989)

¹³ Pg 21, *ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ a former chairman of East India Company and a member of an evangelical sect known as clapham sect, *op.cit*

¹⁷ New African, IC Publication, UK, August/September 2005

to address the disparities.¹⁸ Mamdani,¹⁹ also shares the same observation in that the emergence of the civil society was as a result of the strategic initiative of an embryonic bourgeois class which shaped an associational life along voluntary and democratic principles. During the anti-colonial struggles, there was a marked shift in the relation between civil society and state that saw the expansion of civil society activities.²⁰

After the scramble and partition of Africa the colonial powers had no desire to finance state welfare programmes for Africans. Government social services for the indigenous population were minimal. Social policy was geared towards ensuring and maintaining the structures of colonial rule. There was thus no time or resources to cater for the majority of the rural population and was left to a number of church charities and missionary groups to exchange their “spiritual wares for material support in education, health or other social services.”²¹

With the rise of the struggle for emancipation of Africans from colonial rule, the missionary societies and charitable organizations transformed themselves with their ideological outlook replacing the overt racism of the past with the new discourse about “development” that was just beginning to take shape in the international

¹⁸ Ibid

¹⁹ Contemporary Africa and the Legacy of Late Colonialism by M. Mamdani, Princeton University Press(1996); www.pupress.princeton.edu/titles/5839.

²⁰ Ibid

²¹ Ibid

arena.²² The term development itself was first used in the 1940's by the US Government and other international Agencies²³ to distinguish the world into "developed" and "underdeveloped" spheres and to describe "development" as a universal and desired goal. The exigencies of African resistance and international politics had forced them to reconstruct themselves as indigenous "development" NGOs.

However, the real problem was that the dominant discourse of development was framed not in the language of emancipation or justice, but with the vocabulary of charity, technical expertise, neutrality and deep paternalism accompanied by the rhetoric of participatory development.²⁴ The discourse of development provided a means of subverting popular aspirations for radical change in the context of independence struggles while legitimatizing the continued marginalization of Africans. After independence the development discourse worked to undermine

²² see Kenyatta Jomo, *Facing mount Kenya*, East African Educational Publishers Ltd Reprinted (2004)

²³ Harry Truman, President of the US inaugural address on January 20, 1949: "More than half the people of the world are living in conditions approaching misery. Their food is inadequate. They are victims of disease. Their economic life is primitive and stagnant. Their poverty is a handicap and a threat both to them and to more prosperous areas. For the first time in history humanity possesses the knowledge and skills to relieve the suffering of these people I believe that we shall make available to peace loving peoples the benefit of our store of technical knowledge in order to help them realize their aspirations for a better life..... What we envisage is a program of development based on the concepts of fair dealing..... Greater production is the key to prosperity and peace. And the key to greater production is a wider and more vigorous application of modern scientific and technical knowledge. (op. cit *The Making and Unmaking of the Third World*, Arturo Escobar, Princeton University Press, Princeton, New Jersey)

²⁴ These sentiments are also shared by the liberal intellectuals Notable among these are Joseph Stiglitz, a onetime official of the World Bank and a noted economist, Jeffrey Sachs, a high ranking U.N. official. For an excellent critique, Graham Hancock in his book "Lords of Poverty" has thoroughly exposed the fallacies of what he refers to as the "aristocracy of mercy"

popular mobilization and to limit an expanding communist ideology both of which threatened to obstruct the continued growth of Western interests in Africa²⁵.

The role of the NGOs grew in the late 1970s with the events that marked an end to the discourse on development agenda. Global economic changes in the 1970s and 1980s decades resulted in an increase donor aid financing development activities in Third world countries.²⁶ As a result the indebtedness of developing countries gave the multilateral lending agencies the leverage they needed to impose their neo-liberal policy prescriptions across the board.²⁷

As indicated by Stiglitz,²⁸ the Bretton Wood institutions through SAPs determined both the goals of development and the means of achieving them. In this way, they managed to intervene in political decision making processes and the determination on the extent of states involvement in the social sector. Popular dissatisfaction followed and this forced the multilateral and bilateral aid agencies to rethink their approach to development promotion particularly how to present the same neo-liberal economic and social programmes with a more human face.²⁹ The outcome of these deliberations was the “good governance” agenda of the 1990s and the decision to adopt the NGOs and other civil society organizations to a repackaged programme of social and welfare provision. The purpose of such programmes was to act as

²⁵ Ibid

²⁶ Stiglitz, “Globalization and its Discontent”, www. Norton&company; 1st edition (2002)

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

palliatives that could minimize the more glaring inequalities that the policies of the multilateral and bilateral had perpetuated and in turn take advantage of the globalization process.

But who was to administer these funds? The governments in Africa were deemed corrupt and would squander the funds or the leadership would embezzle them. In addition, the inability of the African governments to adopt these programmes as fast as possible created room for the NGO sector with their so called expertise to take leading roles. As a result, the involvement of western NGOs in Africa grew profoundly.³⁰ The availability of such funds for NGOs had a dramatic impact on the very nature of that sector. The involvement of Western NGOs in Africa grew profoundly. For example, in Kenya during the period 1978 to 1988 the NGOs increased three times to 134. As at April 2002 there were over 2,226 NGOs operating in Kenya and 200 NGOs are registered every year. Over 40 % of these NGOs are foreign.³¹

In general, Steinberg highlights three stages or generations of NGO evolution since the period of 1940s.³² The first typical development of NGO focuses on relief and welfare and delivers relief services directly to beneficiaries. Examples are the distribution of food, shelter or health services. NGOs in the second generation are oriented towards small-scale, self-reliant local development. At this evolutionary

³⁰ Ibid

³¹ Chelogy et al, An introduction to the Non-Profit Sector in Kenya, www.allavida.org. Pg 62

³² Steinberg, 2001

stage, NGOs build the capacities of local communities to meet their needs through self reliant local action. The third generation involves sustainable systems development whereby NGOs try to advance changes in policies and institutions at local, national and international levels; they move away from their operational service providing role towards a catalytic role. As a result, the NGOs move from relief NGOs to development NGOs.

The UN indicates that the number of INGOs has been growing. An increased growth of 19.3 % was noticed between the years of 1990 and 2000.³³ This is indicated in Table 1 below.

Table 1: Growth of INGOs between 1990 and 2000

Purpose of INGO	1990	2000	Growth (%)
Culture and Recreation	1,169	2,733	26%
Education	1,485	1,839	23.8%
Research	7,675	8,467	10.3%
Health	1,357	2,036	50%
Social Services	2,361	4,215	78.5%
Environment	979	1,170	19.5%
Economic Development, Infrastructure	9,582	9,614	0.3%
Law, Policy Advocacy	2,712	3,864	42.5%
Religion	1,407	1,869	32.8%
Defense	244	234	-4.1%
Politics	1,275	1,240	-2.7%
Total	31,246	37,281	19.3%

Source: UN Human Development Report (2002)

³³ UN Human Development Report, 2002 undp.org/reports/global/2002/en

It is important to note that the globalization process has contributed to the rising numbers and influence of NGOs in many countries. INGOs and NGO alliances are emerging as increasingly influential players in international decision-making.

1.0.3 Justifications offered for the Role of NGOs in Developing Countries

The role and development of NGOs is closely associated with changes in the social, economic and political conditions of developing countries in which their work is concentrated in. NGOs exist for a variety of purposes, usually to further the political or social goals of their members. Current literature on NGOs identifies a variety of roles that non government entities play on the international scene. Depending on the circumstances, the NGOs may act as:³⁴ service providers (often as government subcontractors); watchdogs or private enforcement agents; lobbyists; stakeholders or countervailing interests; agents of civil society enriching the public dialogue and representing interests not reflected in national government viewpoints; policy analysts or expert advisers to governments; mobilizers of public opinion; bridges between state and non-state actors connecting local and global politics; change agents offering new viewpoints and consultants to industry.

Notably a growing share of development spending, emergency relief and aid transfers passes through the NGOs. NGOs have become the most important constituency for the activities of development aid agencies. Since the mid-1970s,

³⁴ Esty, 2003

the NGO sector in both developed and developing countries has experienced exponential growth.

Before the development discourse and the emergence of NGOs, the source of funds for the civil society came from private donations. In the early 1970's less than 2 % of NGOs income came from official donors.³⁵ From 1970 to 1985 total development aid disbursed by international NGOs increased ten-fold. By the mid-1990s this figure had risen to 30 %. For instance, between 1984 and 1994 the British government increased its funding to NGOs by almost 400% to \$ 68.7 million. In 1992 international NGOs channeled over \$7.6 billion of aid to developing countries. It is now estimated that over 15 % of total overseas development aid (aid from EU, IMF and World Bank) is channeled through NGOs. Between 1990 and 1994, the proportion of the EU's relief aid channeled through NGOs rose from 47 % to 67 %. (The Red Cross states that NGOs now disburse more money than the World Bank). Once little more than ragged charities, NGOs are now big business.³⁶

In spite of these funding, NGOs are selective in their project funding and they have been accused of deliberately marginalizing the poor people as they purport to foster their core agenda. A model of the NGO financing and support for the development agenda shows that for countries whose governments are deemed difficult and cannot

³⁵ The Economist, Jan 29, 2000

³⁶ *ibid*

be collaborators, even where specific sectors of their economies merit collaboration, they are not funded.³⁷ Under such circumstances, any resistance to the NGO agenda is met with strong advocacy strategies, both at the national, regional and global levels to the extent that the affected countries come under pressure from global bodies such as the UN to behave differently on a given strategy.³⁸ The countries deemed weak and ready to collaborate are the ones awash with projects that are at times poorly planned and in competition and at times at variance with the long term national development goals of the recipient countries. Quite often short term goals become the whole preoccupation.³⁹ Over the years the NGOs have been funded enormously by the donors and this has encouraged them to put up consortiums which are now able to respond directly in a bigger fashion.⁴⁰ This has created enormous challenges in recipient countries in maintaining their basic sovereignty and territorial integrity.

On their part the NGOs have been agitating for increased role and have demanded for greater participation in multilateral negotiations on the pretext that the poor countries are not sufficiently endowed with the capacity to undertake negotiations due to the limitations of resources.⁴¹ The dichotomy is that the NGOs are partly responsible for insufficiency in capacity as they are the ones who employ the most qualified people from the government and into the NGO world where salaries are

³⁷ Lords of Poverty, Supra

³⁸ Former US Secretary of state Henry Kissinger once said "it is amazing what a few grains of cereal can do to an African leader"

³⁹ Food security is one such characteristic project. In some instances the food donations have led to loss for local harvests resulting in loss to small scale farmers and thus aggravating poverty.

⁴⁰ Examples are the Swiss coalition of Development organizations, British overseas NGOs for Development.

⁴¹ Article 127 and 128 of the East African Community Treaty

extremely lucrative.⁴² Lack of capacity is thus held out as the main reason why NGOs should have a greater role in these negotiations. The project thus examines if this demand is motivated by the need to assist the poor countries or it is intended to ensure that NGOs remain relevant and in business and also advance the agenda of the donors whose primary aim is to continue the exploitation of the developing countries.⁴³

1.2 STATEMENT OF THE PROBLEM

It is evident that with the growing number of INGOs and NGOs especially in the Third World countries and Africa in particular, their respective influence in terms of political, economic and social development has been expanding. Most African countries are gradually ceding their sovereignty in trade negotiations and policy formulation to these organizations. The NGOs have also insinuated themselves to the national governments and have been offering to assist the countries in international forums where issues affecting these countries are discussed. In addition some organizations have managed to obtain accreditation in these international

⁴² See generally "Lords of Poverty," supra

⁴³ In a speech to the U.N Economic and Social Council Panel on development financing in New York, the Kenyan Minister for Planning Prof. Anyang Nyong'o mentioned;
"Financing development through NGOs had failed to produce desired results such as the Millennium Development Goals (MDGs). (It) has failed to drive economic growth in Africa over the past four decades and will not work for the current generation... There seems to be a merging populist attitude that where governments are weak, development financing should be channeled through NGOs.... This is quite often a ploy by assistance providers to put food on the table of Western NGOs so that overseas development assistance can be channeled back to the West in unforgivable proportions. (reported in the Daily Nation Newspaper of 12th May 2005)

forums where they articulate positions allegedly in favour of the African countries without solicitation from the said countries.⁴⁴

As a result of this increased influence especially in the international and regional trade policy development, conflicts have arisen between the INGOs and NGOs on one hand and the respective governments on the other hand. The African governments claim that the organizations tend to propose policy measures that favour their interests and those of the donor countries while subjugating government proposals. In addition, the existing legislation⁴⁵ governing the NGOs does not provide for sufficient legal framework to examine the problems caused by the NGOs and the monitoring of their activities. The Act only provides for the methods of registration of NGOs and has no provisions to ensure that the registered NGOs are credible and that they conduct their affairs in a transparent manner. This has led to the formation of brief case and single issue NGOs that are famous for espousing spurious issues or the “hot button” causes that are popular with the donors at a given time. At a local level some of the NGOs have been found to engage in activities that are clearly against the host countries’ interests.⁴⁶ The NGOs are also composed of individuals who are unelected and with no defined constituencies. Consequently there is a larger issue of whose interests they represent. Based on this background, this research seeks

⁴⁴ Op .cit

⁴⁵ The NGO coordination Act, (1990)

⁴⁶ The Dispute between the Kenya Government and Denmark over the activities of a Danish NGO-MS is a case in point. Kenya refused to renew the work permits of three Danish NGO personnel accusing them of engaging in funding illegal activities. In reaction to this position, the Danish government froze Kshs 400 million in official assistance to Kenya and announced that there would be no new grants to Kenya. (reported in the Daily Nation of Wednesday July 13, 2005)

to highlight the existing legal and institutional frameworks at the multilateral trade institutions that allow NGOs to participate actively at trade negotiations. Their participation at these trade institutions tends to be more negative as opposed to being positive towards the developing countries.

The research is limited to the activities of these NGO's in the less developed countries especially Africa, and examines the negative impact of their activities in multilateral trade negotiation forums.

1.3 CONCEPTUAL FRAMEWORK

Notably, NGOs have developed in terms of their focus of operations from relief/welfare providers and vehicles for local development to playing a catalytic role in policy formulation in areas of political, economic and social aspects. The roles of the NGOs have as a result of these also expanded with time. However, these increased roles are having an increasing negative effect to the countries or persons that the NGOs purport to represent in international forums.

The premise of membership in all multilateral trade institutions is that democratically elected governments that negotiate trade deals represent their citizens. It is the individual government's primary responsibility to take care of its interests in trade policy making. However, in democracies, all interested groups have the opportunity to express their views on trade and related policy issues to representatives in the legislature and government. Given the need to be elected, politicians will be

responsive to those interests, as they must mobilize votes come election time. On the other hand NGOs are comprised of individuals who are not elected by the poor people they claim to represent. Despite this fact, NGOs are playing the role of advisors and participants in trade forums in the name of representing the interests of the Third world countries' residents.

The theory behind the setting up of NGOs as examined in the preceding section (1.1) indicates their stated general function, is to serve the underserved or neglected populations in order to empower them to participate in positive social change. The brief synopsis shows that as a result of the structural adjustment policies imposed on the developing countries by the International Monetary Fund (IMF) and the World Bank in the 1980s most of the developing countries were unable to fund some social obligations to its citizens. Thus, the state was compelled to abdicate its traditional role, and the NGOs moved in to fill the vacuum. But the available funds were not sufficient to cover the cuts in public spending and this led to their seeking and obtaining patronage from aid and development agencies and funds from Western Governments, the World Bank, the United Nations and multinational corporations. These agencies are part of the political formation that oversees the neo-liberal projects that demands cuts in government spending.⁴⁷ Why should these agencies fund NGOs? The answer to this question forms the background against which the role of NGOs is examined in this project. In the long run NGOs are accountable to

⁴⁷ Stiglitz, Globalization and its Discontent, *ibid.*

their donors not the people they work amongst. The greater the devastation caused by neo liberalism, the greater the outbreak of NGOs.⁴⁸

On another insidious scale the funds available to NGOs plays the same role in alternative politics as the speculative capital that flows in and out of the economies of developing countries. In addition to these, the availability of resources in terms of human capacity and financial enable the NGOs to be aggressive articulators of their policies at the trade forums. It enables the NGOs to insinuate themselves to the national governments of the developing countries. In this way, they are able to push their agenda which in any event is the agenda of their donors. It depoliticizes poverty and interferes with the local elite who are the natural activists who would articulate the poor people's problems but who now feel that their jobs afford them an opportunity to do some good while they earn a living.

1.4 OBJECTIVES OF THE RESEARCH

1.4.1 Main objective

The main objective of the study is to demystify the NGOs and demonstrate that majority of the NGOs are not motivated by altruistic ideals when dealing

⁴⁸ Nothing illustrates this more accurately than the US attack on Afghanistan and Iraq. While the US was preparing to invade both countries they were also readying the NGOs to clean up the resultant devastation. Afghanistan accused the NGOs of hindering local reconstruction and economic growth and compelled the NGOs to sign a code of conduct (Integrated Regional Information Network, May 31, 2005.) In Iraq, the International Committee of the Red Cross was accused of not publishing reports on prison abuses in Iraq until the media leaked allegations of torture. The Red cross argued that its policy of "keeping quiet" allows, the organization to uphold its mandate-visiting prisoners and ensuring their humane treatment, (Newsweek May 15, 2004), New York Times of August 4, 2004 reported that USAID, a governmental aid donor threatened to discontinue contracts with NGOs that do not show willingness to conform to US Foreign policy. In the face of losing a major source of aid many NGOs complied.

with poor countries. There are some NGOs engaged in valuable work particularly in provision of health and education.⁴⁹ However, the majority of the NGOs in particular those involved in advocacy and the development discourse have insidious motives and are engaged in extension of the strategic interests of their donor.

1.4.2 Specific objectives

1.4.2.1 To demonstrate that it is the sovereign duty of the poor countries to take the lead in the formulation of trade policy and to present and argue their positions in the interests of their nationals.

1.4.2.2 To demonstrate that the perceived lack of capacity in the poor countries and the timidity due to the brow beating and agitation from the NGOs that they are corrupt is not justification for these countries to cede their legitimacy and abdicate their sovereign responsibilities.

1.4.2.3 To establish and demonstrate that the poor countries should eschew positions agitated by NGO's in the forums where issues relating to trade policy are being negotiated.

⁴⁹ Chelogy et al, An introduction to the Non-Profit Sector in Kenya, www.allavida.org, pg 32. the 208 hospitals in Kenya in 1994, 50.5% were run by NGOs.

1.5 ASSUMPTIONS OR HYPOTHESES

- 1.5.1 The National Governments of poor countries are ill prepared and at times overwhelmed during the meetings of multilateral organizations. They have limited human capacity and resources to enable them to engage in the complex multilateral negotiations. In this way they are unable to secure the best interests for their countries.
- 1.5.2 The NGOs, having realized these inadequacies, have by cunning and stealth insinuated themselves to the poor countries and consequently assumed roles as advisors or participants in these forum. Such actions are detrimental in the long term to the interests of the poor countries and always benefit the rich countries who are the sponsors of these NGOs.
- 1.5.3 It is a sovereign responsibility of a country to formulate a trade policy and to articulate it aggressively in multilateral forum. This is the only way available to secure for them and their nationals the necessary impetus to participate in global trade and in the process alleviate poverty and create wealth for the citizenry.

1.6 RESEARCH QUESTIONS SOUGHT TO BE ANSWERED

Questions that the project seeks to answer include:

- 1.6.1 Whose interest do the NGOs actually represent and are these interests consistent with the national goals of the poor countries?
- 1.6.2 Do the poor countries cede their sovereign responsibility when they permit NGOs to influence policies on trade, which is exclusively the duty of an individual state taking into account the best interests of their citizenry?
- 1.6.3 Should the Treaties and protocols establishing the multilateral institutions confer a role to the NGOs?
- 1.6.4 Whether the NGOs can supplement the efforts of poor countries in multilateral negotiations forums and whether this is in the best interest of such countries.

1.7 LIMITATIONS TO THE STUDY

The study focuses on poor countries in Africa and the respective NGOs that tend to influence policy issues at the trade negotiation and institutions. It is important to note that trade negotiations tend to be based on both economic and political interests. Thus the legal issues which touch on the trade institutions are normally influenced by

these considerations and the study has been undertaken against this background. As a result, the study may appear as a political discourse but attempts have been made to give it sound legal basis to focus on issues of trade policy within the various regional and international legal regimes. The legal content may appear to be submerged by the political, economic and social issues that inform the debate.

1.8 METHODOLOGY

This project is based on limited primary sources and there will be a preponderance of use of library/desk research and the internet. There is heavy reliance on the library materials. Legal statutes, journals, booklets, magazines and newspapers are extensively used in developing the arguments. International treaties and legislations are also used to illustrate the underlying theme of the project. All the materials used are available in different libraries and bookshops in Nairobi.

1.9 LITERATURE REVIEW

Manji and O'coill⁵⁰ indicate that the development discourse of NGOs has offered a new philosophical rationale as a more noble pursuit than humanitarian relief alone to Third world countries. NGOs participation in development discourse has permitted them to market themselves amongst their donor public in their countries. However, this development is tied not only to charity, but to technical expertise, neutrality and deep paternalism accompanied by the rhetoric of participatory development. This

⁵⁰ The Permission given to Africans to form Trade Unions and welfare associations in Kenya in the late 1950's

discourse of development provides a means of legitimatizing the continued marginalization of Africans. The ever changing technological world and reduced capital in developing countries has resulted in them relying on aid and as a result increasing their debt levels. The indebtedness of African nations has given rise to multilateral lending agencies the leverage they needed to impose their neo-liberal policy prescriptions across the board.⁵¹

As indicated by Oyugi,⁵² NGOs play a major role in socio-economic development in Third world countries. This role increased after the post independence period, especially from the 1980s following the demonstrated failure of the states all over the continent, as a credible provider of basic services to the poor. As a result, instead of channeling development assistance through the state, some donor agencies opted to do so through the non-state actors mainly the NGOs thereby increasing their influence on political, economic and social policies.

Clark⁵³ states that where the host governments have positive social agendas (or even where individual ministries do) and where NGOs are effective, there is the potential for a strong, collaborative relationship between the governments and NGOs in implementing the developmental programmes in the countries. This exists where there is genuine partnership between NGOs and the government to work on a

⁵¹ *ibid*

⁵² Oyugi Walter. "The Role of NGOS in Fostering Development and Good Governance at the Local Level in Africa with a Focus on Kenya", *Africa Development*, vol XXIX No. 4 (2004)

⁵³ www.gdrc.org/ngo/ncafe-ks.html

problem facing the country or a region, based on mutual respect, acceptance of autonomy, independence, and pluralism of NGO opinions and positions. However, such relations are rare, even when the conditions are met. The mutual distrust and jealousy appears to be deep-rooted. This is because governments fear that NGOs may erode their political power or even threaten national security while NGOs mistrust the motivation of the government and its officials.⁵⁴

However, even with a largely adversarial relationship, consultation can be a surprisingly productive process and reduce tensions. An example of this can be seen in NGO proponents of environmental issues that most governments have proved receptive to their concerns, and developed plans for environmental management.⁵⁵

Steinberg⁵⁶ points out that governments also find NGOs an important source of information as they bring back reports of what is happening in different regions. Often the information the NGOs gather is unavailable from other sources, such as human rights NGOs. While this is useful, governments may sometimes exploit NGOs, particularly those working in the midst of conflict, by using them as a cover for spies. Some NGOs take over diplomatic functions, such as negotiating ceasefires, preventing and ending conflicts and restricting arms flow. In performing such tasks NGOs must take care not to act as "instruments of government foreign policy."⁵⁷

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ http://www.wfm.org/WFM_NEWS/wfmpubs.html

⁵⁷ Ibid

The LOME policy marked European's conversion to supporting the structural adjustment programmes initiated by the Bretton Wood Institutions, although with the decidedly European bias.⁸⁹ In parallel, stress was placed on diversification of the ACP economies, promotion of the private sector and the increasing importance of regional cooperation as a precursor to regional integration⁹⁰ NGO activities in the ACP countries started to enjoy patronage by the European countries. The mid-term review of LOME IV led to the signing of a new agreement in Mauritius (1995) between 15 European states and 70 ACP countries in which the activities of the NGOs were also taken into consideration.

At the end of 1995, the European commission embarked upon a process of reflection which was to result in the "Green Paper on relations between the European Union and the ACP and options for a new partnership"⁹¹ This initiative was symbolic of the spirit of dialogue given that post LOME negotiations which were not set to begin until September 1998⁹² and the fact that the "Green paper" was raising issues accompanied by proposals than a prefabricated response. This generated a whole range of consultations in Europe and the ACP countries involving all those with a

⁸⁹ The demands for privatization benefited firms from European countries. According to a report in the East African of 18th-24th October a UK based study accused the Bretton Wood Institutions and the British government of deepening poverty in the developing countries by giving away aid money to consultants who "advise" the beneficiary governments to sell out their public institutions and services. For example, 1997-2000 the UK Department of International Development (DFID) awarded contracts amounting to \$10.967 billion to consultants as fees for advice on privatization. This amount is more than the GDP of all sub-Saharan African countries.

⁹⁰ Supra

⁹¹ ibid

⁹² ibid

In addition to these, the NGOs also provide expertise to the host governments in undertaking various functions. The various types of NGOs have different perspectives and skills from those of government, and have helped to meet the wide range of social needs of the international community by supplementing government functions and filling in areas beyond government reach. For example, more NGOs are becoming involved in international humanitarian relief and development assistance. As the assistance needs of developing countries diversify and NGOs are taking an active role in areas such as Official Development Aid (ODA) by deploying experts abroad and meeting the demands of technical cooperation. In many cases, such cooperation leads to public involvement in and greater visibility for aid, enhancing the efficiency and effectiveness of aid. INGOs also help to gauge the impact of multinational corporate activities, which expand beyond sovereign state borders. Moreover, the global networks developed among NGOs with specialist knowledge in their particular areas are valuable from the perspective of gathering and analyzing detailed information drawn from local sources around the world.⁵⁸

The NGOs are further viewed as the effective tools or channels for donors to provide international development funds to low-income countries. They are seen as effective and efficient agencies as compared to the host governments in delivering services to the poor population. This is because they are seen as being strongly associated with grassroots action and community organizing, which may exist outside

⁵⁸ Anup Shah, Non-governmental Organizations on Development Issues, www.globalissues.org/TradeRelated/NGO.asp (June 2005).

the domain of the formal development world.⁵⁹ In overall, the NGOs are perceived as playing an increasingly vital role in democratizing societies by empowering them politically, economically and socially.

On the other hand, Hancock critiques the activities of the institutions and organizations involved in official and humanitarian assistance to the poor countries as pretenders.⁶⁰ Hancock quotes a survey conducted in the United States for the World Bank which concluded that skepticism about government efficiency in handling aids leads to a preference for non-governmental channels in the distribution of aid.⁶¹ Hancock further reveals that a great deal of the aid or humanitarian money is spent on purchasing the expertise that Americans and Europeans provide.⁶² Besides, there is an injudicious mix of religion with relief work and this abiding concern of many voluntary agencies has resulted in human costs. Hancock quotes a past President of the World Vision, one Ted Engstrom who remarked:

“We cannot feed individuals and then let them go to hell,”⁶³

Hancock catalogues a series of outrageous disasters of tragic and comical proportion due to naiveté on the part of the personnel of the NGOs and generally characterizes them as “junk, waste and stupidity.”⁶⁴ A lot of humanitarian assistance does not reach

⁵⁹ Clark, www.gdrc.org/ngo/ncafe-ks.html

⁶⁰ *Lords of Poverty* Camerapix Publishers International, 2004 ed;

⁶¹ *Ibid*, the reality is however different. Hancock gives the example of the Hunger Project, an American NGO which received donations of \$ 6,981,005 and spent only a sum of \$ 210,775 on hunger related projects.

⁶² *Ibid*

⁶³ *Ibid*; A further example is given at Pg 9 *ibid*; World vision employees used the threat of withholding food supplies to coerce Salvadorians refugees into attending Protestant worship services. Salvador is largely Catholic country.

⁶⁴ *Ibid*.

the intended recipients due to “bureaucratic errors and inefficiencies, wastefulness inappropriateness and unforgivable lateness.⁶⁵ He also takes issue with the aggressive and reprehensible techniques used by the NGOs in their fundraising activities. He concludes that “...what underlies the sturdy appeals, the images of starving babies and shell shocked refugees turns out not to be a genuine concern for the capitalism of mercy in which aid organization compete to boost their own size and prestige with precious little reference to those who are meant to benefit from their programmes.”⁶⁶ This has often led these NGOs to have underhand and fraudulent means of appeals for funds by over exaggerating the extent of Third World disasters. For example⁶⁷ the World vision, US placed an advert in a publication alleging that “12 million East Africans were on the verge of death due to starvation in the greatest human need of our time.”⁶⁸ All this turned out to be false. The NGOs have also been accused of using methods that humiliate the supposed beneficiaries by misrepresenting them as passive victims incapable of doing anything for themselves.⁶⁹ This is both degrading and sensational designed to depict the poor as helpless and dignified victims who can only survive on charity and benevolence of the rich.

The NGOs tend to misrepresent the supposed beneficiaries as passive victims incapable of doing anything for themselves. The NGOs have become the

⁶⁵ Ibid, pg 16. World vision committed “wire fraud” in the US to siphon funds being raised by another NGO. Threatened with an exposure World vision made a payment of \$ 250,000 without specifying if this was intended as compensation or as hush money.

⁶⁶ Ibid at pg 17

⁶⁷ Ibid;

⁶⁸ An illustration is given where in a TV appeal for funds an official of an NGO showed a dead Somali baby for the benefit of the cameras with the following words uttered “ No gift is too big”. New African, ibid

⁶⁹ New African, ibid;

personification of government structures in much of Africa and have managed to influence policies. Based on this aspect, the NGOs act as self-appointed spokespersons of the poor in the host countries to the exclusion of the intended population. Over time, they have acquired knowledge of the local situation and this is employed by them in lobbying global institutions to tilt their programmes towards specific directions. NGOs today are at par with UN agencies such as the Inter Agency Standing Committee (IASC), the UN Humanitarian Organization based in Geneva where the Interaction (The American NGO consortium) and the International Council of Voluntary Agencies (the European Consortium of NGOs) and the Steering Committee for Humanitarian Response (SCHR) among others deliberate as equal partners with the UN, in defining standards and procedures on humanitarian response, to the total exclusion of the “beneficiary population” across the globe, let alone Africa.⁷⁰ Thus in reality, the NGOs have become the surrogates of the donor governments they faithfully represent as majority of the western donors deem African governments as incompetent and corrupt. Hence the donors are unwilling to provide aid unless NGOs are involved.⁷¹

1.9.1 NGOs Influence in Policy Making

The ever expanding role of the NGOs is being questioned by developing countries.

The present NGOs have been recognized as different compared to the 20th century

⁷⁰ In Kenya, all International NGOs have representation. The local offices are also heavily staffed by expatriates from the country of origin.

⁷¹ In 1993 President Clinton, declared in the UN that “American aid to Africa would go exclusively through NGOs”. Foreign Policy Association: Resource Library
www.fpa.org/topics-info 2414

NGOs in terms of their diversity, breadth of coverage and their transnational networks.⁷² NGOs have moved to the forefront of international development, bringing with them considerable influence in shaping development policy, planning and implementation. At the same time, the global context in which NGOs operate has changed considerably over the last decade. A significant development has been the emergence of strong, autonomous NGOs in the South that receive direct funding from donor agencies. This has led to the re-examining of the roles of Northern NGOs; those organizations that have their roots in the industrialized countries of the west, but work in development in the South.

There has been an increased interest by Western governments in NGOs and the large western private funders are putting enormous resources into some NGOs.⁷³ In fact, some NGOs function as subcontractors to governments for instance, the U.S. Wildlife Fund gets over half of its budget from USAID, to do work that a government could do. Finally, many governments are now "mandated" to consult with NGOs, and so are the World Bank and the IMF. This has brought to the fore the issue of NGO influences on trade aspects of individual countries. Presently, NGOs especially the INGOs have lobbying accessibility at the global level that shape individual government policies on trade issues. More generally, today NGOs often directly engage in questions of democracy, empowerment and redistribution in a way that they did not in the past.

⁷² Sassen, 2005, A New Geography of Power? www.globalpolicy.org/ngos.htm

⁷³ Ibid

There is an emergent hyper-critique of NGOs today, focused particularly on the large western NGOs that are well financed, operate globally and have basically technocratic organizational standards. This leads to the formation of an elite stratum of NGOs that become the favorites of large Western funders and set the standards for other NGOs if they are to be funded. They then emerge as the "good NGOs." In addition, this world of NGOs is seen as a part of the West's hegemonic project: by instituting standards and aiming at strengthening western style liberal democracy they have the effect of making places safe for western-style capitalism. These elite NGOs often bypass national governments in developing countries arguing that they want to institute standards and western style democracy in places where the national and local governments are not oriented this way. A clear example of this is the case of international standards set by the ISO group. By acting as enforcer of national law, ISO does not function as a critic, potentially in opposition to the state, but merely as an entity augmenting the inspection capacities of a state. Of interest is that the standards are now being implemented worldwide by influencing the standard policies of individual states. Another example is the privatization of public bureaucracy functions and relocation of these functions onto the world of corporate agendas.

It is also worth noting that NGOs may have special interests and thereby distort World Trade Organization (WTO) policymaking. Whenever lobbying of a decision making body is permitted, there exists a risk that certain interests will exert disproportionate influence. A more refined version of the special-interest-domination fear focuses on the fact that governments have to trade off competing domestic

interests in order to strike agreements that liberalize trade. Trade officials in particular see great benefit in going behind closed doors to cut deals that sacrifice inefficient industries that are hiding behind tariff barriers or other protectionist walls in favor of more open markets. Industries that have a great deal at stake in trade policy invest considerable resources in the political process to protect their established positions while the general public, which benefits broadly but not deeply from free trade, faces much smaller incentives to become politically active. Many trade observers fear that any role for NGOs will heighten the asymmetries of interest and action among the contending parties.⁷⁴

Furthermore, the WTO should be an inter-governmental body that allows governments to debate on the trade processes freely without a cacophony of other voices.⁷⁵ Of importance to note is that, the NGOs may at times have two positions in the trade negotiations, one in the national debate over what position their government should take to the WTO and a second one at the WTO itself. An additional concern is how many people a particular group represents. This is the most commonly expressed concern by developing countries.⁷⁶ “Who do these NGOs represent?” is a common refrain among government officials and bureaucrats that work for multilateral institutions. Governments often claim to represent their people and thus argue that there is no need for alternative sources of public representation.

⁷⁴ CAFS, 2001, A Situation Analysis of NGO Governance and Leadership in Eastern, Southern, Central and Western Africa, www.cafs.org

⁷⁵ Ibid

⁷⁶ The World Bank, 2001. www.globalissues.org/TradeRelated/Poverty/NGOs.asp.

Multilateral officials claim to represent the collective interests of their government shareholders and thus cloak themselves in a 'representative' legitimacy. While some NGOs do represent vast numbers of members (e.g. Consumers International), others do not rest their legitimacy on representation at all, but on expertise, popular support (e.g. Amnesty International) or moral imperatives that transcend national borders (such as animal welfare).

Indeed, it is likely that Western interests will have more resources to devote to WTO lobbying than Southern interests. Many developing countries object to a greater NGO role at the WTO for just this reason. They fear further dilution of their already modest influence within the international trading system if NGOs, with overwhelmingly Northern perspectives, are allowed to shape WTO policies and decisions. It is further feared that NGOs will draw greater attention to environmental policy shortcomings, human rights violations, and other governmental failures to press further their arguments. In addition, NGOs are not legal entities under international law except for the International Committee of the Red Cross which is a legal entity based on the Geneva Convention. Thus the practical difficulty of credentialing NGOs and controlling their activities becomes difficult. In conclusion, the NGOs tend to serve as long arms of their sponsoring states by gathering intelligence, burnishing their image, and promoting their interests.⁷⁷

⁷⁷ CAFS, 2001 <http://www.cafs.org>

1.10 CONCLUSION

With the onset of the 21st century, there has been a rapid change in terms of the global economy especially in the area of trade. There has been an integration of local and regional economies into trading blocks in order for individual countries to enjoy their respective comparative advantage in the global market. This has resulted in numerous multilateral trade forums to enable governments participate in policy formulation. The trade forums have experienced an expanding and influential role being played by NGOs in the pretext of representing the poor populace in Third World countries.

Notably, the NGOs have evolved to become influential bodies at the local, regional and international forums. Although this aspect can be argued to be of positive impact or importance to developing countries, the negative impact felt by these countries outstrips the important role played by the NGOs.

1.11 CHAPTER BREAKDOWN

Chapter one highlights the development of NGOs and their respective roles within the society. The background presents the general description of NGOs and their historical development over the years. Chapter one also presents the conceptual framework that the research builds on that yields the statement of the problem, objectives, hypotheses and research questions of the study. The methodology used to

undertake the study with the limitations encountered are also included the chapter. Literature review on NGOs and the growing concern on their role in policy making at multilateral trade institutions take the final sections of the chapter.

Chapter two highlights selected multilateral trade institutions in which the Third world countries are members. The chapter goes further to state the respective status and roles accorded to the NGOs by the trade institutions.

Chapter three examines the challenges presented by the NGOs to African countries in participating at the trade institutions. The chapter also brings forth suggestions on how these challenges could be addressed in order to improve the developing countries participation in the multilateral trade institutions without NGOs influence.

The conclusions of the study are presented in chapter four.

CHAPTER TWO

STATUS OF NGO'S IN SELECTED REGIONAL, INTERNATIONAL AND MULTILATERAL TRADE INSTITUTIONS

2.0 INTRODUCTION

There are a number of regional, international and multilateral trade institutions established to regulate inter and intra-trade amongst nations. These institutions are established by treaties between the governments of the respective trading countries to observe agreed legal principles that govern their trade relationship. The treaties are international legal binding instruments that assume fundamental importance in contemporary state affairs. More often than not, the rights and obligations of states formulated by the law of the treaties are also used to bestow rights on third party states and citizens. In practice, treaties regulate a wide range of international relationships in the economic, social and political arenas. This chapter examines some selected treaties that include, the East African Community (EAC), Cotonou Partnership Agreement (CPA), New Partnership for African Development (NEPAD) and the World Trade Organization (WTO) to illustrate how the NGOs obtained a role in each of the Trade Organisation.

2.1 EAST AFRICAN COMMUNITY (EAC) TREATY

The Tripartite commission for East African co-operation was first formed in 1967 as the East African community. The three East African countries, that is, Kenya, Uganda and Tanzania entered into the agreement to be able to control and administer

certain matters of common interest and to regulate the commercial and industrial relations and transactions between them.⁷⁸ A central legislature was placed to enact on behalf of the countries' laws relevant to the purposes of the community. However in 1977, the treaty for East African co-operation establishing the East African community was officially dissolved. The main reasons contributing to the collapse of the community included the lack of strong political will, lack of strong participation of the private sector and concerns over the continued disproportionate sharing of benefits of the community among the partner states due to their differences in their levels of development, intra-community political differences and lack of adequate policies to address this situation.⁷⁹

Following the dissolution of the institutions created by the Treaty, the former member states negotiated a mediation agreement for the division of assets and liabilities, which they signed in 1984. However, as one of the provisions of the mediation agreement, the three states agreed to explore areas of future co-operation and to make concrete arrangements for such co-operation.⁸⁰

Based on this background, a decision to re-establish the community was agreed upon and a treaty signed on 30th November 1999 to establish the East African Community.⁸¹ The treaty aims at developing policies and programmes aimed at widening and deepening of integration in the political, economic, social and cultural

⁷⁸ Profile of EAC, Institute of Security Studies, www.iss.co.za/af/regorg/unity_to_union/eacprof.htm

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ The signatories were Presidents, Mr. D. Moi of Kenya, Mr. Y. Museveni of Uganda and Mr. B. Mkapa of Tanzania.

fields, research and technology, defence, security, legal and judicial affairs for the mutual benefit of the partner states.⁸² The objectives of the treaty are to be achieved through promotion of a single market through a Customs Union, which will progress to a common market, a monetary union and ultimately a political federation. The treaty seeks to create an enabling business environment for the enhancement of private sector and civil society and adoption of people centered and market driven regional integration as well as development of efficient regional infrastructure.

One of the areas that the partner states have been mandated by the treaty to cooperate is contained in Articles 127 and 128. The two articles deal with the role of the civil society in the process of East African integration. The partner states have agreed to provide an enabling environment for the private sector and civil society to take full advantage of the community. Opportunities are provided for entrepreneurs to participate in the improvement of policies and activities of the institutions of the community. The Secretary General is to provide a forum for consultations between private sector, civil society and other interest groups. The secretariat has given observer status to civil organizations that have applied to participate in the activities of the EAC.⁸³

⁸² Article 2

⁸³ These include the East Africa Law Society, The East African Trade Union Congress, The East African Business Council

2.2 COTONOU TREATY (COTONOU PARTNERSHIP AGREEMENT-CPA)

The historical evolution of the relationship between European Union and the African Caribbean and Pacific countries (EU-ACP) has taken place against the background of progress of the European Community and the decolonization of the African, Caribbean and Pacific countries. The evolution has taken place in the context of decolonization (Association of Overseas Countries and Territories – OCT) and Yaounde Conventions, the New International Economic order (LOME I-III) the end of the cold war (LOME IV) and the effects of globalization (Cotonou Agreement).

2.2.1 The OCT Association and Yaounde Conventions I and II: The aftermath of decolonization

The OCT came into being with the Treaty of Rome in 1954. By 1960s, the majority of the OCT members had gained independence. The Yaounde Convention I of 1963 and Yaounde Convention II of 1969 covered 18 Associated African States and Madagascar (AASMS). The two Yaounde Conventions, constituted a learning process not only in terms of setting up joint institutions but also in terms of contractual system.⁸⁴ Their area of specialization was trade finance and technical co-operation. Funding at the sectoral level was concentrated in economic and social infrastructure projects. The development of Yaounde's policies into that of LOME was to result in a larger number of parties and a diversification of objectives.

⁸⁴ The Courier-September 2000-Special Issue on Cotonou Agreement by Dominique David.
<http://www.mhec.stale>.

2.2.2 From LOME I to LOME III (1975 – 1990)

The first three LOME Conventions were signed by ACP and the European countries against a background of East/West rivalry, rising commodity prices and the first oil crisis. Politics were eschewed due to the realities of the cold war. However, Article III of LOME IV alluded to the importance of human dignity (and not human rights) and stressed economic and social rights rather than civil and political rights.⁸⁵

The accession of the United Kingdom in 1973 to the European Economic Council posed a problem to the destiny of 20 developing commonwealth countries in Africa, Caribbean and the Pacific. After a long period of negotiations the first LOME Convention was signed between 9 European countries and 46 ACP countries. At the time it was proclaimed as a model for North/South development based on partnership and solidarity.⁸⁶ The 1975 George Town agreement institutionalized the ACP group and gave it a permanent general secretariat.

At a political level each nation was proclaimed to determine its own policies. At a trading level the principle of non-reciprocal preferences were set up regarding ACP exports to the EEC. STABEX was also set upon as a system of compensation for the shortfalls in export income on the part of ACP countries because of price fluctuations. Finally protocols favouring ACP exports were created in sectors such as sugar, beef, veal and bananas. At a sectoral level, LOME I and II continued to

⁸⁵ Ibid;

⁸⁶ Ibid;

address the issues of infrastructure and agriculture programmes funding. This approach suffered setbacks when development discourse encountered critical attention that led to evaluation of effectiveness of aid with a view to ensuring its credibility. LOME II was signed in 1979 with 58 ACP countries. It coincided with a progressive “globalization” of European Countries including areas outside the ACP Zones. This convention was a continuation of the previous one, but with a new innovation. This was the creation of SYSMIN a mechanism of the same type as STABEX but related to mining products.⁸⁷

LOME III was signed in 1984 between 10 European Countries and 65 ACP countries. It took place when there was an in-depth review of the effectiveness of aid and the emergence of political discourse hence the importance attached to policy dialogue and the gradual and progressive abandonment of the project approach and the need for concentration of community aid on a sectoral basis. Priority was given to development founded on self-sufficiency and food security and to combating desertification and drought. It was in this period that civil society and NGOs were in ascendancy in ACP countries. These achievements of LOME III were illustrated in LOME IV. This was signed in 1989 between 68 ACP countries and 12 European states.⁸⁸

⁸⁷ Ibid;

⁸⁸ Ibid.

role in development including the civil society. The inclusion of civil society was intended to act as a catalyst the EU and ACP countries.

2.2.3 COTONOU AGREEMENT

The new 20 year COTONOU Agreement was signed on 23rd June 2000 between 15 European States and 77 ACP countries. It addresses two issues namely that development is firstly a political issue and that globalization cannot be synonymous with poverty, inequality and exclusion. Indeed, development is generated through the establishment of stable relationships between players in a society in an evolving international context. This partnership, it is touted can only succeed if it is accompanied by political analysis, not only of changes of regime but also of transformation system in partner societies⁹³. In this context NGOs or the non-state actors have been accorded a prominent role. According to Article 2 on Fundamental Principles it provides that participation to ACP-EC cooperation shall involve apart from central government as the main partner, the partnership shall be open to different kinds of other actors in order to encourage the integration of all sections of society, including the private sector and civil society organizations into the mainstream of political, economic and social life.

Article 6 defines the actors of cooperation to include non-state actors amongst whom are "Civil Society in all its forms according to national characteristics."⁹⁴ The

⁹³ Article 6 1(b)

⁹⁴ Article 6(2)

recognition of NGOs shall depend on the extent to which they address the needs of the population on their specific competences and whether or not they are organizations that are organized and managed democratically and transparently.⁹⁵ In a major boost to NGOs the Treaty Provides at Article 7 that “the contribution of civil society to development can be enhanced by strengthening community organizations and non-profit non-governmental organizations in all profit spheres of cooperation. This will require encouraging and supporting the creation and development of such organizations. The NGOs have also been accorded a role in the organization the design, implementation and evaluation of development strategies and programmes.

Title II on political dimension provides on Article 9 on the fundamental elements that political dialogue shall be a focus of support for development strategies. The community shall provide support for political, institutional and legal reforms and for building the capacity of public and private actors and civil society in the framework of strategies agreed jointly between the state concerned (ACP) and the community (EC). Greater participation and involvement of an active and organized civil society and the private sector⁹⁶ are considered crucial elements in contributing to the maintenance and consolidation of a stable and democratic political environment. The support of

⁹⁵ Article 10(1)

⁹⁶ Article 10(1)

an active and organized civil society is also held out as a prerequisite in peace building policies, conflict prevention and resolution⁹⁷

The views of the civil society among others are also sought in the joint parliamentary Assembly, one of the organs in the joint parliamentary Assembly of the ACP-EC. Under Article 19 the Governments and Non State actors in each ACP country shall initiate consultations on country development strategies and community support thereto. Therefore it is in the poor ACP countries where NGOs have been conferred such a significant role and not on the community member states. Article 33 on institutional development and capacity building provides that cooperation in these endeavours shall span all areas and sectors of cooperation to foster the emergence of non-state actors and the development of their capacities, and to strengthen structures for information, dialogue and consultation between them and the national authorities including at regional level.

2.3 NEW PARTNERSHIP FOR AFRICAN DEVELOPMENT (NEPAD)

The New Partnership for African Development is an African Union initiative. It was established with the aim of eradicating poverty and to place African countries individually and collectively on a path to sustainable growth and development. The programme is anchored in the determination of Africans to confront underdevelopment and its exclusion and marginalization in an increasingly globalizing

⁹⁷ Article 17 (3)

world.⁹⁸ As a partnership programme NEPAD builds on principles, objectives and priorities set out in key co-operation agreements including the Southern African Development Community (SADC) Treaty, Organization of African Unity (OAU) Charter and the Common Market for East and Southern Africa (COMESA) Treaty. The NEPAD agreement sets out specific development targets. Among them is to achieve and sustain an average GDP growth rate of 7 % per annum for the next 15 years and to ensure that the continent achieves the agreed International Development Goals (IDGs). The NEPAD programme is quite ambitious and extensive and a substantive discussion of the same is outside the scope of this study. However, the issues identified in the plan in terms of conditions for sustainable development, sectoral priorities and mobilizing financial resources are not new. What is new is the political commitment that Africa can and should guarantee her own future. Secondly, NEPAD presents the basis for a common vision and duty to eradicate poverty and to make Africa a key player in the global economy.⁹⁹ It also provides a framework¹⁰⁰ around which practical partnerships can be defined to achieve measurable targets.

NEPAD acknowledges structural constraints internal to Africa such as poor governance and numerous armed conflicts that have hampered the continent's development. Thus in Article 2 NEPAD declares its commitment to deliver its ambitious goals through a process that involves confidence building among all actors

⁹⁸ Paragraph 1 of the NEPAD Text

⁹⁹ Articles 1.2

¹⁰⁰ Article 1.3

but in particular between Africa and its Northern partners and between governments and civil society. NEPAD has stated that it shall create space for NGOs who have shown commitment to the same principles and ideals and who champion programmes such as community based natural resource management and who share notions of ownership and vision with NEPAD.¹⁰¹

NEPAD also recognizes that the obligation to mobilize financial resources should not be left to the global North alone but should be shared by African governments, the private sector, NGOs and civil society. It accordingly commits itself to increasing domestic resource mobilization and that these resources need not flow directly through institutions of state that might create problems of disbursements and utilization that might arise from capacity constraints.¹⁰² Thus the NGOs with their “famed” capacity are accorded a legitimate entry point in the affairs and activities of NEPAD.

¹⁰¹ Daily Nation, 5th October 2005, NGO role in the peer review mechanism.

¹⁰² Article 8

2.4 WORLD TRADE ORGANIZATION (WTO)

The General Agreement on Tariffs and Trade (GATT) was established in 1947. Notably, GATT was initially limited to tariff agreements but over time, as tariff levels fell, the GATT increasingly came to focus on non-tariff trade policies and domestic policies that had an impact on trade. Its success was reflected by the steady expansion in the number of contracting parties. By the end of the Uruguay Round in 1994, 128 countries had joined GATT. With its transformation into the World Trade organization (WTO) in 1995, membership rose to 141 countries. WTO was as a result of eight negotiating “rounds” which produced accords that reduced tariffs on goods, established open markets and set rules on fair trading for all members.¹⁰³

The WTO also administers the trade agreements negotiated by its members, in particular the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS). The WTO rules and principles establish a framework in which the exchange of goods and services takes place. The disciplines and rules are negotiated among members through periodic rounds of multilateral negotiations and ad-hoc or permanent interaction in various WTO forums. The underlying philosophy of the WTO is that open markets, non-discrimination and global competition on international trade are conducive to the national welfare of all countries. A rationale for the organization is that political constraints prevent

¹⁰³ These are the Ancey Round (1949), the Torquay Round (1951), The Geneva Round (1956), The Dillon Round (1961), The Kennedy Round (1967), The Tokyo Round (1973) and The Uruguay Round (1986-1993)

government from adopting more efficient trade policies and that through the reciprocal exchange of liberalization commitments, these political constraints can be overcome.

The WTO differs from the old GATT in a number of respects. Among them is the role of the NGOs in the multilateral trade negotiations, which now have a profound implication on the functioning of developing and transition economies. The old GATT was a flexible institution and bargaining and deal making lay at its core with significant opportunities for countries to “opt out” of specific areas. This is much less under WTO where rules apply to all members who are subject to a binding dispute settlement procedures. This is a source of concern to groups who perceive the multilateral rules to be inappropriate or worry that the adoption of specific rules may be detrimental to the ability of governments to regulate domestic activities and deal with market failures.¹⁰⁴

The NGOs had no influence in MTNs and the GATT regime. This changed however, in the Uruguay Round¹⁰⁵ when environmental groups became concerned that trade liberalization might have detrimental consequences for the environment. It was largely at the behest of NGOs that the committee on Trade and Environment was set up in 1991. After the creation of the WTO in 1995 NGOs remained active. When the ministers adopted the Marrakesh Agreement, they also included a specific

¹⁰⁴ *ibid*

¹⁰⁵ *ibid*

reference to NGO's. Under Article V:2 The General council is called upon to make appropriate arrangements for consultation and co-operation with non-governmental organizations concerned with matters related to those of WTO.

On 18th July 1996, the General council further clarified the framework of relations with NGOs by adopting a set of guidelines, which "recognizes the role NGOs can play to increase the awareness of the public in respect of WTO activities." These guidelines are instrumental for both members and the WTO secretariat in maintaining an informal and positive dialogue with the various components of civil society. Since 1996 arrangements for NGOs have essentially focused on attendance at ministerial conferences, participation in issue specific symposia, and the day to day contact between the WTO secretariat and NGOs.

Immediately after adopting the guidelines for relations with NGOs, the WTO members agreed on procedures for such organizations to attend the Singapore ministerial conference. Hence, it was decided that NGOs¹⁰⁶ would be allowed to attend the plenary sessions of the conference and NGOs application to register would be accepted by the WTO secretariat on the basis of Article V: 2 i.e. NGOs had to demonstrate that their activities were "concerned with matter related to these of the WTO." The Singapore Ministerial Conference in December 1996 represented the first experience with NGO attendance at a major WTO meeting. In total 159 NGOs registered to attend the first Ministerial conference of the WTO. The 159 NGOs

¹⁰⁶ *ibid*

(represented by a total of 235 individuals) included representatives from the environment, development, consumer, business, trade union and farmer interest. The NGO centre in Singapore provided the NGOs with a large number of meeting rooms, computer facilities and documentation from the official event.¹⁰⁷

The Geneva Ministerial conference and 50th year celebrations of the Multilateral Trading system (MT) in many ways illustrated the evolving relationship with NGOs and underlined the growing interest of civil society in the work of WTO. 152 NGOs registered for the Geneva event. In the end a total of 128 NGOs (362 individuals) came to the second ministerial meeting of the WTO. Throughout the three day event NGOs were briefed regularly by the WTO secretariat on the progress of the informal working session, a feature that was welcomed by the NGOs as a sign of genuine commitment to ensure transparency and the recognition of civil society as an entity which deserved attention in its own right.¹⁰⁸

Since 1996 a number of symposiums have been arranged by the secretariat for NGOs on specific issues of interest to civil society.¹⁰⁹ Also the WTO secretariat receives a large number of requests per day from NGOs all over the world and secretariat staff meets with NGOs on a regular basis-both as individuals and as part of NGO organized events.¹¹⁰ The secretariat also took new initiatives. During the General council on 15th July 1998 the Director General informed members of new steps to

¹⁰⁷ www.itcsd.org

¹⁰⁸ *ibid*

¹⁰⁹ Three on trade and the environment, one on trade and development and one on trade facilitation.

¹¹⁰ *Supra* at note 27

enhance dialogue with NGOs. This involved the provision by the secretariat a dedicated website with specific information for civil society e.g. announcement of registration deadlines for ministerial meetings and symposia and a monthly list of NGO position papers received by the secretariat to be compiled and circulated for information of members.

2.5 “PUSHING THE ENVELOPE”

The term ‘pushing the envelope’ means going to the extreme by taking something beyond its normal course or beyond its acceptable limit.¹¹¹ The institutions examined have made provisions that confer a role on the NGOs. The role is basically that of a stakeholder either in the process of confidence building in the institutions or space created for them to participate in programmes in which the institutions and the NGOs show commitment to the same principles and ideals. However, the NGOs have by their stated positions and activities elicited criticism that they are forging and articulating positions that is beyond their mandate. The criticism leveled against them focuses largely on the issue of legitimacy. Claire Short, one time Britain’s International Development secretary, was memorably unimpressed by NGOs demonstration against globalization at a Group of Eight Summit in 2001. She said:

“They are all white people from privileged countries claiming to speak on behalf of the poor of the world and there is something a little bit wrong with that.”¹¹²

The activities of NGOs are more visible in the meetings of the multilateral institutions particularly the WTO. This is because the WTO is the premier multilateral institutions that deal with matter of trade and that decisions reached at

¹¹¹ Etymologies & Word Origins: <http://www.wordorigins.org/wordorp.htm>

¹¹² Quoted in The Standard, October 10 2005 at Pg 11.

the WTO forums have long term impact on the economies and livelihoods of the poor countries.

NGOs activities in the multilateral forums got noticeable after the violent protests in Seattle in 1999 during a WTO meeting. The demonstrations which turned violent sparked anti-globalization protests around the world. Of importance to note is that the major development-oriented NGOs which include Christian Aid, Action Aid, the World Development Movement and Oxfam have already developed positions on a wide range of trade related issues that include market access and ensure fair terms of trade for developing countries.¹¹³ They argue that the WTO needs to move to a more participatory approach through the creation of consultation mechanism and advisory bodies if it is to generate greater trust and mobilize civil engagement and ownership. Further, countervailing in trade negotiations could be best achieved by giving the NGOs community direct access to the WTO.

The decision-making mechanisms of the WTO were subjected to severe criticism in the run up and the aftermath of the Seattle Ministerial meeting.¹¹⁴ Many poor countries expressed greater frustration regarding the difficulties of keeping abreast of developments in the WTO and objected to being excluded from consultations and meetings where compromises are made and deals are struck in to the called “Green Rooms”. In early 2000, WTO identified this as a priority issue that should be

¹¹³ Ibid.

¹¹⁴ Ibid. pg 47

addressed in order to re-establish confidence in the WTO. In line with this, the poor countries have been pushing for procedural improvements to make sure that the Green Room meetings are transparent.¹¹⁵ They call for greater consultations which should be open ended and take into account views from all members and the outcomes be reported in a timely fashion to those WTO members who are not present. The NGOs on the other hand proposed the opening up of access to the deliberations of the WTO to themselves and to the civil society representatives.¹¹⁶ They have repeatedly argued that since they have observer status in the U.N meetings, they should be allowed similar privileges in the WTO. They have demanded entry into negotiations and dispute settlement sessions and the regular committee and council meetings.¹¹⁷ In the year 2002, the US, the EU, Norway and a few other Western countries made a proposal to open up the WTO dispute settlement mechanism to public scrutiny and at the same time permit NGOs to offer unsolicited 'amicus curial' briefs to the dispute settlement panels and the Appellate body.¹¹⁸ This move was resisted, by the ASEAN representatives notably the Singapore's Ambassador, one Vanu Menoa.

In addition, the President of the Conference of NGOs (CONGO)¹¹⁹ in November 2001 declared that the NGOs wanted to become more inclusive and representative as

¹¹⁵ *ibid*

¹¹⁶ *ibid* Pg 472

¹¹⁷ *ibid*,

¹¹⁸ *Business times*, September 17, 2002. The US Trade official argued that powerful stakeholders like NGOs should have access to trade dispute proceedings.

¹¹⁹ CONGO is an independent umbrella association of some 400 national, regional and international NGOs, associations and networks from North and South in consultative relationship with the UN

a partner for the UN.¹²⁰ This would enable them bring the UN agenda to the regional, national and local level through their outreach programs and bring the developing countries' concerns in a bottom-up approach back to the global level. Part of the President's speech read¹²¹,

“ In addition, we want to push the envelope at the UN and support initiatives for opening the General Assembly and its Committees for an NGO voice and further develop the "Arias" model with the Security Council.....Many of our members have pushed for more open processes and procedures in the WTO for technical cooperation to help poorer countries (hopefully including NGOs) to participate more actively.”

Worth mentioning is that the collapse of the Cancun WTO Ministerial meeting of September 2003 resulted in claims by the WTO and British government that the NGOs had to some extent hoodwinked the developing countries into opposing the issues raised in the meeting. NGOs (both northern and southern) were seen to have had great influence on developing countries decision-making processes at the meeting.¹²²

¹²⁰ "Global Policy without Democracy?" The Participation and Interface of Parliamentarians and Civil Societies for Global Policy: Establishing democratic-making structures at the international level, 26 -27 November 2001, Berlin, Germany. Statement by Renate Bloem, CONGO President
<http://www.ngocongo.org/ngowhow/rbglobalpol.htm>

¹²¹ Ibid

¹²² The Cancun WTO Ministerial Meeting, September 2003, What happened? What does it mean for development? Organization for economic co-operation and development

The new attributes of the NGOs makes them far more strategic in relation to National governments with whom they deal with and consequently national policies often suffer from either being ignored or being altered to suit the priorities of the NGO consortium. This is further complicated by the fact that the same NGOs are implementing agents for UN agencies who subcontract their activities to them. Thus the NGOs have an abiding interest in the economical and political circumstances of the recipient countries as this related to their financial health.

From the foregoing, it is discernible that the U.S and other Western countries are fronting for an increased role of the Northern NGOs in the activities of WTO. However, some of the NGOs from the Asian countries and the poor countries have spurned the WTO. For instance the WTO had invited NGOs for a meeting in Bangkok in March 2001 but the Southern NGOs declined invitation arguing:

*“it is part of a process that will legitimize the use of civil society by multilateral organizations.”*¹²³

He tellingly added:

“Ever since Seattle, Prague and Washington there is a new flavour of the month for multilateral organizations, and that is a necessity to get civil society on board”

He further added:

“The idea is to bring in Civil Society to somehow legitimize these (WTO) organizations”

¹²³ Walden Bello, head of Focus on the Global South, quoted in Deutsche Press Agentur, March 26, 2001.

2.6 CONCLUSION

The institutions examined have made provisions that confer a role on the NGOs. The role is basically that of a stakeholder either in the process of confidence building in the institutions or space created for them to participate in programmes in which the institutions and the NGOs show commitment to the same principles and ideals.

From the literature, it is evident that NGOs are seeking for significant positions in the institutions in order to exert greater influence in the processes of the institutions. However, these stated positions of NGOs have brought forth criticism that the NGOs are forging and articulating positions that are beyond their mandate and represent their individual and sponsor government interests. There is thus need to reduce their role in these trade institutions.

CHAPTER THREE

CHALLENGES PRESENTED BY NGOS TO PARTICIPATION OF AFRICAN COUNTRIES IN GLOBAL TRADE

3.0 BACKGROUND

The African continent has missed out on the massive growth of world trade over the last half century, when compared to other developed and developing regions where trade and not Official Development Assistance (ODA) or aid has filled growth and transformed economies.¹²⁴ There has been a historic decline in the exports of the Sub-Saharan continent. Its share of the world total has dropped from 3 percent in 1950 to barely 1 percent in 1996. This has been largely due to the fact that Africa has not changed the product it exports and that the prices of these products have tended to fall.¹²⁵

When promoting increased trade openness for the rest of the world, the industrialized world, notably USA, Europe and Japan, has maintained protection for some of their producers notably the farmers. Former Chief Economist of the World Bank Joseph Stiglitz in his book on globalization comments:-

¹²⁴ Lord of Poverty (Supra) generally at Pg 192 concludes: 'official development assistance is neither necessary nor sufficient for development': The poor thrive without it in some countries; in others, where it is plentiful available they suffer the most object miseries. Such sufferings, furthermore, as I have argued... Often occurs not in spite of aid but because of it"

¹²⁵ Sutcliffe, Robert (2001) "100 ways of seeing an Unequal World", London Zed Books. United Nations Conference on Trade and Development (UNCTAD) 1999.
ucatlus.ucsc.edu/trade/trade-theme.php.

“Today, few...apart from those with vested interests who benefit from keeping out the goods produced by the poor countries...defend the hypocrisy of pretending to help developing countries while keeping their own markets protected, policies that make the rich richer and the poor more impoverished...and increasingly angry.”

The main problem in WTO negotiations is that the rich countries give little concessions and demand a lot from poor countries. Frustrations are greatest in the area of agriculture. Through creative accounting, Europe has presented proposals that amount to cheating. For instance, EU has approved 163 Billion Euros annually for agricultural subsidies. The actual level of disbursements in the past has been 70 billion Euros. The offer in the Doha Round that is to be concluded in Hong Kong is to reduce subsidies by half to at least 80 billion Euros per annum. What this means is that the EU shall keep its subsidies at the current levels and increase them even by a further 10 billion Euros. A similar logic applies to the U.S whose proposal envisions a cut of just 4 percent in its total agricultural subsidies.¹²⁶ The result is that the worlds two richest economic blocks can maintain their current export subsidies which have driven down international prices stolen markets and destroyed the livelihoods of millions of small producers in Africa, Asia and Latin America. In exchange for this exercise in creative accounting, the EU and the US and other OECD countries are demanding unacceptable counter concession. They demand liberalization of industrial products and services which pose a grave threat for many poor countries where millions of jobs in these sectors are at stake. Some of the proposals consists of

¹²⁶ Ganzala Fanjal, Focus, WTO Summit 2005, The East African Dec 5-11, 2005.

demands on poor countries a scale and range of opening that took Europe more than 50 years to attain and this would certainly jeopardize the states regulations of sectors like education, health care and the supply of safe drinking water.

However, there are a lot of benefits to be derived if Africa took advantage of the opportunities available as a result of the increasing global trade, but to do so there are a number of challenges that must be addressed. All these challenges affect the poor countries equally and they are matters that are obfuscated by the NGOs. These challenges call for a thorough discussion among the poor countries and in the development a consensus and a common approach when dealing with the rich countries. This chapter shall examine the challenges presented by the NGOs to African countries in participating at the global trade negotiations and what the individual governments need to embark on to represent their populace effectively.

3.1 INCREASING NGO PARTICIPATION IN REGIONAL AND MULTILATERAL TRADE INSTITUTIONS

Africa was not an active participant in global trade liberalization initiatives for a better part of the last century. The main reason was the special exception for developing countries under GATT rules.¹²⁷ They provided that the least developed countries, the majority being found in Africa were exempted from making market access concessions and were granted more favourable treatment in the markets of the

¹²⁷ General Agreement of Tariff and Trade, 1947, Part IV on Trade and Development, Article xxxvi (The so called "Enabling Clause")

industrialized countries. These provisions, referred to as the “Enabling Clause” and allowing the so-called “special and differential treatment “of” developing countries, were an acknowledgement that Africa and the developing world was at a relative disadvantage in international trade especially in manufactured products.

Based on Africa’s past inactive participation in the WTO and other multilateral trade institutions, the NGOs took advantage of this to present their involvement in the trade institutions on behalf of the African governments¹²⁸. Of interest is that, it is the member governments of the multilateral trade institutions that amend the governing rules of the institutions to allow NGO participation¹²⁹. The success of these institutions largely depends on the willingness of the member governments to abide by the agreed rules and rulings. A pre-condition for this willingness to be “bound” is the negotiation of agreements which are sufficiently clear in the rules and scope, and whose disciplines are workable and mutually accepted.

At the WTO, several member governments have addressed the issue of NGOs participation in the institution’s activities and indicated that governments are the ones which represent the interest of all their respective citizens. However, the WTO Secretariat, within the mandate given by the member governments, has taken several steps to enhance the dialogue and flow of information to NGOs¹³⁰. Since the

¹²⁸ Blomqvist Peter, (2005) “Strengthened NGO Position in International Law and Politics-democratic problem?” [www./uridicum.suse](http://www.uridicum.suse)

¹²⁹ Ibid

¹³⁰ Ibid

establishment of the WTO, NGO activities especially at the Ministerial Conferences have been on the rise. This is clearly noted by the increasing number of NGOs participating in the conferences and the influence they command especially on African governments. NGOs representing African citizens normally take the advantage of ill-preparedness of African governments in the negotiations or consultations at the multilateral trade institutions. Although the member governments consider themselves as determining what is best for their respective citizens, the NGOs still exert considerable pressure for their views to be included in the policy negotiations¹³¹. As a result, the articulated policies by the NGOs end up being the representative policy positions of the African governments.

The legal status of these NGOs largely depends on the legal status of organizations in the country where they are formed. There is not yet one legally and internationally recognized “NGO-organization”, although efforts have been made by the European Council to create such a legal status and to achieve a situation with automatic recognition of an organization in one country, in neighbour states within the European Union¹³². NGOs appear to have gained almost governmental power over the last 10 – 15 years. This is evident in the manner in which NGOs are “breaking in” or being brought into the democratic processes with a new role of being part of government rather than being private interest groups, for example, the multilateral

¹³¹ Ibid

¹³² Ibid

institutions are eager or have assigned the NGOs important roles for them to exert the influence they currently enjoy.

It is the democratically elected institutions and governments that accept and strengthen the NGO role within the multilateral institutions. This can be seen in the view that NGOs can succeed where states have failed, that is the NGOs are the best alternative to the state as they can fulfill the state obligations¹³³. Through this perception, NGOs are gaining more and more influence in political, economic and social aspects of African countries. There thus need for individual governments' to be aware of the potential risks of having this unelected few with so much influence.

In the launch of the American Enterprise Institute (AEI) website which is funded mainly by major corporations, the main theme of the presentations was "NGOs: The Growing Power of the Un-elected Few" which featured a series of presentations depicting NGOs as growing and largely unaccountable threat to foreign policies¹³⁴. Notably, the NGOs have created their own rules and regulations and demanded that governments and corporations abide by those rules. According to the conference presenters,

"Politicians and corporate leaders are often forced to respond to the NGO media machine, and the resources of taxpayers and shareholders are used in support of ends they did not sanction." "The extraordinary growth of advocacy NGOs in liberal democracies has the

¹³³ Ibid

¹³⁴ Lobe, J. (2005), Iraq Attack: "Think Tank Turns Wrath to NGOs"
<http://www.wto.org/english/tratop-e/devel-e/framework.htm>

potential to undermine the sovereignty of constitutional democracies, as well as the effectiveness of credible NGOs."

The general message at conference was that, while NGOs like *Amnesty International*, *CARE*, *Oxfam*, and *Friends of the Earth*, have performed valuable work in promoting human rights, development, and environmental protection, their general policies, particularly at the international level, may be inimical to individual government interests¹³⁵.

According to George Washington University political science professor Jarol Manheim, INGOs are pursuing "a new and pervasive form of conflict" against multinational corporations, which he calls "Biz-War". Such efforts, he said, should be seen as "part of a larger, anti-corporate campaign", which includes consumer boycotts and other efforts to influence corporate behaviour. This was echoed by John Entine, an AEI adjunct fellow, who called the "social investing" movement, a "wolf in sheep's clothing". The NGOs apart from seeking to influence government decisions are also targeting the corporate world¹³⁶. The NGOs prefer a world order based on "global governance" and the rule of international law to one that is based on "democratic sovereignty", where nation-states whose governments are subject to the vote of the people are the highest authority. In this quest, the NGOs are aided by UN agencies and multilateral trade institutions such as WTO, which see in INGOs and the global

¹³⁵ Ibid

¹³⁶ Ibid

civil society they claim to represent an "alternative form of legitimacy beyond democracy"¹³⁷.

3.1.1 Rationale for NGOs Participation in Regional and Multilateral Trade Institutions

Apart from insinuating themselves as being the best alternative to government failures, NGOs have taken advantage of the roles they have been provided for by the multilateral trade institutions to further their own agendas. For example, while adopting the Marrakesh Agreement in 1996, the General Council of the WTO clarified the framework for relations with the NGOs¹³⁸. The Council recognized the role that the NGOs could play especially with regards to increasing the awareness of the public in respect to WTO activities. In addition, the Council would facilitate appropriate arrangements for consultation and cooperation with the NGOs concerned with matters related to those of the WTO. This role was recognized on the basis that NGOs would be a valuable resource in contributing to accuracy and richness of the public debate and hence the connotation that the NGOs would have a voice but not a vote. This has not been the case as the NGOs have become more influential players in the trade institutions.

¹³⁷ Ibid

¹³⁸ http://www.wto.org/english/tratop_e/devel_e/framework.htm

In addition, the establishment of the Integrated Framework for trade-related technical assistance, including for human and institutional capacity building in 1996 by the WTO, UNCTAD and ITC Secretariats, in collaboration with IMF, World Bank and UNDP further identified significant roles to be played by NGOs in supporting the LDCs in trade related activities¹³⁹. The framework aims at improving the overall capacity of LDCs to respond to the challenges and opportunities offered by the trading system.

This confirmation of roles to the NGOs in addition to funding preferences as opposed to directly funding the governments gives the NGOs impetus to participate actively in the trade institutions. The perception of governments of developing countries being corrupt and inefficient provides the Bretton Wood and UN institutions a platform on which to prefer to implement this programme through the INGOs. With such backing, the INGOs together with local NGOs justify their roles in providing the much needed trade advice to the governments.

3.1.2 Governments versus the NGOs

The tension between government and NGOs is growing with each passing day with no end in sight. Some NGO sympathizers are spreading the misconception that the government has taken the task of eradicating NGOs altogether, whereas the

¹³⁹ <http://www.integratedframework.org/about.htm>

government shows concern over the out of control foreign finance of local research and activities undertaken by the NGOs. Most of the governments especially in the developing world have realized the fact that the English proverb “whoever pays the piper, picks the tune” could actually be true as majority of the NGOs are foreign funded and therefore only articulate policies that favour their home governments¹⁴⁰. The local NGOs are also susceptible to foreign influence as they heavily rely on injection of funds for their major programmes from foreign donors. As a result they end up championing foreign policies in the developing countries.

NGOs have the responsibility to help government and donors fashion more effective development strategies, but they can influence local development policies and attune official programmes of public needs if they make their own selves accountable as well. The dilemma the developing countries are facing is that almost every NGO has an owner as almost all NGOs belong to someone or people who have their own objectives to pursue. As indicated by the Economist¹⁴¹, NGOs are often far from being “non-governmental” as they claim and that they are not always a force for good. The Economist comments that,

“most of the NGOs are minnows; some are whales, with annual incomes of millions of dollars and a worldwide operation. Some are primarily helpers, distributing relief where it is needed; some are mainly campaigners, existing to promote issues deemed important by their

¹⁴⁰ Abid Ullah Jan, (2002), Government versus NGOs: “Manipulation of Good Intentions,” Independent Center for Strategic Studies and Analysis (ICSSA). <http://icssa.org>

¹⁴¹ The Economist, January 29, 2000, “Sins of NGOs”

members. The general public tends to see them as uniformly altruistic, idealistic and independent."

However, NGOs have a great deal to do with governments. For example, a growing share of development spending, emergency relief and aid transfers from developed countries passes through NGOs. According to Carol Lancaster, a former deputy director of USAID, NGOs have become "the most important constituency for the activities of development aid agencies"¹⁴². Governments of developed countries are more willing to provide the funding to the NGO activities in the Third World countries. In 1998, a quarter (\$ 40.5 million) of Oxfam's income was given by the British government and the European Union. World Vision US, which boasts of being the world's "largest privately funded Christian relief and development organization", collected \$55 million worth of goods in 1998 from the American government. Medecins Sans Frontieres (MSF), gets at least 46 % of its income from government sources.

In Africa, where international help has the greatest influence, western governments have long been shifting their aid towards NGOs. America's help, for example \$ 711 million in 1997, increasingly went to approved organizations, often via USAID. Europe's donors also preferred bilateral aid to go to NGOs, which were considered generally more open and efficient than governments. The UN too seems

¹⁴² Ibid

indispensable as it lays more emphasis on relations with NGOs. Most such agencies now have hundreds of NGO partners. Of 120 NGOs which sprang up in Kenya between 1993 and the end of 1996, all but nine received all their income from foreign governments and international bodies¹⁴³. Such official contributions will go on, in order to facilitate transfer of foreign policies into the African continent.

In addition, the continued perception of African governments being inefficient and corrupt encourages foreign governments to continue channeling aid through their representative NGOs. This further creates animosity between the host government and the NGOs as they seem to oppose the government's political, economic and social objectives¹⁴⁴. The NGOs present themselves as being the best alternative to the government's failures especially in the area of developing policies that address the needs of the majority poor. The focus of such NGOs can easily shift from finding solutions and helping the needy recipients to pleasing their donors and winning publicity¹⁴⁵.

In a liberal representative democracy a major virtue of government, and the parliament from which it is derived, is the enfranchisement of the unorganized. It gives them a voice and limits the claims that the many organized interests make against the commons. The civil society, whether church, corporations, trade unions

¹⁴³ Ibid

¹⁴⁴ Blomqvist P. (2005) Strengthened NGO Position in International Law and Politics, bid.

¹⁴⁵ Sins of NGOs, *ibid*.

or NGOs, provides citizens with vehicles to exercise their private initiative. When civil society organizations, however, organize in pursuit of public purposes they compete with the unorganized (government)¹⁴⁶. Of importance to note is that the NGOs in this competition are good at voicing their opinion, but not at resolving the myriad claims presented to governments. They have a different part to play in the great democratic panoply, but they are no more democratic.

Most NGOs, as noted by Tara Magner (Deputy Director of the Winston Foundation for World Peace), are quick in identifying the new trends and 'catchy words' in the funding community and respond accordingly. One of the striking things is the elasticity of mandates within NGOs when they see an issue they want to grab onto, they reinterpret their mandates in order to bring the issue within their reach¹⁴⁷. As a result of these tendencies, these groups are extremely vulnerable to foreign exploitation.

President Thabo Mbeki of South Africa questioned whether NGOs in South Africa were being manipulated by foreign donors and the extent to which the African civil society was independent¹⁴⁸. The president's statements were made in the context of the coming African Union peer review of South Africa and civil society's push for greater representation on the panel to review the state of governance in the country.

¹⁴⁶ Blomqvist P. (2005) The Challenge to Representative Democracy and the Nation State
www.aei.org/doclib

¹⁴⁷ Ibid

¹⁴⁸ Smith T. et al, Cape Times, October 25, 2005, Mbeki's attacks on NGOs undermine Civil Society's Right and Duty to criticize

Mbeki's views reiterate government's ambivalent line on NGOs, particularly on matters related to contested development strategy and NGOs' oversight role.

The roots of government distrust of NGOs predate the Mbeki era. In a speech to the ANC's 50th National Conference in December 1997, Nelson Mandela, usually renowned for supporting a strong independent civil society, made a scathing attack in which he accused elements within the NGO sector of working with foreign donors to undermine the government and its development programme, and of lacking a popular constituency or membership base among the population¹⁴⁹. The concern about foreign donors setting the agenda of civil society organizations is valid in all developing countries. Of importance to note is that majority of the NGOs cannot assert their independence and therefore promote agendas of their donor governments.

This perception has not only been seen in Africa but also in other developing countries. The parliament of Kazakhstan in 2005 passed a motion to strengthen restrictions on NGO activities which was overruled by the constitutional council¹⁵⁰. The parliament had seen the dangers that arose in neighboring countries when foreign NGOs insolently pumping in money that destabilized society. The state was defenseless against this as was seen in the so-called "colored" revolutions that had

¹⁴⁹ Ibid

¹⁵⁰ Karajkov R. November 13, 2005, "NGO Bashing," <http://www.worldpress.org>.

taken place over the last couple of years in Georgia (the rose revolution), Ukraine (the orange revolution), and Kyrgyzstan (the tulip revolution). The scenario was similar; huge popular protests, organized by opposition parties and NGOs, to exert pressure on ruling regimes to surrender¹⁵¹. In Russia, President Vladimir V. Putin mentioned that the government would not tolerate NGOs using foreign money for local political activities and foreign-based policies¹⁵². This was based on the fact that the government had noted that some of the NGOs' objectives were to receive funds from influential foreign and domestic foundations and serve dubious groups and commercial interests.

Bate and Tren further question the objective if really NGOs improve the well being of African countries¹⁵³. NGOs such as *Doctors Without Borders*, *Oxfam*, *Christian Aid* and the national aid agencies often do a useful job in improving the welfare of Africans. In many cases however, these NGOs and aid agencies often pursue policies that are detrimental to the long-term growth of Africa and even advocate policies that exacerbate poverty and increase dependency on aid. In general it is difficult to know how to weigh up the positive versus the negative effects of NGOs, and in Africa it is impossible. The key point is that although some NGOs provide short run benefits,

¹⁵¹ Ibid

¹⁵² In his speech, he mentioned that "we are against overseas funding for the political activities (of NGOs) in Russia. I categorically object, not a single state that respects itself does that, and we won't allow it either"

¹⁵³ Bate R. and Tren R. (2005), "Do NGOs Improve Wealth and Health in Africa?"

www.aei.org/doclib/20030612-batepub.pdf

over time their influence in Africa is malign because their acts, either directly or via aid agencies, are nearly always detrimental¹⁵⁴.

The UN Secretary General, Koffi Annan described the NGOs as groups concerned with the issue of “global people-power”. Amid the praise, he criticized the NGOs as being the world’s largest unregulated industry, that is to say, they often operate without minimum standards, are insufficiently transparent, act like corporations, and are accountable to no one but themselves. The Secretary General further criticized the NGOs for entering policy debates they do not understand and ruining good trade deals that can help poor nations¹⁵⁵. The perception of representing the poor people better than their respective governments has been misconstrued to their advantages at the multilateral trade institutions. In support of this view, Franz Fischler, one of European Union top negotiators at the WTO meeting in Cancun emphasized that the presence of too many NGOs and their influence on developing countries made it more difficult for the countries to reach a deal¹⁵⁶. Fischler indicated that,

"one of the biggest problems was that too many people were not interested in the success of the round and the second problem was that there was a misperception of what negotiations mean. This was led partly by NGOs, they conveyed the message to developing countries that no deal was better than a bad deal."

¹⁵⁴ Ibid

¹⁵⁵ NGO Bashing

¹⁵⁶ Smith J. 19th September 2003, “WTO Mood At Cancun Worsened By NGOs” - EU's Fischler, AlertNet
<http://www.alertnet.org/>

Fischler further accused the NGOs of creating a mood of mistrust between the government representatives. He said that,

"If you (NGOs) are confronted all the time with whatever you do is to cheat the others, then...it is impossible to create an atmosphere of mutual trust."

3.2 THE NEED TO LIMIT NGO ACTIVITY AT MULTILATERAL TRADE INSTITUTIONS

As history entails, the participation of NGOs at the multilateral institutions especially the WTO on the pretext of representing Third World countries should be limited. For most of the history of the GATT, the relationship between the trading system and non governmental actors was not an issue. The International Chamber of Commerce (ICC) occasionally participated in GATT organs, and this practice was apparently not questioned, but no other NGO sought to be included.¹⁵⁷ In his comprehensive study of the GATT published in 1969, John Jackson devoted a short section to the "Private Citizen and GATT Obligations," in which he noted that

"in accord with traditional international law thinking ... a citizen can usually only make policy recommendations to GATT through his government and can only in that way seek relief if he is injured by foreign activities inconsistent with GATT."

¹⁵⁷ Charnovitz Steve, Opening the WTO to non-governmental interests
<http://www.worldtradelaw.net/articles/charnovitzngos.pdf>

The "Statist" perspective presents the view that the WTO is an organization of Member States who are each the exclusive spokesman for the individuals who comprise them. As a functional international organization, the WTO is not endowed with the full competences of its Members. On the contrary, the WTO is set up with a specialized mandate and can only do what the governments authorize it to. So an NGO has no basis for expecting the same opportunities (or rights) for participation at the WTO as it enjoys with its government at home.¹⁵⁸

The NGOs interests must be communicated solely to one's own government.¹⁵⁹ Thus an NGO whose view is being advocated by its government would have little reason to participate, so perforce it is only the NGOs articulating minority interests who want to use their voice. But those ideas are illegitimate because they were already rejected through the domestic democratic process. Allowing unelected NGOs to say things at WTO that contradict what the elected representatives (or their agents) say is anti-democratic because countries must speak with one voice. Jenny Bates notes that,

"if the NGOs are given the channel of participation at home, then a process that gives them a voice in WTO would be unprincipled. It would give the NGO "two bites of the apple," one at home and one at the WTO."

The NGO participation at the WTO is opposed for instrumental reasons. The presence of NGOs would make it harder for WTO member governments to reach a

¹⁵⁸ Ibid

¹⁵⁹ Bates Jenny, 1999, "A Voice, Not a Vote, Civil Society and the World Trade Organization", Progressive Policy Institute. www.cavalierdarily.com/cvArticle.asp.

consensus. The negotiating process works because each government presents a unitary view and then bargains with others that have different views. Were NGOs allowed to observe and make comments, the negotiations would get bollixed.¹⁶⁰ That is because NGO participation would expose the unitary view as a fiction. For example, the mindset of WTO is that trade negotiation is deal making among economic nationalists which would be challenged by NGOs who seek market-oriented solutions to global problems.

As mentioned in preceding chapters, majority of the NGOs in Third world countries are foreign owned. For example, out of the 1,550 NGOs registered with the UN, only 251 are based in the developing countries. Similarly only 25 % of the NGOs registered with UNCTAD are from developing countries.¹⁶¹ There is also a worrying trend of increase in participation by the NGOs at the WTO. The number of NGOs attending ministerial conferences has generally been rising from over 100 NGOs at the first to almost 800 NGOs at the fifth. Statistics indicate that in 1996, the Singapore Ministerial Conference had 108 NGOs present, 128 NGOs at the Geneva Ministerial conference in 1998 and more than 1,000 NGOs were accredited to attend the sixth ministerial conference in Hong Kong in December 2005.¹⁶²

¹⁶⁰ Ibid

¹⁶¹ Ibid

¹⁶² Charnovitz Steve, 2003, WTO Cosmopolitics: The Session of "WTO Negotiators Meet the Academics" on Democratic Governance and Competition Culture in the World Trading System <http://www.worldtravellaw.net/articles/charnovitzngos.pdf>.

Under the Integrated Framework programme of the Bretton Wood and UN institutions, the use of NGOs to assist in trade related activities of the LDCs at the WTO only benefits the developed countries. This is so because the programme entails implementation of foreign policies into the development agenda of the LDCs. The advice of each LDC to pursue its own agenda at the WTO talks further threatens the development perspectives of other LDCs and developing countries under their regional trade blocs¹⁶³.

Even though some of the NGOs based in developed countries claim to speak for citizens of other countries, the imbalance of representation is great enough to suggest a potential problem of legitimacy for international institutions. Indeed, many societal groups in developing countries have very different agendas and priorities (if not different overall objectives) than their counterparts in the developed world. Simply creating a formal mechanism for the recognition of civil society groups at the WTO will not overcome this imbalance of representation.

¹⁶³ North tactics to split developing-country alliances exposed: The tactics of rich countries have changed to a more sophisticated variant of divide and rule strategy, trying to set developing country alliances against one another. For example, in Uganda the former US Assistant Trade Representative for Africa, R. Whitaker, warned President Museveni that Uganda's support along other African countries at Cancun would be considered hostile to US interests. As a result, Uganda did not ally itself with the African position at Cancun. (<http://www.twinside.org.sg/title2/5623c.htm>)

3.2.1 Reforms at the WTO to Reduce NGO Influence

Byers¹⁶⁴ indicates that institutional reform of the WTO is a precondition for any consideration of wider issues, such as a new round of global trade talks. Without reform, the undemocratic procedures and inequalities in representation at the WTO will continue to generate levels of suspicion and antagonism among developing countries and the wider public. This will seriously impede negotiations and undermine progress towards the creation of a fair multilateral trading system. It is noted that nearly half of the least-developed country members of the WTO have no representation in Geneva. Those developing countries that do have some representation in Geneva often have only one person responsible for all negotiations in the WTO, where there can be more than 40 meetings a week on subjects ranging from air transport to competition policy, environmental agreements to industrial tariffs. This means that the interests of many nations and their populations are not represented by the respective government representative at most of the negotiations that go on in the WTO. NGOs tend to take advantage of this and purport to be the authorized representatives of the citizens of these nations. By contrast, the developed countries such as the United States of America have over 250 negotiators in Geneva, and richer countries frequently fly in technical experts to deal with complex issues¹⁶⁵.

¹⁶⁴ Secretary of State for Trade and Industry (UK)

¹⁶⁵ Byers, (1999), Recommendations for ways Forward on Institutional Reform of the WTO
tags.library.upenn.odce/tag

The reforms to be initiated at the WTO must first start with the representative governments taking control of their own development and trade negotiation processes. Besides, for the original aim of establishing the WTO as a member-driven organization to become reality, the WTO processes should be designed to suit the capacity of the least powerful members¹⁶⁶. The aim should be that all WTO members are able to participate in negotiations on any subject of interest to them. This aim should override concerns about the speed of decision making. These changes in internal democracy will have implications for the scope of negotiations that are possible at any one time. In deciding the scope of negotiations, and of the eventual undertaking, WTO members should ensure a balance between the interests of high, middle and low income countries.

These reforms will mainly seal the loopholes that NGOs tend to explore in fulfilling their objectives of claiming to be the best representatives of the developing countries. By initiating the reforms, the governments of the developing countries will be able to effectively ascertain their positions at the trade negotiations without any influence from the NGOs. In addition, since the WTO is a member organization, the role or influence of the NGOs would be limited at the conferences or negotiations. The NGOs would thus make their contributions through their respective host governments and not at the WTO¹⁶⁷.

¹⁶⁶ Ibid

¹⁶⁷ Ibid

3.2.2 Improving Africa's Participation to Counter NGO Influence at the WTO

It is important to note that many developing country and least developed country (LDC) governments are still trying to acquire the analytical and technical skills to deal with the complexities of trade law, and the comprehensive knowledge of WTO agreements that would allow an assessment of the overall costs and benefits of different agreements. In the course of normal WTO business, the small teams of LDC staff in Geneva find it difficult to engage in debates and negotiations from an informed standpoint that allows them to actively pursue their national interests¹⁶⁸.

To enable effective engagement in the multilateral trading system, meaningful capacity building has to go beyond providing technical assistance to implement agreements and the provision of Northern consultants to advise governments. There is a need for institutional capacity building to develop knowledge and analytical skills across civil service departments and enable inter-departmental assessments of the potential impacts of trade rules. This entails the ability to; identify and exploit trading opportunities, effectively defend trade rights, fulfill obligations and execute development policies within the framework of these obligations, and define and pursue interests in future trade negotiations. Investigating in this capacity is an act of sovereign mandate.¹⁶⁹

¹⁶⁸ Ibid

¹⁶⁹ Ibid

A key area of capacity is in coordinating approaches and objectives between various parallel trade negotiations and engagements, such as involving the WTO, EPAS, EU and USA. Such coordination would ensure that these engagements are guided by a common strategy and are mutually supportive, so that commitments made in one context do not prejudice negotiating objectives in others.¹⁷⁰

With regard to Africa's negotiating agenda in the WTO a key strategic objective is to secure recognition and provision for the continent's special circumstances in current and future WTO rules in accordance with the principle of special and differential treatment. It is imperative that in trade negotiations African and other developing countries seek the reaffirmation of this crucial principle on the basis of concrete proposals reflecting their developing interests and needs in the global economy and trade system.¹⁷¹

The specific concerns that African and other developing countries have with the imbalances and deficiencies in current WTO agreements, such as implementation of the agreements, would need to be articulated within the framework of a substantive definition of the principle of special and differential treatment. More generally, for African countries to be major beneficiaries of these initiatives, it is imperative for them to consistently throw their collective political weight behind the inter-agency Integrated Framework for Trade-related Capacity-building for LDCs and related

¹⁷⁰ Ibid

¹⁷¹ Ibid

commitments by LDCs and their development partners adopted at the United Nations LDC conference held in Livingstone, Zambia in June 2005 in a joint communiqué made the following commitments:¹⁷²

- a) Strengthening efforts to integrate trade policies into national development policies towards poverty eradication;
- b) Capacity-building in trade policy and related areas such as tariffs, customs, competition, investment and technology, including through the use of the Integrated Framework for Trade-related Technical Assistance for LDCs (IF);
- c) Improving economic openness and policy predictability, as well as sound macro-economic policy;
- d) Developing human and institutional capacities for effective and informed participation in the multilateral trading systems and for effective negotiations on trade, finance, technology transfer and related areas;
- e) Removing procedural and institutional bottlenecks that increase transaction costs, including through efforts to improve efficiency, efficacy and transparency by the implementation of trade facilitation measures and improving standards and quality control;

¹⁷² www.integratedframework.org. The Integrated Framework (IF) for trade related technical assistance to least developed countries is a multi-agency, multi-donor programme that assists the LDCs to expand their participation in the global economy. The programme was first mandated by the WTO Singapore ministerial conference in December 1996. The participating agencies are IMF, ITC, UNCTAD, UNDP, World Bank and the WTO. Amongst the key stakeholders whose participation is a prerequisite are the civil society and the NGOs. Kenya is not a member of the IF.

- f) Taking advantage of market access opportunities through the identification and strengthening of lead sub-sectors in order to exploit actual and potential supply capacity.
- g) Promoting trade and the competitiveness of exports in order to facilitate the integration of domestic enterprises into the international economy;
- h) Promoting sub-regional and regional cooperation, including for export promotion, and improving transport infrastructure to reduce costs and increase trade flows, taking into account the needs of landlocked LDCs and transit neighbours;
- i) Ensuring that food, agricultural trade, and overall trade policies are conducive to fostering food security for all through fair and market oriented agricultural trading system.

These institutional capacity building reforms in the governments of developing countries would go along way in ensuring that the representatives have the capacity to understand and articulate government positions without being persuaded by NGOs. The roles of NGO in the pretext of providing technical skills to governments for the WTO conferences would thus be eroded as the nations will have their own qualified spokespersons.

3.3 CONCLUSION

It is clear that the role of NGOs in the multilateral institutions was bestowed to them by the individual governments constituting membership in the institutions. Initially, the role was mainly to award the NGOs a voice but not a vote, but with time and their increasing presence, they have ultimately started exerting influence on the trade institutions especially towards the developing countries.

It is evident that the developing countries are becoming concerned of this growing power of “the un-elected few”. Most developing countries are resorting to restricting NGO representation (especially INGOs) in the trade institutions as they realize that the NGOs are expressing their own positions or positions of foreign governments. As a result, the WTO needs to consider complaints member governments on NGO participation. It is apparent that African governments need to uplift their respective capacities to be able to take up the role being played by NGOs at the WTO and other multilateral trade institutions and articulate their respective country positions. Through this development, decisions reached at the WTO would be based on consensus of member governments without influence of NGOs. This will counter the NGOs bid to impose themselves as official representatives for the Third world nations. Furthermore, the developing countries governments need to embark on capacity building to enable them partake in the WTO process effectively.

CHAPTER FOUR

CONCLUSIONS

The study set out to demonstrate that majority of NGOs in the Third world countries are motivated by selfish ideals in the pretext of providing development and much needed help to the residents of the poor countries. The main assumption was that the NGOs in particular those involved in advocacy and the development discourse have insidious motives and are normally engaged in extension of the strategic interests of their donors. Based on this aspect, the study examined the need for the government of Third world countries to take up their sovereign responsibility of stating their respective positions in multilateral trade institutions.

The study noted that the development discourse and the perception that most African governments are corrupt and inefficient has enabled the NGOs to market themselves amongst their donor public in their countries. This is meant to hoodwink the donor countries that the NGOs are the most significant initiators and implementers of development agendas in Third world countries. As a result, foreign governments continue to channel aid through their representative NGOs. As demonstrated by the article 'Sins of NGOs', the focus of such NGOs could easily shift from finding solutions and helping the needy recipients to pleasing the donors and winning publicity.

In addition, the study demonstrated that the structural adjustment policies (SAPS) prescribed to the developing countries by multilateral financial institutions especially the World Bank and IMF have been responsible for increased poverty and marginalization of the poor. The role of the NGOs in all these seminal events have also been examined and the inevitable conclusion is that they are part and parcel of the process of triangulation together with official development assistance (ODA) and SAPS as the significant contributors to the increased and endemic poverty and marginalization of the poor countries.

The study illustrated that NGO development is tied not only to charity, but to technical expertise, neutrality and deep paternalism accompanied by the rhetoric of participatory development. This provides a means of legitimizing the continued marginalization of Africans that gives rise to continued indebtedness of African nations to multilateral agencies and donor countries in their quest to develop. Most of the NGOs had flexible mandates that allowed them to seek funding from various donor governments and thus were susceptible to foreign exploitation. In addition, the study noted that, the increase in NGO activity in the multilateral agencies has resulted in an increasing influence of the economic policies that affect the African countries.

In order to understand why the NGOs influence has significant negative effects on the developing world, the study unveiled the critiques of NGO activities in the Third

world countries. Hancock in his book, “Lords of Poverty”¹⁷³ outlines that skepticism about government efficiency in handling aids leads to a preference for non-governmental channels in the distribution of aid. The NGOs personate government structures in much of Africa and tend to influence policies and thus in reality, the NGOs have become the surrogates of the donor governments they faithfully represent as majority of the western donors. As a result the NGOs lobbying accessibility at the global level shapes individual government policies on trade issues. It is evident that whenever lobbying of a decision making body is permitted, there exists a risk that certain interests will exert disproportionate influence. The emanating question is whom these NGOs legally represent.

The study while seeking to know whom the NGOs represented noted that majority of the developing country leaders perceived NGOs as being manipulated by foreign donors in their quest to implement policies in the developing countries that would favour the donors. The study noted that most leaders saw NGOs as working with foreign donors to undermine the host government development programmes. This resulted in an ambivalent line by the government on the NGOs, particularly on matters related to contested development strategy and NGOs' oversight role. The main concern was that the NGOs could not be able to assert their independence and therefore promoted agendas of their donor governments. In addition, NGOs were seen to often pursue policies that were detrimental to the long-term growth of Africa

¹⁷³ supra

and even advocated policies that exacerbated poverty and increased dependency on aid. The perception of representing the poor people better than their respective governments had been misconstrued to the NGOs advantages at the multilateral trade institutions. This was indicated by their increasing presence at the multilateral trade institutions thereby making it more difficult for the countries to negotiate freely and reach conclusive agreements. Thus the NGOs influence in Africa tended to be more harmful because their acts, either directly or via aid agencies is to create confusion, obstruction of issues and creation of divisions among the poor countries by perpetration of artificial differentiation and labelling of countries as “developing” and others as “less developed”.

The study further identified that the regional, international and multilateral trade institutions have been established by treaties between the governments of the respective trading countries to observe agreed legal principles that govern their trade relationship. Nevertheless, these trade institutions have provisions that confer a role for the NGOs mostly in the process of confidence building in the institutions or space created for them to participate in programmes in which the institutions and the NGOs show commitment to the same principles and ideals. Based on this aspect, the study noted that the NGOs have taken advantage and supplemented their roles by seeking for significant positions in the institutions in order to exert greater influence in the processes of the institutions. This is seen in the increase in the numbers of NGOs participating in the conferences and the influence they command especially on

African governments. This is especially so because of the un-preparedness of the African governments in the negotiations or consultations at the multilateral trade institutions. This has resulted in criticism by governments that the NGOs are forging and articulating positions that are beyond their mandate. As a result, the study recommends that there is need to reduce the role of the NGOs in the trade institutions in order to safeguard the interests of the developing countries especially Africa.

Lastly, the study illustrated that the multilateral trade institutions had been set up by governments with exclusive representatives or spokesmen with specific mandates. The NGOs interests are meant to be communicated exclusively through the host governments. It would thus be unnecessary for an NGO whose view was being advocated by its host government have reason to participate at the trade negotiations. By allowing unelected NGOs at the trade negotiations would lead to contradiction between what the elected representatives have been advised to pursue with what the NGOs would advocate for. This would be achieved by the governments restricting the NGOs role in the trade institutions to that of advising but not influencing or voting. In addition, the study recommended that it would be advisable for the developing countries to uplift their respective capacities to be able to effectively represent their countries at the multilateral trade agreements and articulate their respective country positions. The trade institutions could also formulate programmes that allow exhaustive participation by the developing countries. This would ensure that decisions made are participatory and conclusive.

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