

**ASSESSING THE INFORMAL CROSS BORDER TRADE BETWEEN KENYA  
AND UGANDA**

**By**

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**2015**

**DECLARATION**

I, the undersigned, declare that this is my original work and has not been submitted for a degree in this or any other University for examination.

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This research project has been submitted for examination with my approval as University Supervisor.

.....

**Dr. Patrick Maluki**

## **DEDICATION**

Throughout my life one person has always been there during those difficult and trying times. I would like to dedicate this thesis and everything I do to my Father Jeremiah K. M'nkoro. In addition to him I have always been surrounded with strong supportive Uncles and aunties. I would not be who I am today without the love and support of my grandmother Elizabeth M'nkoro. Although our time together was brief, her contributions to my life will be felt forever.

## ABSTRACT

Kenya and Uganda are important trading partners, but formal trade links between them have been constrained by a myriad of factors which have spurred the growth of informal trade. Trade between Kenya and Uganda is substantial and vital to both countries. The overall objective of the study was to investigate the informal cross border trade between Kenya and Uganda. Specifically the study aimed; to evaluate the role of government taxation policies on informal cross border trade between Kenya and Uganda, to establish the type of commodities being traded in the informal cross border trade between Kenya and Uganda and to assess the influence of trade liberalization policies on informal cross border trade between Kenya and Uganda. The study targeted 150 traders operating across the Kenya Uganda border as well as 10 key informants who included customs officials, security and immigration personnel. Respondents were sampled purposively, section will be picked randomly prioritize the traders perspectives of the trade and willingness to participate, however a deliberate effort will be made to triangulate all their views. The study used both primary and secondary data. Interview schedule as well as a questionnaire was used. Most of the information collected was analyzed quantitatively using SPSS and the results further triangulated with other information derived from direct observation and interviews that was derive qualitative data from key informants. The study revealed that ICBT is a major source of livelihood for people living at border posts, while for government and other institutions such as URA and Police, ICBT as illegal activity/disguised smuggling and a source of unfair competition thus a loss of revenue. ICBT is carried out by men and women of whom, 56 percent were Kenyans and 44% Uganda nationals, and 88 percent are able to read and write. The study further observed that 84 percent of household businesses were operating from permanent structures. This present how well ICBT thrives and benefits traders, leading to structural development. Several reasons were advanced for engaging in ICBT, including; it's a way to earn income, employment thus a major source of livelihood for people's survival. It was also reported that the lucrative markets offered by the counterparts in the bordering country promotes and attract people to engage in the trade. Besides it was mentioned that traders have a tendency to evade high taxes and other customs levies; bureaucratic licensing thus ICBT presents a viable alternative. ICBT is mainly dominated by women and the youth. The following recommendations will go a long way in informing policy and decision making processes for improving the livelihood of those engaged in ICBT as well as improving the ICBT exercise between Kenya and Uganda. Information is very valuable in facilitating informal cross border trade. Therefore at operational level there is need for gender specific strategies, programs and activities that recognize the different needs and capacities of men and women traders. Informal cross border traders cited financial services as a critical problem. The shortage of ready finance hinders the expansion of ICBT activities. Therefore, it is necessary to explore alternative lending ways that are responsive to the unique demands of the informal cross border trade. Inclusion of informal cross border trade in the vision of policymakers will help to facilitate their individual economic empowerment as well as enhancing their role as a significant component of the regional trade activities.

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## **ABBREVIATIONS**

<b>AIDS:</b>	Acquired immune deficiency syndrome
<b>CEMAC:</b>	Central African Economic and Monetary Community
<b>COMESA:</b>	Common Market for Eastern and Southern Africa
<b>DRC:</b>	Democratic Republic of Congo
<b>EAC:</b>	East African Community
<b>FEWS:</b>	Famine Early Warning Systems Network
<b>GDP:</b>	Gross Domestic Product
<b>HIV:</b>	Human Immunodeficiency Virus
<b>ICBT:</b>	Informal Cross Border Trade
<b>IDF:</b>	Import Declaration Form
<b>IMF:</b>	International Monetary Fund
<b>KRA:</b>	Kenya Revenue Authority
<b>MT:</b>	Metric Tonnes
<b>NEPAD:</b>	New Partnership for Africa Development
<b>OSBP:</b>	One Stop Border Post
<b>PTA:</b>	Preferential Trade Agreement
<b>PwDs :</b>	Persons with Disabilities
<b>RATIN:</b>	Regional Agricultural Trade Intelligence Network
<b>SADC:</b>	Southern Africa Development Community
<b>SPS:</b>	Sanitary And Phytosanitary Measures
<b>SSA:</b>	Sub Sahara Africa
<b>TBT:</b>	Technical Barriers To Trade
<b>TTCs:</b>	Trade Transaction Costs



**UNCTAD:** United Nations Conference on Trade and Development

**USAID:** United States Agency for International Development

**VAT:** Value Added Tax

## CHAPTER ONE

### INTRODUCTION TO THE STUDY

#### 1.1 Background

Many countries in Africa registered a period of growth immediately after independence. After this initial period of growth, most economies in the region faltered then went into decline.<sup>1</sup> Africa has witnessed a decade of falling per capita incomes, increasing hunger, and accelerating ecological degradation. This has been caused mainly by informal cross border trade. Cross-border trade is the buying and selling of goods and services between businesses in neighbouring countries, with the seller being in one country and the buyer in the other country. Garcia defines the informal trade as entailing a market-based production of legal goods and services that are deliberately concealed from public authorities and escape detection in official Gross Domestic Product (GDP statistics).<sup>2</sup>

Cross border trade in East African Community (EAC) is primarily informal which directly or indirectly escape from the regulatory framework and often go unrecorded or incorrectly recorded into official national statistics of the trading countries.<sup>3</sup> Informal Cross Border Trade (ICBT) is at approximately 40% of the GDP in Africa Countries and

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<sup>1</sup>Chung, O. (2010). The Lopsided International Investment Law Regime and Its Effect on the Future of Investor-State Arbitration 47 *Va J Int'l L* 953

<sup>2</sup>Garcia, C. (2004). All the Other Dirty Little Secrets: Investment Treaties, Latin America and the Necessary Evil of Investor-State Arbitration 16 *Fla J Int'l L* 301.

<sup>3</sup>Anghuie, A, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge, CUP 2004)

considers that it comprises the majority of the trade in the EAC.<sup>4</sup>The ICBT is common in every country regardless of the income level and size of the economy. It consists of activities ranging from unreported economic activities by women selling cabbages at the border to a registered business that underestimate their production.

A significant proportion of cross border trade between Uganda, Tanzania and Kenya is in the form of ICBT. Apparently, women constitute larger proportion of small scale informal cross border trade. In spite of efforts to promote trade integration among EAC Partner States and specifically Uganda and Kenya, formal trade links are still facing several constraints.<sup>5</sup> Some of these restrictions push traders to ICBT but there are also exclusive incentives or advantages that promote existence of ICBT that need to be explored. Levin and Widell argue that the extent of informal trade is directly correlated with the average applied tax rate in the importing country.<sup>6</sup>

While it may be relatively easy to remove constraints or restrictions to formal trading, the same may not provide better incentives for traders in the informal sector to turn to formal trading. It is worth noting that there had been a Customs Union between Kenya and Uganda from as far back as 1917, with Tanzania only joining it much later in 1927.<sup>7</sup> This kind of history between the two nations precipitates a deeper understanding that should

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<sup>4</sup>Press release on the October 2009 Global Forum on Remittances, facts and figures from IFAD

<sup>5</sup>Abdulai, D. (2007). Attracting Foreign Direct Investment for Growth and Development in Sub-Saharan Africa: Policy Options and Strategic Alternatives' 37(2) *AfriDev*1

<sup>6</sup> Levin, J., and L. Widell (2007): "Tax Evasion in Kenya and Tanzania: Evidence from Missing Imports," Working Papers 2007:8, Orebro University, Swedish Business School.

<sup>7</sup>Crucial Lessons for all member states from the collapsed EAC – The East African, December 29th 2012

be explored. According to the Westbrook, both Kenya and Tanzania have had a marginal drop in agricultural crop production while Uganda has posted the largest drop.<sup>8</sup> This is seen as a confluence of factors, not least is the move towards industries and industrialisation within the greater East African Region. Whether this trend will be lasting or not will remain to be seen and further, the ICBT between Uganda will surely include industry related exchanges.

Apparently, extensive, complex and multi-directional cross-border trade of staple foods and livestock exist in the East African region.<sup>9</sup> Borai state that there is scarce information on the contribution of informal trade to overall cross-border trade. Most (76%) of the volumes were traded through formal channels, except for sugar and vegetable oil, which were traded informally. Kenya and Uganda are important to each other as trading partners though formal trade links between the two countries has had problems that may have given rise to the informal trade.<sup>10</sup> While this informal trade may be important to both nations, it takes up a large chunk of the total trade such that it may rival the formal trade.

## **1.2 Statement of the Research Problem**

Concern about informal trade has gained precedence among researchers. Although informal trade comes in different forms or known by different names like; illegal, unofficial, underground, parallel market activities, black market activities, over and

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<sup>8</sup>Westbrook, J. (2012) 'Priority Conflicts as a Barrier to Cooperation in Multinational Insolvencies' (2008-2011) *27 Penn St Int'l L Rev* 870.

<sup>9</sup> East Africa Crossborder Trade Bulletin, April 2011

<sup>10</sup>Borai, R. (2013) 'Cross-Border Corporate Insolvency: A Modest Proposal for An Enhanced International Approach' PhD Thesis, Queen Mary College, University of London.

under-invoicing, smuggling or hoarding, it is characterized by not being entered in national accounts.<sup>11</sup>The lack of records gives wrong signals to policy makers. In Eastern and Southern Africa in particular, indications are that informal trade is still extremely high. For example, it is estimated that 30,000 -60,000 metric tons of maize is smuggled annually from Zambia to Zaire costing the former \$3million and that much of the Malawian surplus maize in the early 1980s was Mozambican.<sup>12</sup> The Uganda Petroleum Dealers Association estimate that 25 percent of petroleum fuel (petrol, diesel and paraffin) consumed in Uganda is smuggled from Kenya, costing the Ugandan government about \$1.2million annually.<sup>13</sup>

Kenya and Uganda are important trading partners, but formal trade links between them have been constrained by a myriad of factors which have spurred the growth of informal trade.<sup>14</sup> Trade between Kenya and Uganda is substantial and vital to both countries. Despite trade promotion protocols and market reforms which, to a large extent, have eased exchange controls and commodity movement restrictions, high sales taxes and bureaucratic import/export procedures still inhibit formal trade between the two

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<sup>11</sup>Kinana, A. (2012). The Role of the East African Legislative Assembly in Enhancing Popular Participation and Harmonisation of Laws in East Africa (Annual Conference of the East Africa Law Society, Dares Salaam, 25 November.

<sup>12</sup>IMF, *Regional Economic Outlook: Sub-Saharan Africa* (IMF, Washington, D.C. 2009)

<sup>13</sup>Kenya, 'Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007' (Poverty Reduction Papers IMF Country Report No. 05/11, 2005)

<sup>14</sup>UNCTAD, *Economic Development in Africa Report 2009: Strengthening Regional Economic Integration for Africa* (UN, New York 2009)

countries. In addition, inappropriate policy interventions in the factor and product markets tend to distort relative prices, thus encouraging informal cross-border trade.<sup>15</sup>

According to Akech interest in cross-border trade has been overwhelming, but knowledge of its magnitude, determinants, and consequences remains inadequate, leading not only to undervaluation of figures in the national accounts, but also inhibiting formulation of appropriate policies and strategies to exploit its potential impact, particularly on food security.<sup>16</sup> As a result of this, the both countries remain in dire need of a recommendation on what should be done in order to control the informal cross border trade hence the need for this study.

### **1.3 Objective of the Study**

The overall objective of the study was to investigate the informal cross border trade between Kenya and Uganda.

Specifically the study aimed;

- i. To evaluate the role of government taxation policies on informal cross border trade between Kenya and Uganda
- ii. To establish the type of commodities being traded in the informal cross border trade between Kenya and Uganda
- iii. To assess the influence of trade liberalization policies on informal cross border trade between Kenya and Uganda

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<sup>15</sup>World Bank, *Doing Business Report 2011* (Washington, 2010)

<sup>16</sup>Akech, M. (2011).The Common Law Approach to Liability and Redress: Its Applicability to East Africa' (Paper presented in the Liability and Redress under Cartagena Protocol Workshop organised by International Environmental Law Research, Mombasa.

## 1.4 Literature Review

According to Berkovitch et al., kinship networks often play a major role in informal cross-border trading in Africa both substituting for and undermining official institutions.<sup>17</sup> In Africa, allegiance to traditional sources of authority is often far more binding than to the modern state. Kinship groups often originated many centuries prior to European colonization, and have adapted to the colonial and post-colonial economic environments. On the positive side Clift asserts that, the social and religious bonds linking the members of the group enable complex and flexible trading strategies with property rights and contract enforcement provided by group solidarity rather than formal rules. Religious affiliation and belief plays a major role in many groups 'solidarity'.<sup>18</sup> The bonds of trust, norms and enforcement mechanisms provided by kinship networks enable contract fulfillment, access to financing, and information exchange without documentation or official involvement.

According to Fletcher informal cross border trade play a particularly important part in international trade, helping to overcome transaction costs created by lack of information and differences in business practices across countries.<sup>19</sup> On the negative side, however, informal networks can be exclusionary, accepting or even promoting anti-social behavior and violation of the rules and norms in the formal economy.

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<sup>17</sup>Berkovitch, E, Israel, R. & Zender, J. (2007). An optimal Insolvency Law and Firm Specific Investments 41 *Eur Econ Rev* 487

<sup>18</sup>Clift, J. (2004). The UNCITRAL Model Law on Cross-Border Insolvency- A Legislative Framework to Facilitate Coordination and Cooperation in Cross-Border Insolvency' 12 *Tul J Int'l & Comp L* 307, 322 - 346.

<sup>19</sup>Fletcher, I. (2010) 'Maintaining the Momentum: The Continuing Quest for Global Standards and Principles to Govern Cross-border Insolvency' 32 *Brook J Int'l L* 767.

According to Harris often several ethnic groups operate within the same country but in different regions.<sup>20</sup> Examples where ethnic groups living in adjacent countries play a major role in ICBT include the Mourides in Senegal and the Gambia, the Yoruba in Eastern Nigeria and Benin, the Igbo in Cameroon and Southern Nigeria, the Hausa in Northern Nigeria and Niger, the Burji in Northern Kenya and Ethiopia, the Nande in Eastern Congo, and the Lugbara in north-western Uganda and the north-eastern Congo. Menski provide a recent interesting illustration of the role of kinship groups in integrating markets across countries found that there is no border price discontinuity for trade in millet and cowpeas across the Niger-Nigeria political border, as long as that trade takes place between markets of the same (Hausa) ethnicity.<sup>21</sup> There is a border effect, however, when cross-border trade is between Hausa and non-Hausa markets as well as a statistically significant price discontinuity across the virtual border between Hausa and Zarma regions within Niger.

According to Devling, many countries having realized the benefits of less restriction to cross border trade are pushing for less restrictive borders and have adopted a strategy known as the One Stop Border Post (OSBP) as a mechanism to improve the movement of goods and services across shared international borders.<sup>22</sup> Where implemented, this strategy has been found to have both economic and customs law enforcement benefits. However, to succeed its implementation required the support of all border management

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<sup>20</sup>Harris, J. (2007). International Regulation of Hedge Funds: Can the Will find a Way? 28 *Company Lawyer* 277

<sup>21</sup>Menski, W *Comparative Law in Global Context: The Legal Systems of Asia and Africa* (2nd edn CUP, England 2006)

<sup>22</sup>Devling, B. (2011). The Continuing Vitality of the Territorial Approach to Cross- Border Insolvency 70 *UMKC L Rev* 435



stakeholders. The OSBP strategy has therefore been adopted in the East Africa common market which was created through the establishment of the (EAC in a treaty entered into by six Eastern Africa countries of Kenya, Uganda, Tanzania, Rwanda, Burundi and South Sudan.<sup>23</sup>

Malik noted that the EAC Common Market protocol wishes to establish a single customs union or territory to facilitate free movement of goods in the East African region.<sup>24</sup> This need to facilitate free trade motivated the adoption of the OSBP model in some major border points within the EAC. One of these critical border points is the Busia border post which is located at the international border between Kenya and Uganda. Busia serves as one of the main transit points for goods heading to the landlocked countries of Uganda, South Sudan, Rwanda and the Democratic Republic of Congo (DRC) from the Kenyan port of Mombasa. This then is one of the busiest cross border points in the region. It is characterised by heavy human and vehicle traffic consisting of petroleum tankers, small scale cross border traders and containerised cargo trucks carrying either transit, export or import containers.<sup>25</sup>

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<sup>23</sup>Mbogoro, D. *Global Trading Arrangements and Their Relevance to Kenya and Uganda Economic Development: Challenges and Prospects*, (Friedrich Ebert Stiftung, Kampala 2011).

<sup>24</sup>Malik, M. (2008). Recent Developments in Regional and Bilateral Investment Treaties (A Background paper for the 2nd Annual Forum for Developing Country Investment Negotiators, Marrakech, Morocco 2-4 November).

<sup>25</sup>Kenya Institute for Public Policy Research and Analysis, Overseas development Institute, and Institute of Development Studies, University of Nairobi, 'Trade Policy and Poverty Linkages in Kenya'(A study prepared for Ministry of Trade and Industry in the Government of Kenya, under the DFID-funded Africa Trade and Poverty Programme) <<http://www.odi.org.uk/resources/download/1186.pdf>> accessed 23 March 2011

Akech asserts that the low level and discrepancies of recorded intra-African trade flows have been noted for at least 30 years.<sup>26</sup> This situation has continued or even expanded despite structural adjustment programs involving trade liberalization and extensive integration schemes aiming to promote formal integration. According to Cho there are some 30 regional blocs in Africa, and on average each of the 53 countries on the continent are members of 4 often overlapping groups.<sup>27</sup> Yet official intra-African trade accounts for only about 10 per cent of total African exports and imports, far below other regions of the world.

Casual observation by Ahmad and Schroeder shows that in the countries themselves, however, reveals that ICBT is thriving almost everywhere in Africa.<sup>28</sup> There have been numerous case studies of ICBT in the last two decades, most by sociologists, anthropologists and political scientists rather than economists; Kieck survey a few of these studies.<sup>29</sup> These studies cover a great many border areas in Africa, including, among others: the Horn of Africa Somalia, Ethiopia, Kenya; Southern Africa South Africa. Uganda; Nigeria-Cameroon-Chad; Benin-Togo-Niger-Nigeria; Senegal-The Gambia; Ghana-Togo-Burkina Faso; Sierra Leone.

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<sup>26</sup>Akech, J. (2012). The African Growth and Opportunity Act: Implications for Kenya's Trade and Development. *International Law and Politics* 651.

<sup>27</sup>Cho, S. (2011) 'Breaking the barrier Between Regionalism and Multilateralism: A New Perspective on Trade Regionalism' 42 *Harv Int'l LJ* 419

<sup>28</sup>Ahmad, S. & Schroeder, R. (2003). The Impact of Management in Small and Medium Enterprises, *Journal of Operations Management*, 21 (1), 19-43

<sup>29</sup>Kieck, E. (2010). Coordinated Border Management: Unlocking Trade Opportunities through One Stop Border post. *World Customs Journal*, 4(1).

Uganda is Kenya's largest trading partner in EAC and ICBT between the two countries involves huge amount of both agricultural and industrial goods. Ackello et al. contends that the volume of trade between the two countries is grossly underestimated.<sup>30</sup> Estimate total annual value of informal trade between the two countries in 1994-1995 was valued at US\$146 million, compared to the total annual value of formal import which stood at US\$96 million.<sup>31</sup> Therefore this raises serious issues that need to be further investigated for policy purposes. Further, lack of consensus in formulating a unified theory of the ICBT or even a precise definition of the components that comprise it, suggests that important questions remain unanswered Mehdi et al., argues.<sup>32</sup>

ICBT sector often does not pay taxes and as consequence deny government substantial revenue desperately needed for investment. Ogalo argues that if statistics on the ICBT are missing, it may be difficult for the government to prescribe the sector with any specific suitable policies.<sup>33</sup> Further, Pearce and Robinson attests that ICBT appear to represent a substantial share of regional cross-border trade in the EAC. Therefore lack of accurate data on ICBT implies that there has been a gross underestimation of gross domestic product in EAC economies and specifically Kenya and Uganda.<sup>34</sup> This, in turn, means that

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<sup>30</sup>Ackello, H., Ogutu, C. & Echesah, P. (1997), unrecorded Cross –border Trade between Kenya and Uganda: Implications for food Security. Technical Paper No. 59, Bureau for Africa, USAID, Washington, DC

<sup>31</sup>Mintzberg, H. & Quinn I. (2011). *The Strategy Process Concepts, Contexts and Cases* 2<sup>nd</sup> Edition, Englewood Cliffs, New Jersey: Prentice Hall Inc.

<sup>32</sup>Mehdi, Z., Shahrake, O. & Bayrami, H. (2008). *Effective Factors Pattern Affecting Implementation Strategic Plans*. Persian: Islamic Azad University.

<sup>33</sup>Ogalo, V. (2010). *Informal Cross-Border Trade in EAC: Implications for Regional Integration and Development*. A CUTS publication under BIEAC Research Series.

<sup>34</sup>Pearce, J. & Robinson, R. (2007). *Strategic Management: Strategy Formulation, Implementation and Control*, 10th edition, Chicago, IL: R. D. Irwin, Inc.

there have been misconstrued perceptions on a number of issues including: the actual balances of trade of EAC economies with each other, trade benefits that accrue to individual partner States from regional integration, and the performance and direction of growth of regional trade in the EAC. Thus, wrong policy prescriptions may be prescribed leading to unpremeditated negative results such as diversion of resources away from important projects, thus impacting negatively to the regional trade integration and development of EAC.

A study by Sashittal and Wilemon shows that those engaging in informal trade minimize their risks by holding small stocks of merchandise and by diversifying the commodities they handle at any given time.<sup>35</sup> They perform various marketing functions such as exchange, storage, transportation, processing, and grading, but specialization in these functions is minimal. According to Trademark East Africa most of the transactions are done on a cash basis, with the Kenyan currency as the preferred method of payment.<sup>36</sup> Due to insufficient working capital, trade is characterized by quick turnover of stocks. Trading is dominated by money speculation, except when Ugandan traders exchange food commodities for Kenya's industrial products. The traders rely on hired transport and, generally, lack their own storage facilities. In most cases, the goods arrive at the border sites in hired trucks and are stored in rented stalls/shops while arrangements are made to smuggle the goods across the border, either during the day or at night.

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<sup>35</sup> Sashittal H. & Wilemon D. (2006). Marketing Implementation in Informal Cross Border Trade; an Exploratory Study, *Industrial Marketing Management* 25, 67

<sup>36</sup> Trademark East Africa (2010). Trademark East Africa to Set up One Stop Border Posts 2013, retrieved in May 2013 from <http://www.trademarkea.jobballard.net>.

Cornish assert that traders hire porters to carry small quantities of their merchandise through footpaths. The major sources of marketing information are interpersonal communication, prevailing supply/demand conditions, experience with seasonality in production and supply, and the established print and electronic media.<sup>37</sup> Lack of working capital was cited by traders as the single largest barrier to starting and/or expanding an import/export business.<sup>38</sup> Other constraints were high tax rates, institutional restrictions in the form of lengthy procedures involved in the issuance of licenses, limited credit facilities, harassment by public officials, poor infrastructure, and increased corruption at the border. These administrative and regulatory burdens inhibit traders' ability to adjust quickly to the volatile domestic and export market conditions.

A study by USAID shows that policies aimed at promoting international or intraregional trade and weather conditions were found to be the prime determinants of the level and seasonality of informal cross-border trade, especially of food commodities.<sup>39</sup> Whereas comparative advantage exists in the production of some commodities, trade in many of the commodities is driven by demand and supply factors. The gains from informal trade include job creation and provision of both agricultural and industrial goods that would otherwise be unavailable. Informal trade thus plays an important role in food security by moving food from surplus to deficit areas and by providing income to those involved in it. However, informal trade encourages official corruption and could be a source of

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<sup>37</sup>Cornish, W. (1996) *Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights* (London, Sweet & Maxwell).

<sup>38</sup>UNCTAD, *Investment Policy Review: Kenya* (UN, New York 2005)

<sup>39</sup>USAID, 'Kenya's Agenda for Action: Commercial Legal and Institutional Reform- Diagnostic of Kenya's Business Environment' (Business Climate Legal and Institutional Reform June 2009) <<http://www.bizclir.com/galleries/countryassessments/Kenya.pdf> > accessed 17 August 2010

revenue loss to the exchequer. In addition, due to the nature of informal trade, there is a low degree of specialization in traders' operations, and the transaction costs could be high.<sup>40</sup> Other problems, including quality control and adherence to sanitary requirements, arise from poor handling during transportation and storage of goods. A common feature in the informal cross-border trade is the numerous number of times that the goods are shifted from one mode of transport and/or storage to another.

### **1.5 Justification of the Study**

This study has both academic and policy justification. Trade is a critical area of international relations. Trade play a significant part in a country's interactions. They serve to strengthen the ties that exist between them. In particular trade stem from economic, security and political dimensions. The findings of this study will provide useful factual information to the policy makers in the Government of both Kenya and Uganda, other EAC partner states and the East African Community. It is useful not only to all agencies and stakeholders involved in border management activities, but also to other managers in the public sector involved in implementing a common trade strategy. It will assists in identifying various aspects that the managers face in informal cross border trade between the two counties. The study will suggest recommendation that can be useful in proving ways that are considered applicable in sustaining such by provision of the necessary technical advice and advancement of supportive resources to ensure the trade is formalised and realizes success.

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<sup>40</sup>Amani, H. (2007) 'Challenges of Regional Integration for Tanzania and the Role of Research'. *Journal of Business Research*, 55, 301-310.

This study will be important to both the Kenya and Uganda government to assist them in channeling funds that will be used to control the informal cross border trade by establishing control centres in order to enhance formal trade and by so doing it will set a base for implementation of formal cross border trade strategies in future.

Further, the study results will be also useful to scholars as it will provide rich material for further research. It will as well serve as a source of secondary material for researchers looking into cross-border trade and challenges of common strategy implementations by multiple institutions. The study will also highlight other important relationships that require further research.

### **1.6 Research Hypotheses**

1. Government taxation policies significantly influence informal cross border trade between Kenya and Uganda
2. Type of commodities being traded significantly influence the informal cross border trade between Kenya and Uganda
3. Trade liberalization policies significantly influence informal cross border trade between Kenya and Uganda

### **1.7 Theoretical Framework**

Traditionally, there have been two competing theories of informal cross-border trade, namely territoriality and universality.<sup>41</sup> The increasing incidences of Informal cross-border trade associated with the globalisation of the world economy have, in recent years,

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<sup>41</sup>Hill, C. & Jones, R. (2001).*Strategic Management Theory: An integrate Approach*.5th Edition, Boston: Houghton Mifflin.

drawn attention to, and given rise to a debate over, the theories. However, while the territorial approach has been much favoured in practice by most jurisdictions, the universality approach has enjoyed tremendous appeal to most theorists and academics. The two competing theories notwithstanding, there is also the notion of unity, which means that one court administers all assets. However, a wider treatment of universalism, in modern times, has tended to include unity as a form of pure universalism. Accordingly, universalism as envisaged in the current debate is an approach which vests in a single sovereign state, which is the home country of an insolvent debtor, an exclusive right to administer all of the assets and debts of an insolvent debtor wherever located through one central proceeding governed by the court and the law of the home country.<sup>42</sup>

The home country's trade policy will apply to such issues as the conduct of the administration of the assets, the priority ranking, the stay of enforcements, transactions avoidance and whether to liquidate or rescue.<sup>43</sup> Thus, assets located in countries other than the home country would be repatriated to the home country jurisdiction for administration or subjected to ancillary proceedings conducted under the substantive trade policy of the home country jurisdiction. The idea is to facilitate global distribution to creditors or approval of a single plan of rescue. Territorialism is a theory that vests in each sovereign state an exclusive right to administer assets of an insolvent debtor situated within its own borders using its own policies without having regard to the debtor's trade proceedings initiated in other sovereign states. The theory denies the extraterritorial effect of a trade

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<sup>42</sup> Noble, C. & Mokwa, M. (1999). Implementing Marketing Strategies: Developing and Testing a Managerial Theory, *Journal of Marketing*, 63, 57-73.

<sup>43</sup> Buxbaum, HL 'Rethinking International Insolvency: The Neglected Role of Choice-of-Law Rules and Theory' (2000) 36 *Stan J Int'l L* 23



administration, but caters for assets and persons within the territory of the sovereign state whose jurisdiction is asserted.<sup>44</sup> It is thus only claims that originate within the sovereign state of the relevant jurisdiction that may be included on the list of beneficiaries of any resulting distribution. In the context of the trade of a multinational corporation, a court has jurisdiction over those portions of the corporation that are within its country's borders.

According to Hay, (1996), the underlying basis of territorialism is the notion of sovereignty.<sup>45</sup> Traditionally, the notion is characterised by the ability of a sovereign state to exercise power to dominate a territory and assets located thereon. It includes the imposition of the law of the sovereign on all within the territorial reach of the sovereign state and the restriction of the application of foreign laws within the borders of the sovereign state. The other theoretical basis for territorialism, which descends from sovereignty, is the desire of a sovereign state to protect its local interests. This justification is related to the claim that trade policies often reflect deeply held societal norms, values, interests, policies and priorities of the respective countries.<sup>46</sup> Conversely, universalism, in the modern parlance, traces its basis from the theory of market symmetry, which requires a legal system to be symmetrical with the market, covering all

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<sup>44</sup>Hathaway, O. 'Between Power and Principle: An Integrated Theory of International Law' (2005) 72 *Univ Chicago L Rev* 469

<sup>45</sup>Hay, J. 'Privatization in Transition Economies: Toward a Theory of Legal Reform' (1996) 40 *Eur Econ Rev* 559 349

<sup>46</sup>Schwartz, A, 'A Contract Theory Approach to Business Bankruptcy' (1998) 107 *Yale L J* 1807

or nearly all transactions and stakeholders with respect to the legal rights and duties embraced by those systems.

## **1.8 Research Methodology**

### **1.8.1 Study Design**

The study took a multi-method approach which incorporates primary and secondary research of cross border trade both formal and informal since these are likely to be often interlinked.

### **1.8.2 Study Sight**

The study was conducted in Busia town along the Kenya Uganda border.

### **1.8.3 Study Population**

The study targeted 150 traders operating across the Kenya Uganda border as well as 10 key informants who included customs officials, security and immigration personnel.

### **1.8.4 Sample Population**

Respondents were sampled purposively, section was picked randomly prioritize the traders perspectives of the trade and willingness to participate, however a deliberate effort will be made to triangulate all their views.

### **1.8.5 Methods of Data Collection/ Instruments**

The study used both primary and secondary data. Interview schedule as well as a questionnaire was used. The instruments will be administered in a language the trader

understood such as English and Kiswahili. The questionnaires targeted the traders who have extensive information on cross border trade while interview schedules were for customs officials, security and immigration personnel. The researcher recruited research assistants who visited the places and premises where traders buy and sell as well travelling and observing what goes on at border point. The research assistants were trained to observe keenly what was going on, and what was traded, how the traders behaved in terms of apparent freedom to disclose information and their interaction with peers, customers and government officials. The same also applied to border officials.

To some extent, and without compromising the relevance of local contexts, relevant experience from other countries and regions derived from source materials was used to assess the legal frameworks of the countries under study and to gain insights and lessons that could be considered in addressing the challenges and to provide an insight into the crafting of a workable and appropriate cross-border framework for Kenya and Uganda. Kenya and Uganda were used as representative case studies for Sub Sahara Africa (SSA) countries. The use of the case studies intended to allow in depth investigations of the research questions to be undertaken

#### **1.8.6 Validity of Data Collection Instrument**

During questionnaire construction, various validity checks were conducted that ensured the instrument measures what was supposed to measure and perform as it was designed to perform. To ensure content validity, the questionnaire was formulated and operationalized as per the study variables that ensured adequacy and representativeness of the items in each variable in relation to the purpose and objectives of the study.

Further, content validity was verified through expert opinions from supervisors and practitioners. The Cronbach's alpha reliability coefficient test of reliability was employed to test the reliability of the instruments.

### **1.8.7 Data Analysis**

Most of the information collected was analyzed quantitatively using SPSS and the results further triangulated with other information derived from direct observation and interviews that was derive qualitative data from key informants.

### **1.8.8 Ethical Consideration**

The study considered and addressed ethical issues to ensure free and objective respondent participation in the study. Confidentiality was assured as the information provided through the study was not made available to anyone who did not participate in the study. Anonymity allowed respondents not to identify themselves throughout the study and avoided the fear of being victimized for providing the required data. The following procedures were followed and ensured compliance with expected research code of ethics; the researcher obtained a research permit from University at the beginning of the field work, also from the National Council for Science and Technology and further obtained the necessary clearance from the Ministry of Foreign Affairs and International Trade.

### **1.8.9 Scope and Limitation**

Trade and cross border trade in particular is a very sensitive topic when discussed by people who live on it. Respondents were concerned about why they were being asked questions and what the interest of the researcher really was. Real fear may emanate

from possibility of collected information being passed on to government authorities such as tax departments. Respondents in Kenya and Uganda feared security implications of their interviews, as they were not sure of their status even when they were found trading in different markets. To counter this anonymity was the best strategy for getting information.

The time within which the study was conducted was not sufficient to obtain necessary permit to conduct open interviews and questionnaires however the researcher used conversational modes of interview and case experience based short personal testimonies (by traders). This limited the number of people that were interviewed. Fear by traders that information they gave was to be used against them either by the revenue authorities or political repression the researcher explained that the study was purely for academic purposes.

### **1.9 Chapter Outline**

The present chapter has laid out a contextual framework of the study by identifying and developing research problem, reviewing the literature, and developing the development framework and the methodology of the study. Chapter Two provides a critical review of the conceptual and historical aspects of the informal cross border landscape from Kenya and Uganda perspective. Chapter Three present the informal cross border trade between Kenya and Uganda which is a critical evaluation. Chapter 4 the informal cross border landscape from Kenya and Uganda: analytical evaluation: In this chapter, the emerging issues from the interviews are critically analyzed in a more scholarly perspective. Chapter 5 Conclusions: In this chapter the research concluded, giving recommendations made and final analogies of the research was drawn from.

## CHAPTER TWO

### INFORMAL CROSS BORDER TRADE BETWEEN KENYA AND UGANDA: AN OVERVIEW

#### 2.1 Introduction

In this chapter, conceptual and historical aspects of the informal cross border landscape from Kenya and Uganda perspective will be evaluated. The first section covers; the informal cross border trade concept to bring the reader into perspective. Typologies of informal cross border trade have been analysed as well as informal unrecorded trade showing the regional economic integration and its link to informal sector trade. The chapter concludes by presenting the ICBT between Kenya and Uganda.

#### 2.2 Informal Cross Border Trade Concept

Conceptually, the definition of the informal economy is no unanimity among researchers as pointed out so well: "*The first studies of" informal sector "have sometimes been criticized for being vague because they have not clearly defined what the "informal sector" was. Conceptually, the informal economy focuses on activities that are under the form and structure, operating outside the bureaucratic controls, which are likely to be more insecure and less stable"*.<sup>47</sup> Chauvin and Gaulier asserts that the area of informal trade, has been neglected.<sup>48</sup> Although informal trade takes different forms and is known under different names (for example, unrecorded trade, illegal trade, unofficial trade,

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<sup>47</sup>Westbrook, JL and Trautman, D 'Conflict of Laws Issues in International Insolvencies' in Ziegel, J (ed), *Current Development in International and Comparative Corporate Insolvency Law* (Clarendon Press, Oxford 1994) 657

<sup>48</sup> Chauvin, S. and G. Gaulier (2002), *Regional Trade Integration in Southern Africa*|| , *CEPII Working Paper No. 2002-12*, Paris.

underground trade, part of parallel market activity, the activities of black market, trade subject of over-and under-invoicing, smuggling or hoarding), it is best characterized by its non-inclusion in the national accounts of a country or region in terms of its domestic and International trade.<sup>49</sup>

The relationship between economic growth and the informal sector has always led to considerable interest at different points in time.<sup>50</sup> The informal sector has been considered as a temporary situation that would disappear with economic growth take off. Cross-border trade is highly sensitive to the treatment meted out to traders by conditions imposed by national governments. Its success depends critically on the ability of individuals to routinely cross the border without paying a large unofficial payment or prohibitive tariff duties and border charges, and to cross the border with their own passenger vehicles or with light vehicles from bordering regions.<sup>51</sup>

Cross-border trade among continents dates back to the pre-industrial era. Spices, textiles and precious stones were the main commodities in the international commerce during the pre-industrial era. Europeans worked their way into this commercial nexus in the early sixteenth century.<sup>52</sup> The Portuguese were the first to arrive, having discovered a sea route from Europe to the East that allowed them to avoid the heavy taxes on goods sent

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<sup>49</sup> Hummels, D. (2006), *Benefiting from Globalisation: Transport Sector Contribution and Policy Challenges*, Topic I, *Global Trends in Trade and Transportation*, paper prepared for the *ECMT/OECD 17th International Symposium on Theory and Practice in Transport Economics and Policy*, Berlin, 25-27 October 2006.

<sup>50</sup> Little, P.D. (2007), *Unofficial Cross-Border Trade in Eastern Africa*, paper presented at the *FAO Workshop on Staple Food Trade and Market Policy Options for Promoting Development in Eastern and Southern Africa*, March 2007, FAO Headquarters, Rome.

<sup>51</sup> Martinez-Zarzoso, I. and Marques-Ramos, L., (2007), *The Effect of Trade Facilitation on Sectoral Trade*, *Discussion Paper No. 167, Dec. 2007*, University of Gottingen, Germany.

<sup>52</sup> OECD (2006), *A Review of Technical Assistance and Capacity Building Initiatives for Trade Facilitation* in OECD (2006), *OECD Papers, Vol. 6, No. 2*, 2006, OECD, Paris.

overland through the Middle East. (This indicates that tariffs and transport difficulties were the main barrier for cross-border trade.) The Dutch and the British took domination of international trade and controlled the exports and imports in Southeast Asia. In the period from 1600 to 1800, cross-border trade considerably increased between European and South Asian traders, but collapsed after the independence due to various reasons including political affairs of the countries.<sup>53</sup>

In Africa, it is estimated that informal cross border trade (ICBT) represents 43 percent of official gross domestic product (GDP), thus being almost equivalent to the formal sector.<sup>54</sup> Giovannucci indicate that in some African countries, informal regional trade flows represent up to 90 per cent of official flows.<sup>55</sup> Intra-Africa trade is quite diversified compared with Africa's trade with the rest of the world, a large part of which is ICBT, generally following a long trading tradition among African nations. It is significant in boosting Intra-African trade, as well as in tackling unemployment levels, improving the supply side of goods and services and food security among others. In many instances, informal trade represents the only type of exchange that is possible under conditions prevailing in some regional economic communities. Poor regional infrastructure and

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<sup>53</sup>Auboin, M. and Meier-Ewert, M. (2003), *Improving the Availability of Trade Finance during Financial Crises*, WTO, Geneva.

<sup>54</sup>Dradri, S. (2007). *A Market Analysis of the Food Security Situation in Southern Africa in 2007/8*, World Food Programme, Lusaka.

<sup>55</sup>Giovannucci, D. (2008), *National Trade Promotion Organizations: their Role and Functions*, World Bank, Washington.



communications often render near-impossible official trade between neighbouring countries.<sup>56</sup>

In fact, for many parts of Africa the overall effect of structural adjustment has resulted in a significant expansion of trans-border trade, especially by large numbers of unemployed youth, women, and others, including ex-formal sector employees downsized through budget reforms.<sup>57</sup> CBT is ‘illegal’ in many countries of the region because it avoids official procedures and channels, but it does not mean that the traded products themselves are illegal. Most cross-border commerce is in clean commodities, although perceptions are that CBT (especially in the Horn of Africa) encourages trade in illicit drugs, weapons, and other illegal and harmful goods. Despite common perceptions CBT has strong ties to the formal sector. In fact, the distinctions between what is formal and informal in CBT are difficult to make. Take the case of maize, for example, that may be informally sourced from trans-border markets but eventually sold through licensed retail shops in the import country; or the case of livestock that are trekked across borders to be sold but are officially taxed at different market centers and eventually sold through formal market channels. CBT also generates significant amounts of local taxes and permit revenues for the formal sector, as well as a wide range of unofficial payments or taxes to government personnel and offices. The fact that policies directed at formal food market channels can

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<sup>56</sup>Hertel, T. and Keeney, R. (2006), What Is at Stake: The Relative Importance of Import Barriers, Export Subsidies and Domestic Support in: Anderson, K. and Martin, W. (eds.) (2006), *Agricultural Trade Reform and the Doha Development Agenda*, World Bank, Washington D.C.

<sup>57</sup> Brown, E.D. (2007). Competitive advantage and the resource based view of the firm. Retrieved from <http://ericbrown.com/competitive-advantage-and-the-resourcebased-view-of-the-firm>.

strongly affect the performance and profitability of unofficial commerce and vice-versa is further evidence of the interconnectedness of the formal and informal sectors.<sup>58</sup>

Cross-border trade is also an increasingly important phenomenon in Eastern Africa, but one that remains surrounded by considerable controversy and ignorance.<sup>59</sup> For some observers it represents a normal market response to cumbersome, time-consuming export regulations and regional price distortions, and should be encouraged as a means to increase intra-regional trade (and ‘regionalization’), meet local demand that is not being met by national production and markets, and insure regional food security. These same supporters often argue that many trans-border markets pre-date colonial and post-colonial state boundaries and, thus, reflect longstanding indigenous patterns that make more sense than formal trade channels.<sup>60</sup> For others, CBT reflects a potential loss of foreign exchange, an illegal activity, and a source of unfair competition for official traders and food producers. The contra position argues for increased regulations and taxes, policing, and/or forcing CBT into formal market channels. As Njinkeuet al., work shows, it was assumed by some policy makers that market liberalization (structural adjustment) policies

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<sup>58</sup> USAID (2010). Report on One Stop Border Posts 2012. Retrieved in May 2013 from [www.competeusaid.com](http://www.competeusaid.com).

<sup>59</sup>Forman, J. &Argenti, P.A. (2005). How Corporate Communication Influences Strategy Implementation, Reputation and the Corporate Brand: An Exploratory Qualitative Study, *Corporate Reputation Review*, 8, 245-264.

<sup>60</sup> Icafrica (2011), Boost for One Stop Border Post Concept retrieved in May 2013 from <http://www.icafrica.org/en/news/ica-news/article/press-release->.

of the 1980s and 1990s would have channeled most informal trade into formal market channels, which has not been the case in large parts of Africa.<sup>61</sup>

The informal cross border trade provides people with a source of income and employment.<sup>62</sup> Cross border trade enables traders to meet the education, housing and other basic needs of a significant number of their dependents. Kaplan and Norton indicates that cross border traders supported on average 3.2 children as well as 3.1 dependents who were not children or spouses.<sup>63</sup> Heracleous states that research suggests that cross border trade involves a greater number of female than male entrepreneurs, thus promoting the empowerment of women in the Southern Africa Development Community.<sup>64</sup> Most are aged between 25 and 35 years. This trade has been going on for several years but under very difficult circumstances.

### **2.3 Typologies of Informal Cross Border Trade**

The International Labour Organisation adopted the term ‘informal economy’ in 1972 giving it a definition that has become widely used. The International Labour Organisation, like Olarreaga, argues that this ‘marginal sector’ has the potential to be

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<sup>61</sup>Njinkeu, D., Wilson, J.S. and PowoFosso, B. (2008). Intra-African Trade Constraints: The Impact of Trade Facilitation, April 17, 2008. Paper prepared for the African Economic Research Consortium (AERC)- World Bank Workshop on Trade Costs and the Business Environment: A Focus on Africa.

<sup>62</sup>Wilson J.S., Mann, C. and Otsuki, T. (2005). Assessing the Benefits of Trade Facilitation: A Global Perspective|| , in: *The World Economy*, Vol. 28, No. 6, pp. 841-871, June 2005, Blackwell Publishing, Oxford, UK.

<sup>63</sup>Kaplan, R.S. & Norton, D.P. (2004).*Strategy Maps: Turning Intangible Assets into Tangible Results*. Boston, MA: Harvard Business School Press.

<sup>64</sup>Heracleous, L. (2000). The Role of Strategy Implementation in Organization Development, *Organization Development Journal*, 18, 75-86.

profitable and efficient. For this reason researchers have taken up the challenge of investigating the informal sector although there are some challenges they still have to overcome; one of these is finding a strategy of measuring the productivity of this sector.<sup>65</sup> Duval says informality is not a property of individuals, firms, or activities; rather, it is a property of social transactions and the rules and norms that govern these transactions. In an attempt to identify those rules and norms governing the informal sector, the International Labour Organisation gave a characterisation that included ease of entry, small-scale enterprises, family ownership, and use of labour-intensive technology.<sup>66</sup> Other characteristics of the informal sector given are that it includes activities and enterprises outside the systems of formal wage labour and low productivity activities that are not in compliance with the formal norms, such as licensing and taxation, and is not included in a nation's GDP.

The informal economy is untaxed, has no formal contracts, no fixed hours, no job security, and no employment benefits, such as paid sick leave or pension arrangements. The potential of the informal economy activities vary from survivalist to small enterprises including activities, such as subsistence occupations, bartered skills, unpaid domestic work, self-employment and informal cross-border trade.<sup>67</sup> In addition, Peberdy asserts that the informal sector is characterised by activities that are not legally recognised and

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<sup>65</sup>Olarreaga, M. (2003). *Tariff Evasion and Customs Corruption: Does pre-Shipment Inspection Help?*, *World Bank Policy Research Paper No. 3156*, World Bank, Washington D.C

<sup>66</sup>Duval, J. (2007). *Trade Facilitation Beyond the Doha Round of Negotiations*|| , *Asia-Pacific Research and Training Network on Trade Working Paper Series, No. 50*, December 2007, ESCAP, Bangkok.

<sup>67</sup>Ishengoma, E., and Kappel, R. (2006). *Economic Growth and Poverty, Does Formalisation of Informal Enterprises Matter?*|| , *GIGA Working Paper No.20*, German Institute of Global and Area Studies, Hamburg.

do not follow recognised official channels.<sup>68</sup> Tegegne argues that attempting to define the informal economy using its characteristics or by just saying it is the opposite of the formal sector is very problematic because ‘formal sector’ on its own also does not have a straight forward definition.<sup>69</sup> Although there is much confusion around the definition of the informal economy, researchers should still work towards a proper definition for the concept.

In the continued attempt to define the concept of informal economy it would be of great importance to consider what Otsuki meant by saying informality does not imply a lack of structure or predictability.<sup>70</sup> It simply means that structure and predictability are achieved through a different set of rules and norms than those associated with formal institutions. Subramanian and Matthijs argues that these rules that govern informal transactions are constructed by the larger social context; putting emphasis on the importance on networks, kinship, regional origin and ethnicity, for the success of these informal transactions.<sup>71</sup>

Porto also noted the importance of such networks in the success of informal cross-border trade. Other forms of non-recording are under invoicing and mis-declarations of cargo which invariably occur with the cognisance of the customs officials and are hence

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<sup>68</sup>Peberdy, S. (2002). Hurdles to Trade? South Africa’s Immigration Policy and Informal Sector Cross-Border Traders in the SADC, paper presented at the *Workshop on Regional Integration, Poverty and South Africa’s Proposed Migration Policy*, Pretoria, 23 April 2002.

<sup>69</sup>Tegegne, G. (1999). Cross-Border Livestock Trade and Food Security in the Southern and South-eastern Ethiopia Borderlands|| , *OSSREA Development Research Report Series, No. 1*, Addis Ababa.

<sup>70</sup>Otsuki, T. (2003). Trade Facilitation and Economic Development: Measuring the Impact, *World Bank Working Paper 2988*, Washington D.C.

<sup>71</sup>Subramanian, U., & Matthijs, M. (2007). Can Sub-Saharan Africa Leap into Global Network Trade?, *World Bank Policy Research Working Paper 4112*, January 2007.

fiendishly difficult to document for purposes of research.<sup>72</sup> Efforts will be made to establish the total annual volume of trade that does not go onto the official government records. This form of trade can also be referred to as unofficial or informal trade. Community transactions along the open border not served by established roads and trading centres will not be covered due to budgetary and sampling reasons.

CBT concern the scale and spatial aspects of the activity. Much CBT involves small amounts of food products moved over short distances for example, the Ugandan trader who bicycles with two sacks of beans across the border to sell in Kenya but other types entail large volumes and vast distances.<sup>73</sup> The latter might include large scale Kenyan traders who transport truckloads of animals 250 km across the Uganda border to be exported, relying on market information transmitted via hand radios and faxes. The merchants then return home with considerable amounts of imported foods to be sold in eastern Ethiopia. Recent policies by some governments to permit small-scale (low value) CBT within certain distances of borders show recognition that important scale differences that characterize the activity.<sup>74</sup>

However, to date, there is still limited information on its dimension as the tools for its measurement have not been very well developed.<sup>75</sup> The situation has had some adverse

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<sup>72</sup> Porto, G. (2005). *Informal Export Barriers and Poverty*, Development Research Group, World Bank, Washington D.C.

<sup>73</sup> Stern, R.E. (2005), *Designing a Small Business Tax System that Enhances Growth: Lessons from Africa*, FIAS, World Bank Group, Washington D.C.

<sup>74</sup> Mansour, M. (2007). Revenue Mobilization in Sub-Saharan Africa: Challenges from Globalization|| , paper presented on 15 October 2007 at the *USAID Economic Growth Officers Workshop*, Washington, D.C.

<sup>75</sup> Dzaka-Kikouta, T. (2004), *Focus on Cross-Border Exchanges Between Brazzaville/Congo and Kinshasa/DRC*, Nov-Dec. 2004, Initiative for Central Africa (INICA), Paris.

impact on the estimation and reporting of intra-African trade, impacting negatively on African countries ability to seize the opportunities offered by comparative advantage in informal cross border trade to improve efficiency and specialization. It is hence prudent for ICBT to now be brought to the fore fronts of the whole intra-African trade and the African integration agenda. This was strongly emphasized during the last 7<sup>th</sup> Session of the Committee on Trade, Regional Cooperation and Integration, which called for the development of a tool/instrument for measuring and tracking the contribution of the informal trade sector in regional integration and intra-African trade in general.<sup>76</sup>

Trade between Sub-Saharan Africa and the developed world has always been in a narrow range of traditional commodities such as tea, coffee, tobacco, cotton, sisal and minerals. At the same time, trade within Sub-Saharan Africa not only remains woefully low in physical and value terms but is also fraught with selfish regulations and policies adopted by the incumbent governments. The 1982 Preferential Trade Agreement (PTA), which has now assumed a wider operational mandate and a new title, the Common Market for Eastern and Southern Africa, has been working for several years to enhance intra-African trade.<sup>77</sup> While progress has been made in reducing tariff and non-tariff barriers, formal trade among African countries is still depressed. In Eastern and Southern Africa in particular, indications are that informal (unrecorded) trade is still extremely high. For example, it is estimated that 30,000 - 60,000 metric tons of maize is smuggled annually

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<sup>76</sup>Ndlela, D. (2006). Informal Cross-Border Trade: The Case of Zimbabwe|| , *Occasional Paper, No. 52*, Institute for Global Dialogue, Johannesburg. Business Action for Improving Customs Administration in Africa (BAFICAA) (2006), *Customs and Business in Africa: A Better Way Forward Together*, July/August 2006.

<sup>77</sup> OECD, (2003b), *Trade Facilitation Reforms in the Service of Development*, TD/TD/WP(2003)11/FINAL, OECD, Paris.

from Zambia to Zaire costing the former US\$ 3 million and that much of the Malawian “surplus” maize in the early 1980s was Mozambican.<sup>78</sup>

The Uganda Petroleum Dealers Association estimates that 25 percent of petroleum fuel (petrol, diesel and paraffin) consumed in Uganda are smuggled from Kenya, costing the Ugandan government about US\$1.2 million annually.<sup>79</sup> The phenomenon of unofficial trade across the borders most likely arises from unfavourable agricultural and macroeconomic policies being followed by the African governments. In particular, uncoordinated and partial implementation of structural adjustment programs and the reluctance to eliminate all formal trade barriers significantly influence unrecorded (informal) cross-border trade.<sup>80</sup> Interest in the informal cross-border trade has been overwhelming but inadequate knowledge of its magnitude not only leads to misleading figures in the national accounts, but also inhibits formulation of appropriate policies and strategies to exploit its potential impact particularly on regional food security.

Foreign exchange controls contribute to distortions of recorded trade by encouraging over-invoicing of imports and under-invoicing of exports as a means of capital flight. This overstates recorded imports and understates recorded exports. Smuggling has also been facilitated in the past by barter trade and by the semi-convertibility of currencies in

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<sup>78</sup> Perry, G.E, Maloney, W.F., Arias, O.S., Fajnzylber, P., Mason, A.D., Saavedra-Chanduvi, J. (2007), *Informality: Exit and Exclusion*, World Bank, Washington D.C.

<sup>79</sup>Oyejide T.A. (2010). *Policies for Regional Integration in Africa Economic Research Papers*, University of Ibadan, Ibadan, Nigeria.

<sup>80</sup>Oduor, N.W (2007), *Difficulties faced by Eastern & Southern African Trade Development Bank in implementing the strategy of capital resource mobilization*: Unpublished MBA project: University of Nairobi.



border areas.<sup>81</sup> Import licensing, often a response to an overvalued currency, restricts the supply of imports and raises their domestic price which in turn provides incentives for a parallel market in smuggled goods. Relative price differentials between countries and shortages in a particular country also encourage border trade. Scarcity and shortages in some of the neighbouring countries create effective demand and high profits thus making it extremely difficult to control smuggling. The other cause could be the uncoordinated and partial implementation of structural adjustment programs and half measures aimed at removal of formal trade barriers.<sup>82</sup>

#### **2.4 Regional Economic Integration and its Link to informal sector Trade**

The expansion of the informal economy over several years and the deterioration of employment situation in many developing countries in sub-Saharan Africa, Latin America and the Caribbean have been regarded as the cause of low GDP growth.<sup>83</sup> However, as shown by a number of recent studies, this positive relationship of the informal and economic growth is not always verified. In the cross-border trade of agricultural products between Cameroon and the CEMAC, the relationship between the informal and economic growth in the region is not fully established although recent years

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<sup>81</sup> Meagher, K. (2003). A Back Door to Globalization? Structural Adjustment, Globalization and Transborder Trade in West Africa. *Review of African Political Economy* 95: 57-75.

<sup>82</sup> Smith, Alasdair, and Anthony Venables (2012), Completing the Internal Market in the European Community: Some Industry Simulations. *European Economic Review* 32 (7): 1501-25

<sup>83</sup> Miti, C. (2004), *Maize Marketing and Trade Policies in Southern Africa: Toward Defining Appropriate and Mutually Supportive Roles for the Public and Private Sectors*, COMESA Secretariat.

have found an increase of informal activities with a lower rate of growth in Cameroon and in other CEMAC countries except Equatorial Guinea.<sup>84</sup>

The conceptual issues regarding economic growth and poverty are vast and varied. However, whether economic growth leads to poverty reduction or not is a question that has been debated for years among governments and economists. There are those who advocate growth at any price and those who suggest that the emphasis is made on policies that directly affect the poor. However, the impact of economic growth on the rate of poverty reduction depends on the nature, strength and other characteristics of the linkages between growth and poverty at some point in time and in a country in particular.<sup>85</sup>

Concerning the debate on the legalization of the informal economy, the views are divided on a question: is the legalization of the informal sector a prerequisite for economic growth? Keen argued that legalization of the informal economy is a precondition for faster growth because informal prevent growth and investment because of tax evasion that it entails.<sup>86</sup> This position is born of the idea that informal enterprises operating outside of taxation and regulation, consequently, have difficulty accessing credit, which limits the scope of their operations and their ability to exploit investment opportunities. In addition, the informal sector affects the ability of governments to raise revenues and, consequently,

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<sup>84</sup>Levin, J. and Widell, L. (2007). Tax Evasion in Kenya and Tanzania: Evidence from Missing Imports|| , *Working Paper No.8*, Department of Business, Economics, Statistics and Informatics, University of Orebro, Sweden.

<sup>85</sup>Goorman A. (2005). Customs Valuation in Developing Countries and the World Trade Organisation Valuation Rules”, in De Wulf, L. and J.B. Sokol (eds.) (2005), *Customs Modernisation Handbook*, World Bank, Washington D.C.

<sup>86</sup>Keen, M. (2003). The Future of Fiscal Frontiers and the Modernisation of Customs Administration|| in Keen, M. (ed.) (2003), *Changing Customs: Challenges and Strategies for the Reform of the Customs Administration*, IMF, Washington D.C.

adversely affects public sector resources with their complementary role in financing private investment through infrastructure development or facilitation of the business environment is obvious. In the case of informal cross-border trade between Cameroon and neighbouring countries of CEMAC, the problem of legalization remains unsolved and current.<sup>87</sup>

On the question, why economic agents do encourage informal trade in disfavor of formal trade? In the case of the SADC member countries in East Africa where Kenya and Uganda are categorised, summarized these reasons as follows: it was stressed that the adoption of restrictive policies in many countries creates incentives for illegal trade.<sup>88</sup> Restrictions such as tariffs on imports, quotas, exchange controls, state monopolies in certain businesses and export restrictions (such as currency declaration and obtaining licenses to export) create incentives for informal activities. The high tariffs and export taxes encourage smuggling and shortcomings of invoicing of imports and exports, primarily as a means to evade taxes. This leads to an underestimation of cross-border flows and a poor record of trade. The overvaluation of the currency resulting from exchange controls reduce export prices and thus act as implicit taxes on exports.<sup>89</sup>

The exchange controls contribute to distortions of official trade encouraging overcharging of imports and under invoicing of exports as a means of capital flight. This

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<sup>87</sup> International Finance Corporation (IFC) (2007a), *Designing a Tax System for Micro- and Small Businesses: Guide for Practitioners*, IFC, Washington D.C. IFC (2007b), *Reforming the Regulatory Procedures for Import and Export: Guide for Practitioners*, IFC, Washington.

<sup>88</sup> Hummels, D. (2006), Benefiting from Globalisation: Transport Sector Contribution and Policy Challenges, Topic I, Global Trends in Trade and Transportation, paper prepared for the *ECMT/OECD 17th International Symposium on Theory and Practice in Transport Economics and Policy*, Berlin.

<sup>89</sup> Gonzalez, A. and F. Lamanna (2007). Who Fears Competition from Informal Firms? Evidence from Latin America|| , *Policy Research Working Paper 4316*, World Bank, Washington D.C.

overestimates the official imports and underestimates exports.<sup>90</sup> Smuggling has also been facilitated in the past by barter and the semi-convertibility of currencies in the border areas. Import licenses are often presented as a response to an overvalued currency, limiting the supply of imports and increases in domestic prices which offer incentives for black market in smuggled goods. The relative price differentials between countries and also shortages in one country encourage informal trade across borders. The scarcity and shortages in some neighbouring countries create effective demand and high profits which make it extremely difficult to control smuggling. Other causes could be lack of coordination and partial implementation of structural adjustment programs and measures aimed at removing formal trade barriers.<sup>91</sup>

In addition, certain events in the history of SSA countries in general and CEMAC in particular have prevented the "normal trade" to take its course.<sup>92</sup> For example, civil wars in Uganda in the mid-1980s, Congo in the late 90s, CAR and Mozambique, which lasted nearly two decades, there are few events. Another important factor is drought. It is well known that the main foods are differently susceptible to drought. As production methods differ between countries and that consumption patterns of grain are more or less similar in SSA, increase cross-border trade in times of drought to mitigate the effects of

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<sup>90</sup> De Wulf, L. (2005a). Ghana, in *Customs Modernization Initiatives, Case Studies*, World Bank, Washington D.C.

<sup>91</sup>Mwaniki, J. (2004), *The Impact of Informal Cross-Border Trade on Regional Integration in SADC and Implications for Wealth Creation*, Community Organisations Regional Network (CORN), Zimbabwe. TAD/TC/WP(2008)13/FINAL 49

<sup>92</sup>Regional Agricultural Trade Intelligence Network (RATIN) (2007), *East Africa Food and Trade Bulletin*, October 2007, No. 45.

production fall in countries affected by drought.<sup>93</sup> At the CEMAC sub-region, several factors are advanced to explain the increasing activities of informal cross border trade including the urban cities (Libreville, Brazzaville, Douala, Yaounde, etc.), recurring socio-political instability, the inadequate physical infrastructure, trade liberalization, the HIV / AIDS and lack of employment.

Regarding the question on the estimation of volumes and values of cross-border informal trade, several researches were conducted in the case of Eastern Africa showing that the volume of informal trade between Kenya and Uganda represents 150% of official trade between both countries.<sup>94</sup> One way of categorizing the commodities is to distinguish them as agricultural products and inputs; manufactured consumer goods, including textiles; or minerals and forest resources. Cross border trade is balanced by exchange of food products for manufactured goods, minerals and forest resources. Commodities may also be categorized according to their origin as follows: locally produced in country under study; exports originating from a third country; and goods in transit. There have been cases of goods in transit being off-loaded for sale before reaching their final destination thereby evading official records and payment of duty.<sup>95</sup>

Re-exports of goods imported from the world market (or donated as food aid from a third country) is not uncommon in Eastern and southern Africa. Since such re-exports do not enjoy the concessionary COMESA tax rates accorded to locally produced goods, the

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<sup>93</sup> Scott, C. (2005), *Measuring Up to the Measurement Problem, The Role of Statistics in Evidence-Based Policy-Making*, Paris 21, OECD, Paris.

<sup>94</sup> OECD (2004), *Istanbul Ministerial Declaration on Fostering the Growth of Innovative and Internationally Competitive SMEs*, OECD, Paris.

<sup>95</sup> Widdowson, D. (2005). Managing Risk in the Customs Context|| , in *Customs Modernization Handbook*, World Bank, Washington D.C. TAD/TC/WP(2008)13/FINAL 51

temptation to pass the former through the underground routes is irresistible.<sup>96</sup> Preliminary investigations have established that there is a thriving trade in donated food items in practically all the major trading routes in the region. Locally produced goods may also be smuggled to a second country if producer prices are more attractive there, before being exported officially to a third country. A classical case was in the late 1970s when Kenya was exporting coffee which was believed to have originated from Uganda unofficially. Currently, there are indications that Kenya coffee may be crossing the border into Uganda and subsequently exported by the latter.<sup>97</sup>

Some events in the history of SSA countries have prevented normal trade to take its course. For example, civil strife in Uganda from early 1970s until the mid-1980s, and civil war in Mozambique which was continuous for almost two decades, are some of the events.<sup>98</sup> Another important factor is drought. It is well known that the individual main staple foodstuffs are differently prone to drought. As production patterns differ between countries and as the consumption patterns of cereals are more or less similar in the region, many a time, cross-border trade increases during drought to mitigate the effects of production shortfalls in the drought stricken countries.

Government taxation policies may contribute to illegal trade. When, for instance, a sales or value added tax is paid, supply and demand clear at the tax-paid price. Excess demand exists at pre-tax price, but it is illegal to offer goods at that price. If the risks of evading

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<sup>96</sup>Akilu, Y. (2006), A Review of Policies and their Impact on Livestock Trade in Ethiopia during Three Regimes, (1965-2005). In J. McPeak and Peter D. Little, eds.

<sup>97</sup> Richard E. and Anthony V. (1997), International Economic integration, in Grossman G. and Rogoff K., eds., *Handbook of International Economics*, Vol. 3, Amsterdam: North Holland.

<sup>98</sup>Soko, D., (2006). Why Trade facilitation is Key to Boosting Intra-African Trade?|| , in *Africa Growth Agenda*, November 2006.

taxes are not prohibitive, supplies will meet that demand at a price that is less than the tax paid price.<sup>99</sup> Lack of information could be another barrier to increased trade. Asymmetric information could be an effective entry barrier, insulating the better informed from the rigors of competition by deterring new entrants.<sup>100</sup> Cross-border trade in some cases arises due to the introduction of pan - territorial and pan-seasonal pricing in a country. In effect, pan-territorial pricing penalizes areas with least transportation costs and subsidizes those with high transport costs.

Regional economic integration has been viewed as a novel phenomenon in global trade dynamics with the potential to halt the marginalization of African countries in the multilateral trading system and the subsequent eradication of poverty. However, cross-border production networks, that have been a salient feature of development in other regions, especially East Asia, have yet to materialise in Africa.<sup>101</sup> Regional economic integration aims to create a common market for better economic performance as it helps to increase the volume of trade, stimulate production of goods and services and increase employment. Schneider favourably concludes that cross-border trade offers, by far, the most efficient financial and commercial infrastructure that is presently available for

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<sup>99</sup> Schneider F., (2006). *Shadow Economies and Corruption All over the World: What Do We Really Know?* , *Discussion Paper No. 2315*, Institute for the Study of Labour (IZA), Bonn.

<sup>100</sup>Tchale, H. (2001), *Informal Cross-Border Trade: The Case of Beans in Eastern and Southern Africa*, paper prepared for the Bean Seed Workshop held in January 12-24, 2001 in Arusha, Tanzania.

<sup>101</sup>United Nations Conference on Trade and Development (UNCTAD) (2005a). *Customs Procedures- Post Clearance Audit* , *Technical Note No. 5*, UNCTAD Trust Fund for Trade Facilitation Negotiations, Geneva, Switzerland

regional trade.<sup>102</sup> It could, given the appropriate policy framework, contribute to the rapid and massive expansion of markets for local industrial and agricultural goods.

There are three categories of informal cross border trade. Category A ICBT consists of unregistered operating entirely outside the realm of formality. Category B ICBT embraces those firms that are registered but who fully evade trade related regulations and duties. Category C ICBT are those participants that are formally registered but who partially evade regulations by resorting to illegal practices. Informal cross border trade in Africa covers a wide range of agricultural and non-agricultural or manufacturing sector commodities.<sup>103</sup> However, the most consistent commodities being monitored have been agricultural and concern trade in maize, rice and beans in eastern and southern Africa and rice in West Africa. Goods traded informally can cover both small volumes of goods, transported by individual traders crossing the border by foot or by bicycle, as well as larger volumes transported in containers by land, sea or air. Informally-traded goods can originate from (and be produced in) world markets or come from neighbouring countries. Illegal ICBT participants engage in the distribution of prohibited goods and services, deriving lucrative income that competes directly with trade in food and cash crops in Africa. For example, enforcing the official rice export ban in place in Sierra Leone since 2011, has been challenging, such that informal cross-border flows meant reduced

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<sup>102</sup>Schneider, F. (2010). Size and Measurement of the Informal Economy in 110 Countries around the World|| , paper presented at a Workshop of Australian National Tax Centre, Canberra, Australia. TAD/TC/WP(2008)13/FINAL 50

<sup>103</sup> Wilson, N. (2007). Examining the Trade Effect of Certain Customs and Administrative Procedures|| , *OECD Trade Policy Working Paper 42*, OECD, Paris.



availability of rice in local markets.<sup>104</sup> Cocoa from Côte d'Ivoire is routinely exported through Liberia. Cocoa and coffee production tends to flow to the market where prices are most attractive, irrespective of borders.

ICBT in Eastern Africa is relatively more discernible when compared to other parts of the continent. Countries such as Uganda, Tanzania, Ethiopia and Somalia are generally recognized as sources of non-processed tradable goods consumed in Kenya and South Sudan.<sup>105</sup> Kenya is a major source of manufactured goods sold informally into the region. With regard to non-processed goods, food items are the most traded to satisfy the huge demand in the horn of Africa and to mitigate ecological variations. All the countries in the region except South Sudan trade in re-exports. This is primarily due to the fact that there are some aggressive attempts in Uganda to capture ICBT flows..

## **2.5 ICBT between Kenya and Uganda**

Historically, cross border trade between Kenya and Uganda dates back to pre-colonial times. People carried out barter trade without the need for formal registration.<sup>106</sup> At independence, many African states adopted the artificially created borders, which led to the emergence of tariff and non-tariff barriers. This in turn has disrupted informal economic activity. Goods were sold internally within Kenya and Uganda and across the

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<sup>104</sup>Yaya H. and Meagher K. (2011). Cross Border Trade and the Parallel Currency Market Trade and finance in the context of Structural Adjustment, A Case Study from Kano, Nigeria|| , *Research Report No. 113*, Nordica Afrikainstitutet, Uppsala 1999.

<sup>105</sup> Yang, Y. and Gupta, S. (2005). Regional Trade Arrangements in Africa: Past Performance and the Way Forward|| , *IMF Working Paper*, WP/05/36, IMF, Washington.

<sup>106</sup>Ogutu, C. (2010), *Unrecorded Cross-Border Trade between Kenya and Uganda: Implications for Food Security*. Technical Paper No. 59, Bureau for Africa, SAID, Washington, DC.

border to neighbouring countries. Haji and Semboja postulates that informal cross border trade was often associated with low-income earners.<sup>107</sup>

Interest in cross-border trade between Kenya and Uganda has been overwhelming but inadequate knowledge of its magnitude not only leads to misleading figures in national accounts but also inhibits formulation of appropriate policies and strategies to exploit its potential impact.<sup>108</sup> According Gichuru the exports to the PTA sub-region form a high proportion of Kenya's total exports to Africa.<sup>109</sup> However, the share has declined moving from 95% in 1987 to 84% in 1991. The exports also form a significant proportion of Kenya's total exports, although the shares declined from 24% in 1988 to about 20% in 1991. The major markets for Kenyan exports are Uganda, Tanzania, Rwanda, Sudan, Zaire, Somalia, Burundi and Ethiopia.<sup>110</sup> The share of exports to these markets in 1991 was 89%. Uganda (34%), Tanzania (17%), Rwanda (9%) and Sudan (9%) constituted 69% of the market. This indicates that there is a geographical concentration of exports within the sub-region, with Uganda buying the bulk of the Kenyan exports.

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<sup>107</sup> Haji H., and Semboja, J., (2009), East African Economic Integration: Base Case Economic Analysis, *African Integration Review* (October 2009).

<sup>108</sup> Gunning W. (2001), Regional integration and strategies for trade policy in Sub-Saharan Africa Elbadawi and Ngulu (ed) *Economic development in Sub Saharan Africa* Palgrave

<sup>109</sup>Gichuru, A. (2010), *Trade related barriers to Kenya's export of fruits & vegetables to the European Union*: Unpublished MBA project: University of Nairobi.

<sup>110</sup>Ndung'u, N. (2011), *Regional Integration Experience in the East African Region* (Paris: OECD Development Centre).

Informal cross-border trade activities between Kenya and Uganda involve an exchange of substantial quantities of agricultural and industrial goods.<sup>111</sup> Various categories of transporters and couriers serve a smaller group of entrepreneurs, while some public officials invariably combine their official duties with active participation in the informal trade. Rent-seeking practices among public officials at the major border crossing points and cumbersome import/export procedures encourage both large and small traders to pass their goods through undesignated routes.<sup>112</sup>

## **2.6 Conclusion**

The chapter has analyzed chapter two which is a historical view and contains the informal cross border trade. Debates concerning the debate on the legalization of the informal economy have been presented and this narrows to the two countries under study that is Kenya and Uganda.

The chapter that follows is Chapter Three presents the informal cross border trade between Kenya and Uganda which is a critical evaluation. This chapter covers the case study as analysed from the interviews and the secondary sources. The information will contribute to knowledge on informal cross border trade.

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<sup>111</sup>Kirkpatrick, C. and Matsuo, W. (2005). Regional trade in Sub-Saharan Africa: An analysis of East African Trade Cooperation. *The Manchester School* Vol.73 No.2 1463-6786.

<sup>112</sup>Little, D. (2007). *Unofficial Trade When States are Weak: The Case of Cross- Border Commerce in the Horn of Africa*. Research Paper No. 2005/13. Helsinki,Finland: World Institute for Development Economics Research United Nations University.

## **CHAPTER THREE: INFORMAL CROSS BORDER TRADE BETWEEN KENYA AND UGANDA- CRITICAL EVALUATION**

### **3.1 Introduction**

The previous chapter has analyzed conceptual and historical aspects of the informal cross border landscape from Kenya and Uganda.

This chapter is a case study, and reviews the informal cross border trade between Kenya and Uganda, a critical evaluation as analyzed from the interview guide, questionnaire and secondary data findings from the view of other researchers. The study received response from 91 traders operating across the Kenya Uganda border as well as 3 key informants who included customs officials.

### **3.2 Kenya-Uganda Border: Critical Evaluation**

Compared to the other borders such as those of Mozambique and Tanzania, the border between Kenya and Uganda is relatively short.<sup>113</sup> The site selected for intensive monitoring was Busia. These two cities cater for Lake Victoria routes. All the border sites handle at least some quantity of the following products: agricultural products (food and beverage): maize, beans, fish, cassava, wheat flour, sugar, rice, bread, juices and soda. Industrial Goods include: cooking oils and fats, toiletries, petroleum products, beer, wines and spirits, textiles and vehicle/bicycle parts .

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<sup>113</sup> Ackello-Ogutu, C. and Echessah P. 2010. *Unrecorded cross-border trade between Kenya and Uganda: Implications for food security*. A USAID SD Publication Series; Office of Sustainable Development Bureau for Africa. Technical Paper No. 59. Washington, DC: USAID.

Busia border post which the study concentrated on is located along the Uganda/Kenya border has no physical barrier separating the two countries hence making the border porous. There are two important unofficial crossing points along the border that is Sophie and Malachi that are monitored in addition to the main gate. The persons involved in informal trade in these areas are mainly women and men cyclist who provide transport services. The market days for Busia are on Wednesdays and Saturdays on the Kenyan side. Whereas on the Ugandan side, there is a central gathering point for agricultural commodities around the “no-mans’-land”. There is a forex bureau in Busia but it’s not utilized by ICBT traders. The currency conversion is handled through the informal system of Money Changers.<sup>114</sup>

A significant proportion of informal traders at the border post are women, who are vulnerable to harassment, abuse, and health risks including HIV/AIDS.<sup>115</sup> Widowhood has made most women assume roles of household heads to take care of themselves as well as the orphans. It was reported that women had assumed roles of their drunkard husbands by paying school fees, healthcare and looking after their families. These responsibilities are the main driving force into ICBT. Women dominance in ICBT was linked to their easier access to loan facilities as compared to their male counterparts. FGD participants reported that women were regarded to be trustworthy and had mobilized themselves into cash round groups (mainly called “merry-go-round” which enable them to service loans.

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<sup>114</sup>EABC (East African Business Council), 2012. A Study on non-tariff Barriers (NTBs) and development of a business climate index in the East Africa Region. March.

<sup>115</sup>Karugia, J.T. Waithaka, M.M, Freeman, A.H., Prabhu, R. Shiferaw, B., Gbegbelegbe, S., Massawe, S., Wanjiku, J. and Kyotalimye, M. 2008b. Responding to the food price crisis in Eastern and Southern Africa: Policy options for national and regional action. (Draft ASARECA, ReSAKSS and CGIAR Alliance report), Nairobi, August 2008

### 3.2.1 Category of Participants in ICBT

The youth were ranked second in engagement in ICBT because many of them were reported to be orphaned or lacked fees and could not continue with education. However, this was disputed by participants as insignificant factor because most of the youth especially girls were cited to drop out of school and were being taken to neighbouring countries to perform petty jobs as housemaids, barmaids and as sex workers.<sup>116</sup> One elderly male FGD participant observed that: *“these young girls have helped in child trafficking as a result of money enticements. These young girls usually come to Uganda and convince other young girls to join them in Kenya for better life after conniving with Kenyan lords who have gained out of selling them to people who need them.”* [Male FGD participant, Busia]

The Persons with Disabilities (PwDs) were ranked third in participating in Kenya – Uganda ICBT. They are mainly employed to provide transport of ICBT materials on their wheel chairs. The PwDs are neither intercepted by the customs staff nor by the revenue collectors and are able to cross the border so many times without restrictions. The PwDs mainly constituted men although there were a negligible number of women among them. Men were said to be the least participants in ICBT because they fear to secure loans to run business. Besides, the few who had secured loans had not used them productively because they ended up marrying other women, drinking as well as spending it on prostitution.<sup>117</sup> Besides, men had failed to acquire the investment capital due to limited

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<sup>116</sup>Nzuma, J.M. 2010. An Economic analysis of the impacts of trade liberalization on Kenya’s maize sector. University of Guelph, Canada, Unpublished PhD Thesis

<sup>117</sup> Rich, K. and Lundberg, M. 2012. Multimarket model and policy: An application to Madagascar. Mimeo, Development Economics Research Group/Poverty reduction Group, Environment and Infrastructure Team. Washington, DC: World Bank.

savings and heavy family responsibility and expenditure. Thus they cannot effectively compete with their female counterparts. One male respondent noted that: *“Women are suckers to our financial resources and they depend on us for everything. As a result, many men have ended up in brokerage services, and casual labour of loading and offloading trucks, working in gardens, and rearing of cows and goats.”* [Male FGD participant, Busia]

### **3.3 ICBT Activities**

Diverse ICBT activities were reported to be conducted by border communities only separated by nationality but interact with each other very often for activities like trade. Trading in agricultural and manufactured goods across the border was reported to be the major ICBT activity. This is mainly carried out between 5.00 am and 9.00 am and from 3.00 pm to 9.00 pm. However, the peak times differed among border posts and individual traders.<sup>118</sup> During the FGD meeting, one male FGD participant observed that: *‘the choice of time depends on how well it works for individual traders’* [FGD participant, Busia].

Participants/traders reported use of informal routes due to restrictions at the boarder points in regards to certain items. This was mainly with regard to beans, milk, firewood and charcoals which fetched high returns and attracted many customers. The majority of

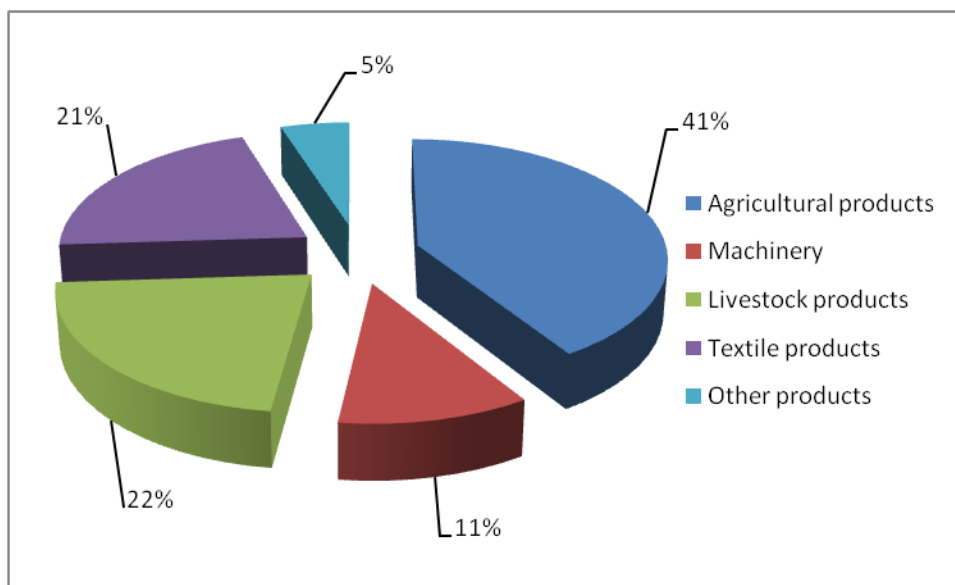
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<sup>118</sup> Weliwita, A., Nyange, D., and Tsujii, H. 2013. Food demand patterns in Uganda: A censored regression analysis of microdata. *Sri Lankan Journal of Agricultural Economics* 5(1): 9-34.

the ICBT traders involved in food products are also engaged in small-scale agricultural production.<sup>119</sup>

### 3.3.1 Commodities Traded in ICBT

Mauyo et al., assert that trade between Sub-Saharan Africa and the developed world has always been in a narrow range of traditional commodities such as tea, coffee, tobacco, cotton, sisal and minerals.<sup>120</sup> At the same time, trade within Sub-Saharan Africa not only remains woefully low in physical and value terms but is also fraught with selfish regulations and policies adopted by the incumbent governments.



**Figure 3.1 commodities stranded in ICBT**

<sup>119</sup>Wood, S. and You, L. 2012. *Assessment of strategic land use options for Uganda. Potential economic benefits of increased agricultural productivity in Uganda*. Washington, DC: The International Food Policy Research Institute.

<sup>120</sup> Mauyo, J. R. Okalebo, R. A. Kirkby, R. Buruchara, M. Ugen and R.O. Musebe (2012); *Legal and Institutional Constraints to Kenya-Uganda Cross-Border Bean Marketing*



Respondents were asked to indicate to what extent they felt the following type of commodities should be tax free; 41% who were the majority indicated agricultural products, 11% were for machinery while the least (5%) indicated other products. Barrett assets that one way of categorizing the commodities is to distinguish them as agricultural products and inputs; manufactured consumer goods, including textiles; or minerals and forest resources.<sup>121</sup>

Seasonality was reported to be the key determinant for the types and quantities of commodities traded under ICBT especially for agricultural commodities. This explains the demand and supply forces on either side across the borders as one of the key informant had this to say: *“Seasonality is a key determinant for the types as well as quantities of commodities traded. For example during times of food scarcity trucks of matooke are taken to Kenya while beans are brought in to Uganda”* [KRA Customs Official].

Commodities traded in ICBT include forest products such as timber, firewood and charcoal, agricultural and manufactured goods. The agricultural commodities include cereals, beans, cow peas, cabbages, cassava, groundnuts, fish, tomatoes, matooke, ripe bananas, Irish potatoes, yams, and carrots (food items). The agricultural commodities traded were reported to be influenced by the food items grown around the border and neighbouring districts. The driving force for exportation of these products was linked to the high prices offered as a result of the high demand and scarcity of food items, poor soils and harsh climatic conditions that are not conducive to agricultural

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<sup>121</sup> Barrett, C. (2008). Smallholder market participation: concepts and evidence from Eastern and Southern Africa. *Food Policy* 33:299–317

production.<sup>122</sup> Hawking of second hand shoes and clothes, plastic wares, radios, watches, padlocks, were also mentioned as items of ICBT activity. On the other side of the border, a male FGD participant who operates an eating place in Sofia suburb of Busia border post remarked that: *'Most of the Kenyan border population cross and eat from Sofia because of their limited food options.'* [Male FGD participant, Busia]

The manufactured goods traded include crafts, cooking oil, salt, paraffin, wheat flour, plastic wares, electronic goods, second-hand clothes, soap, mattresses, perfumes, polyethene bags, leather products, electronic goods, building materials, bicycle parts, drinks, human and veterinary drugs, and general merchandise. The importation of these items was linked to the low cost prices in the countries of manufacture and high profit margins when sold in Uganda. A female FGD participant had this to say: *'I can get salt from Kenya for as low as UGX 100- 150, paraffin can be bought for as low as UGX 900 per litre, a child's clothing can be acquired for as low as UGX 100 and a man's shirt can be bought at UGX 500 which is not the case in Uganda.'*

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<sup>122</sup> Lutz C, Kuiper WE, van Tilburg A (2010) Maize market liberalisation in Benin: a case of hysteresis. *J Afr Econ* 16:102–133



**Figure 3.2 Main commodities the ICBTs trade**

The direction and composition of trade both confirm the common view that Kenya, in relation to her neighbors, has a comparative advantage in manufactured and processed goods. Uganda informally has been exporting to Kenya an estimated 84,250 metric tons (MT) of maize valued at about \$12.4 million.<sup>123</sup> Kenya produces about 200,000 MT of beans annually, but this falls short of consumption requirements.<sup>124</sup> Part of the excess demand is met by imports from Uganda and Tanzania. Kenya has been exporting an estimated 9,300 MT of beans that were not registered by the customs officials. These imports were valued at close to \$5 million, using an average price of \$520 per MT. About 13,000 MT of sorghum, simsim, choroko, millet, groundnuts, and rice, with a total value of \$5 million, were also imported from Uganda. In addition, Kenya also imported

<sup>123</sup> Rashid S (2014) Spatial integration of maize markets in post-liberalised Uganda. *J Afr Econ* 13:102–133

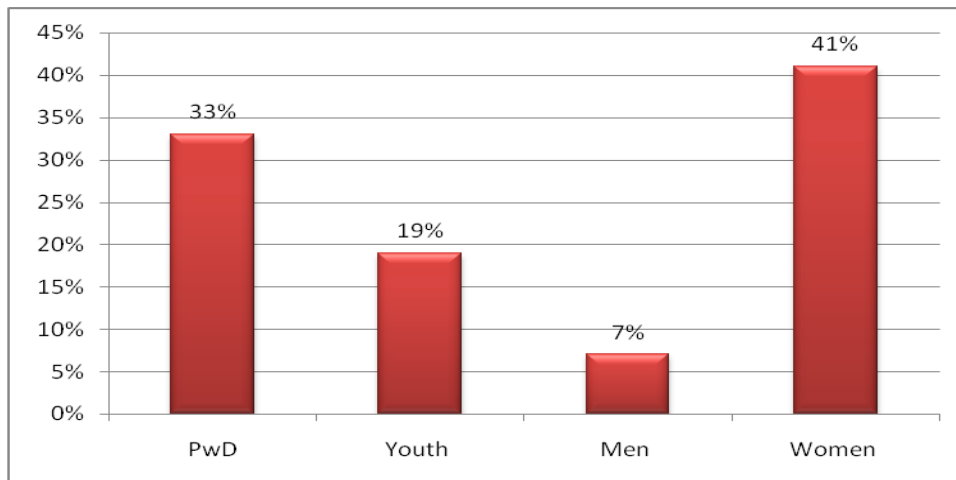
<sup>124</sup> African Development Bank, United Nations Economic Commission for Africa. 2009. “Assessing Regional Integration in Africa IV: Gender and Intra-African Trade, The case of East Africa”. Nairobi, Kenya.

bananas and other fruits valued at more than \$0.5 million and roots/tubers estimated at about \$2 million.<sup>125</sup>

ICBT was balanced by exchange of food products for manufactured goods, minerals and forest resources. Discrimination in favor of agricultural commodities is therefore likely to generate a bias in estimates of the unrecorded trade. Commodities are also categorized according to their origin as follows: locally produced in country under study; re-exports originating from a third country; and goods in transit. There have been cases of goods in transit being off-loaded for sale before reaching their final destination thereby evading official records and payment of duty.

### 3.4 Beneficiaries of ICBT

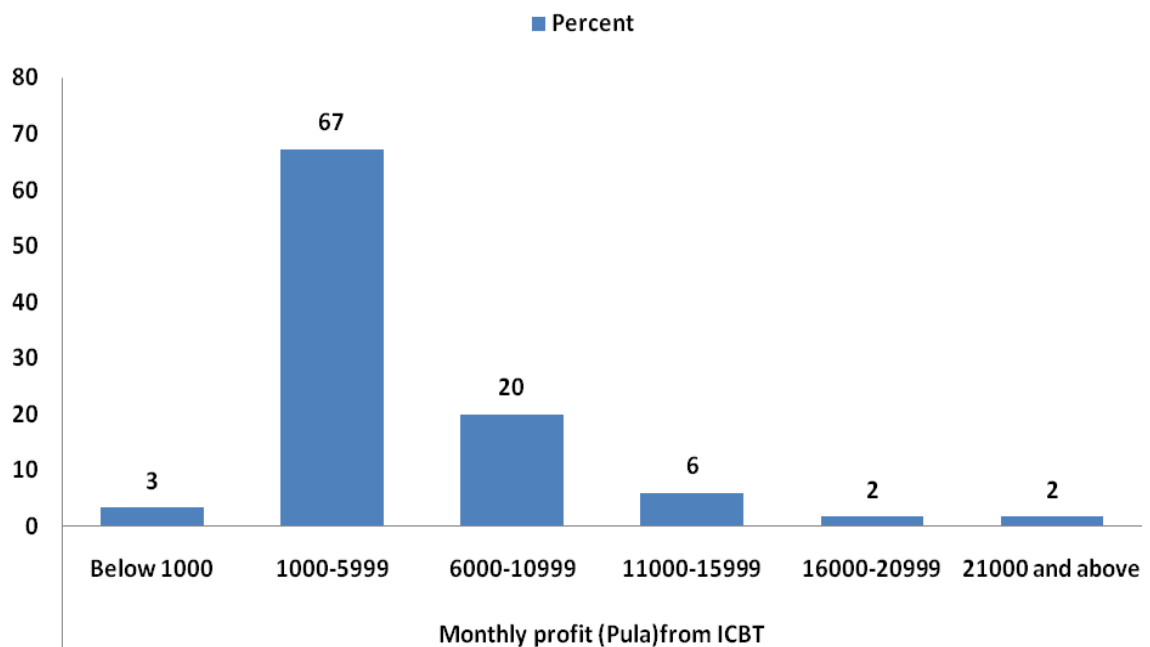
At Busia border post, the major beneficiaries of ICBT were reported to be women and PwDs.



**Figure 3.3: Beneficiaries ranking**

<sup>125</sup> African Development Bank, United Nations Economic Commission for Africa. 2009. "Assessing Regional Integration in Africa IV: Gender and Intra-African Trade, The case of East Africa". Nairobi, Kenya.

The women were reported to have benefited by supporting the education of their children as well as providing for their households. One female FGD participant noted that: *“as for me I feed my children as well as dress them”* [Female FGD participant, Busia]. Women have also been able to secure and service loans while engaging in ICBT. Many women testified that they have acquired plots of land and constructed houses for rent as a result of involvement in ICBT. One female FGD participant indeed noted that: *“for me I brew waragi and sell it to Kenyans because of the loan I got and I have been able to service it adequately. I have also been able to buy a plot of land in Bugiri where I intend to settle with my children during my old age.”* [Female FGD participant, Busia].



**Figure 3.4** The average monthly profit made by the ICBT traders

Women also confessed that they were earning more money than men. However, they reported losing some of it to their husbands who take the entire capital upon sighting it. One female FGD participant noted that: *“our men if you don’t keep the money very secretively, a man can carry the whole of it if he comes across it. For me I keep my*

*money on my waist and the man can't eat on it except my child.*''[Female FGD participant, Busia].At Busia border, PwDs were ranked second in benefiting from ICBT and this was linked to the sympathy and favours from the customs and other revenue officials from either side of the border. They transact their trade without any interference. Besides, the PwDs have also organized themselves into groups through which they have accessed financial support as well as access to other resources.<sup>126</sup> In Busia these groups included Foster Group for Disabilities, Syoteba Syobona Disability Group and Widows and Orphans Group for Disabilities.

The youth on the other hand were ranked third in benefiting in ICBT but had not registered any significant achievement because they spend their earnings on social enjoyments such as discos, playing cards, drinking, and promiscuity.<sup>127</sup> One elderly FGD male participant noted that: *'Our youths love quick and soft life'* [Male FGD participant, Busia]On the other hand, the men were reported to benefit less in terms of development since they spend much on polygamous unions, drinking and are weak hearted in accessing and utilizing loans. As for the children, they have minimal involvement in ICBT. The few children in ICBT were mainly reported to be errant children who had escaped from their parents just to come and earn money. It was reported that these children keep waiting at the gate for the PwDs with wheel chairs so that they can provide support services by pushing the PwDs while transporting their goods across the border points. As for the Karamojong children, they pick grains from produce markets,

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<sup>126</sup>IGAD (Intergovernmental Authority on Development). 2011. "Study on the status of Cross Border Trade in the IGAD region".

<sup>127</sup> Musonda, M. 2010. "Overview of Informal Trade in the SADC Region: Where are we now?".Regional Workshop for SADC Informal Traders 11-12 February. Harare, Zimbabwe.

accumulate the quantities and sell them across. One elderly woman noted that: *“Karamojong children save every coin they get and accumulate big chunks of money which they carry back to their homes.”* [Elderly woman, Community FGD, Busia].

As to why they don't attend school, one female participant remarked that: *‘If parents of these children in Karamoja have not controlled them, how do you expect us in Busia to manage them?’* [Female FGD participant, Busia]. Besides, the children who are schooling and staying with their parents were reportedly to be periodically involved in ICBT during holidays. They do it with the consent of their parents in an effort to raise school fees. The positive aspects of informal cross-border trade include availability of markets, food security, and income.<sup>128</sup> The role played by ICBT in terms of income, employment, and market to food producers could be substantial. Opportunities offered through cross-border markets should be explored as these markets provide an important outlet for producers who may not have access to domestic markets due to poor infrastructure and internal marketing inefficiencies.

### **3.4.1 Constraints Experienced in ICBT**

Traders involved in ICBT experience several obstacles ranging from infrastructure, legal and administrative framework which often results in increase in the cost of doing business and market distortion. The cost of goods entering Uganda becomes expensive thereby reducing profit margins significantly.<sup>129</sup> Profit margins remain small leaving

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<sup>128</sup> Ugandan Bureau of Statistics. 2009. “Informal Cross Border Trade 2009- 2010 Report (11-35)”. Kampala, Uganda

<sup>129</sup> Beghin, J., and Bureau, J.C. 2011. Quantitative policy analysis of sanitary, phytosanitary and technical barriers to trade. *Économie internationale* 87, 107-130.

limited funds for reinvestment; hence traders tend to remain poor. The traders cited lack of access to finance as a critical problem to initiate and even expand their businesses. They cannot access finance from banks and are unable to solicit finance from other formal financial institutions as they are considered to be involved in high risk businesses. Hence they fund their activities from their personal savings or through backstreet moneylenders, merry-go-rounds, friends and relatives. Only a few are able to raise money from banks or savings and credit institutions. The stringent measures demanded by banks compound the situation for this partially developed sector. The high interest rates attached to loans from financial institutions have especially affected women's abilities to save and re-invest in businesses.<sup>130</sup>

The fluctuation of exchange rates sometimes results into losses especially when the goods have to be sold in Uganda at prices lower than the equivalent of the cost price in the neighbouring countries.<sup>131</sup> The currency fluctuation was attributed to lack of a common currency in the EAC and monetary policy. Adoption of common currency and harmonization of monetary policies could enable informal cross border traders to carry out trade easily without incurring much loss and creating unnecessary demand for hard currencies. Informal traders are asked to pay heavy penalties and bribes when caught with goods from neighbouring countries hence impacting negatively on the growth of their businesses. Women further reported incurring losses as a result of unfair trade with their clients who take their goods on credit and fail to effect payments. One female FGD

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<sup>130</sup>Delgado C., Minot, N., and Tiongco, M. 2013. Evidence and implications of nontradability of food staples in Uganda 2010-2013. Presented at the American Agricultural Economics Association Annual Meeting, Montreal, Canada, July 27-30.

<sup>131</sup> Karugia, J., Gbegbelegbe, S., Nzuma, J., Massawe, S., Freeman, A., Bahiigwa, G., Berisha-Krasniqi, V., Bouet, A., Dimaranan, B., Mevel, S. and Roy, D. 2008a.



participant who deals in ICBT mentioned that: *‘These customers are very unpredictable. They start by paying at first but when they get used to us they begin telling us that they have not fully sold the merchandise. This has retarded our businesses.’* [Male FGD participant, Busia]

In addition, women in informal trade complained of excessive harassment especially when men do the body search for any hidden goods. They complained of embarrassment and discomfort and would prefer any inspection to be done by women colleagues at the border posts.<sup>132</sup> Other problems faced by women who participate in ICBT included domestic violence, sexual harassment, loss of goods to customs/police officials, force to pay bribes, and fights with fellow traders as well as imprisonment/detention. As for men who participate in ICBT, they mainly face imprisonment/detention and losses of goods to customs and police officials. Other problems faced include high transport costs, high taxes; harassment for identification, charged when convicted, and restriction from entry and markets.

Although some border posts had restrictions on child participation in ICBT, the children who involve themselves mainly face problems of imprisonment/detention, loss of goods to customs officials/police, cheating by adults, beatings by police and parents, as well as child labour charges. Lack of trade facilitation makes trading along the border lengthy and costly.<sup>133</sup> Crossing formal borders can take days at times and costs of clearance,

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<sup>132</sup> Musyoka, M.P. 2012. An analysis of urban household food demand in Nairobi, Kenya. Egerton University, Department of Agricultural Economics and Agri-Business Management, Unpublished Thesis.

<sup>133</sup> WFP/FEWS-Net. (2006), *Informal Cross Border Food Trade in Eastern Africa*. Issue 17. January 2006. Nairobi, Kenya.

processing fees, tariffs and taxes are generally above the value of goods being traded informally.

Inadequate border infrastructure including proper warehousing facilities, community markets, transport networks and especially functional and adequately staffed border institutions and agencies makes it unattractive, inefficient and sometimes downright dangerous to trade via formal routes. Lack of adequate public and private transportation systems causes delays, forcing traders to miss community market days and their consumable goods especially agricultural produce to perish.<sup>134</sup> Border infrastructure issues should be addressed in order to enhance the movement and security of traders and their goods.

Limited access to finance also plays a prominent role since traders are not bankable and transactions are cash based or bartered. Most traders lack working capital and tangible business assets making it difficult for them to get financing.<sup>135</sup> The absence of banks in the rural areas makes access to financial services virtually impossible. Since policymakers generally regard ICBT as illegal, the scope and opportunities for developing ICBT related trade finance facilities have not been adequately explored. Access to finance could provide a tremendous incentive for informal traders to join the

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<sup>134</sup> Streatfeild, J. (2012). *An Examination of Regional Trade Agreements: A Case Study of the EC and the East African Community*. Tralac Working Paper, November.

<sup>135</sup> Oyejide T. A. (2012), *Regional integration and trade liberalization in Sub-Saharan Africa: An AERC Collaboration Research Project Summary Report*. AERC Special Paper, No 28, AERC, Nairobi.

formal economy. Limited market information makes it difficult for informal cross border traders to tap into regional and local market opportunities.<sup>136</sup>

In most African regions, the provision of information on cross-border markets is at best, minimal. Since most traders operate outside regular business circles, market information on prices, demand and supply is generally not available to them.<sup>137</sup> They generally rely on informal sources which sometimes give unreliable information. Information on policies, regulations, agreements and protocols for the facilitation of cross-border trade is equally difficult to obtain. These should be published in reader friendly language and conspicuously displayed at border points in order to enhance communication and expedite implementation. More must be done to provide market intelligence services at key border points to facilitate flow of information on prices, demand and supply but also policies and regulations affecting cross-border trade.<sup>138</sup>

Corruption and Insecurity at the border fuels ICBT. Corrupt law-enforcement agencies often take advantage of the local traders' lack of knowledge on customs procedures to take bribes. Traders carrying money run the risk of having money seized. Some regions have recorded high incidences of rapes.<sup>139</sup> Lack of effective policing at border points and market ports increases the incidence of crimes against traders, forcing them to travel in

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<sup>136</sup> Tumuhimbise, C. and Ihiga, S. 2010. A survey of non-tariff barriers that affect Ugandan imports and exports within EAC and COMESA countries.

<sup>137</sup> Mwaniki, K. (2013); the Impact Of Informal Cross Border Trade On Regional Integration In SADC And Implications For Wealth Creation.

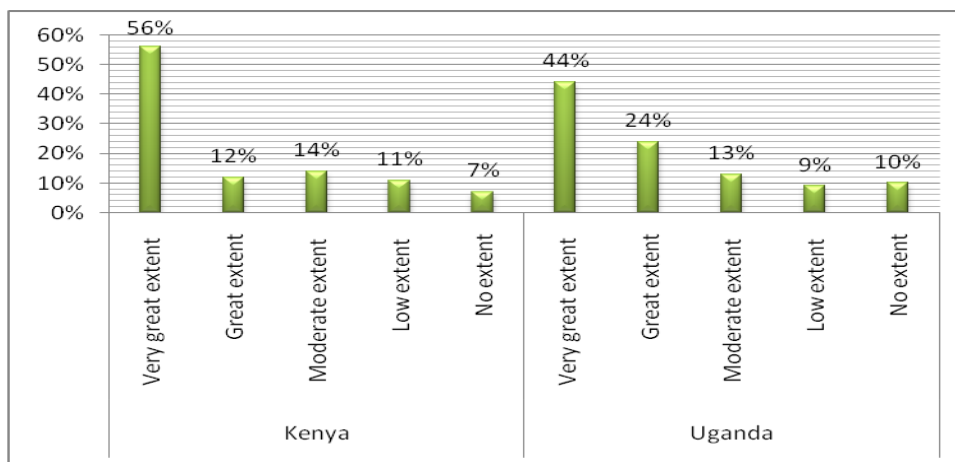
<sup>138</sup> Kimenyi, F. 2008. Rwanda: Country Welcomes Kenyan Decision to Reduce Number of Weighbridges. The New Times (Kigali), 11 August 2008.

<sup>139</sup> Goletti, F. and Rich, K., 1998. Policy issues and policy analysis for post-harvest research. Washington DC: International Food Research Institute, Washington DC.

groups to protect themselves, or simply use informal routes mainly called “panya routes”. Low knowledge, education and business management skills are also at the core of addressing the ICBT issue. ICBT traders are generally less educated and often lack basic business management skills. Business skills are generally acquired via traditional means and numeracy as well as literacy levels are notoriously low in some regions.<sup>140</sup> This is exacerbated by a lack of knowledge and understanding of customs procedures and regional trade protocols. Conducting border community sensitization campaigns and empowering local traders with basic knowledge on management and customs procedures could go a long way in addressing the ICBT issue.

### 3.4.2 Government Taxation Policies

Respondents were asked the extent to which government taxation policies influence informal cross border trade, Majority as shown by 56% in figure 3.5 indicated Kenya while 44% indicated Uganda.



**Figure 3.5 Government Taxation Policies**

<sup>140</sup> Umar, A. (2007), Risk Taking for a Living: Trade and Marketing in the Somali Region, Ethiopia. Addis Ababa, Ethiopia: UN-OCHA/Pastoral Communication Initiative Project.

In support of the above findings respondent's indicated that there was not enough information disseminated by official sources or people who know it. The researcher did not find evidence of official structures for disseminating such information to women and even male traders. The average male trader or transporter interviewed demonstrated more knowledge of the protocol as well as confidence at dealing with customs/immigration using their acquired knowledge. Further, customs officials were of the view that male traders had proved more difficult to handle, this was as a result of gangs formed against the custom official and every time the authorities tried to regulate the trade attacks were inevitable. Women traders did not show similar knowledge and assertiveness which implied that customs officials were more likely to be more careful to do things right when handling male traders than female traders.

Closely related to the women's knowledge gap is the age old rampant corruption that thrives on ignorance, fear and impunity of government officials at border posts. Corruption and impunity make it difficult for women traders to believe that they should expect professionalism and adherence to the law when going trading across borders. This is the main reason for their preference for aliases such as middlemen and brokers who appeared to smooth the way and shield women traders from what could be unpleasant confrontation with officialdom.<sup>141</sup> It may appear that there is a possibility that government officials at the border crossings are silently sabotaging the protocol for their selfish gain from corruption. The conspiracy may include security personnel, local council officials and administration personnel who stand to lose money and/or influence if the protocol is implemented in full.

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<sup>141</sup> Mshomba R. (2010), *Africa in the Global Economy London*: Lynne Rienner Publishers.

The study also established that conflicting local council by-laws on both sides of the Kenya and Uganda border have not been reviewed with the signing of the protocol.<sup>142</sup> Local council officials present at the borders were seen stopping people they suspected to be traders and even attempting to take away goods they were carrying across the border because they had allegedly not paid some local council tax. Officials interviewed were reluctant to state what exact by-laws were broken but still they felt justified in accosting traders because they know that goods crossing the border must be taxed at a higher rate than locally available goods. The potency of such threats to arrest traders or take away their goods as a consequence of non-compliance appears to be under threat by the EAC protocol so it is in the interest of the officers to prove or at least demonstrate that the more things change-the more they remain the same.<sup>143</sup>

### **3.5 Reasons for Engaging in ICBT**

Informal cross border trade thrives due to a number of factors. The tendency for traders to evade high taxes and other customs levies; bureaucratic licensing; attractive prices offered in neighbouring countries, registration requirements; and local market failures as a result of different policies adopted by the East African States and poor road infrastructure.<sup>144</sup> This latter can result into poor access to domestic markets where Ugandans find it easier to market across the borders of Kenya, Democratic Republic of

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<sup>142</sup> Little, D. (2010), The Global Dimensions of Cross-Border Trade in the Somalia Borderlands. In *Globalization, Democracy, and Development in Africa: Future Prospects*. In A.G. M. Ahmed, ed. Pp. 179-200. Addis Ababa, Ethiopia: Organization for Social Science Research in Eastern and Southern Africa (OSSREA).

<sup>143</sup> Boko, S. H., Balamoune-Lutz, M. and Kimuna, S. R. eds, (2013), *Women in African Development: The Challenges of Globalization and Liberalization in the 21<sup>st</sup> Century*. Trenton, NJ: Africa World Press.

<sup>144</sup> Walsh, J.T. (2006), —New Customs|| , in *Finance and Development, March 2006*, Vol. 43, No. 1, Washington D.C.

Congo, Tanzania and Rwanda rather than to other parts of Uganda.<sup>145</sup> In some cases, due to wider price differentials among the neighbouring countries Ugandans take advantage of existing market niches out of the country. The readily available market in Kenya, Rwanda, Democratic Republic of Congo and Tanzania was mentioned as one the factor facilitating ICBT. One male FGD participant noted that: *“you cannot fail to sell off your item if you take it to Kenya.”*

The Kenyans have liquid capital to buy the trade items and this is a motivation for the traders to increasingly carry their goods across the border. On the other hand, Rwanda was reported to have fewer businesses and commodities to be traded in and this was responsible for the influx of people crossing to Uganda to buy a variety of goods. The political stability and good relations existing between the Ugandans and her neighbours enables citizens from either country to freely cross the border and transact business in search for better livelihood.<sup>146</sup> This has promoted interactions among community members at the border posts. One district level key informant had this to say: *“Neighbours naturally do interact, intermarry, and usually have social gatherings and cultural issues that force them to interact. In due course they are even bound to engage in trade easily more so because of their proximity”* [Security personal].

Furthermore, it was reported that there is, free interaction on the Ugandan side. One key informant at the border post indeed remarked that: *“When these people come to trade in Uganda, they are not limited in any way regarding the need for documentation”*

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<sup>145</sup>Little, P.D. (2009). Unofficial Trade When States are Weak: The Case of Cross-Border Commerce in the Horn of Africa|| , *Research Paper No. 2005/13*, United Nations University/WIDER, Helsinki.

<sup>146</sup> Clarke, G.. (2005). Beyond Tariffs and Quotas: Why Don't African Manufacturers Export More?|| , *World Bank Policy Research Working Paper 3617*, June 2005, World Bank, Washington D.C

[Customs Border Post]. The existence of strict formal laws governing the border posts coupled with the inability to meet these requirements results in use of informal routes as an escape alternative. These include immigration, security, taxation requirements and perceived delays that might hinder them from making quick money. The existence of weekly market days attracts people from across borders to purchase items on either sides thereby facilitating ICBT.<sup>147</sup> At Busia, the low cost prices of some commodities from the respective border countries and availability of ready market for items from Uganda was also noted to be a driving factor for engagement in ICBT.

Informal cross border traders leave their homes and country determined to earn money by buying, and selling, an assortment of products ranging from food items to electronic appliances.<sup>148</sup> It was revealed that traders engage in ICBT as a way to earn income, employment to cater for their families and buy cheap goods across the border points. Thus ICBT is a source of livelihood to people involved in it for survival. A female FGD participant mentioned; *“Most of us came to the border to look for survival. In search for better livelihoods many of us have engaged in trade which has translated into further interactions within these areas ”* [Female FGD participant, Mirama Hills].

The involvement in ICBT was also linked to the lucrative markets offered by the counterparts in the bordering country.<sup>149</sup> The high profit margins obtained were reported

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<sup>147</sup>Helble, M., Sheperd, B. and Wilson, J. (2007). Transparency, Trade Costs and Regional Integration in the Asia Pacific|| , *World Bank Policy Research Working Paper No. 4401*, World Bank, Washington, D.C.

<sup>148</sup> Eastern Africa Community (EAC) (2005), *A Guide for Maize Traders on Regulatory Requirements for Imports and Exports of Maize in East African Community*, EAC, Arusha.

<sup>149</sup> Ackello-Ogotu, C. (2012). Methodologies for Estimating Informal Cross-Border Trade in Eastern and Southern Africa|| , *USAID Technical Paper No. 29*, USAID Africa Bureau, Washington.



to be a driving force for engagement in ICBT. One male FGD participant said that: *“the high market prices for Ugandan agricultural products across have encouraged people to engage in ICBT to fetch high profits and therefore keep in business.”* [Male FGD participant, Busia]. Another female FGD participant noted that: *“A fish of 1-1.5 kg costs UGX 5000 in Kenya so traders have found it profitable to sell it to Kenya at a higher price. This has left us with fish remains popularly known as ‘philly’ or spoilt / skeletal fish.”* [Female FGD participant, Busiaborder].

The scarcity of food supplies in the neighbouring countries could have encouraged people to participate in ICBT. This was emphasized by one female FGD participant indeed noted that: *“our neighbouring countries do not have adequate food supplies because they lack conducive climate and fertile soils that can support growth of food.”* [Female FGD participant, Busia]

Another reason for engaging in ICBT was the preference to buy items at a cheaper cost or being paid in foreign currency which was stronger than the Ugandan currency.<sup>150</sup> At Mutukula engagement in ICBT was linked to buying of goods such as cooking oil and rice from Tanzania at cheaper prices. At Busia border traders revealed that the sale of Ugandan goods to Kenya facilitates the procurement of manufactured goods. Lack of alternative job opportunities was also reported as one of the reasons why people engage in ICBT. At Busia, many people were reported to be unemployed and this had made men, women and PwDs to engage in ICBT. An elderly man from Busia said that: *‘In Busia*

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<sup>150</sup>Engman, M. and Yasui, T. (2005). The Role of Automation in Trade Facilitation|| , *OECD Trade Policy Working Paper No.22*, OECD, Paris

*here we don't have any factory to employ us and this trade has helped to employ most of the people from this border area.''*

### **3.5.1 Important Price Disparities and High Trade Transaction Costs**

Price disparities can in part be accounted for by the existence of significant levels of import duties (in destination countries) and export duties (in exporting countries) on selected commodities. In Ivory Coast and Ghana, for example, agricultural exports have been taxed by a marketing board which contributed to raising their consumer price in formal markets.<sup>151</sup> More generally, while collected tariff rates have more than halved in OECD countries between 2008 and 2013 (decreasing from 4.2 to 1.2), this was not the case in Africa, where the average effective rate remained more or less unchanged (at 17). In fact, in 2014, the average collected tariff rate in sub-Saharan Africa was still close to 15, with trade taxes representing almost 5 percent of GDP.<sup>152</sup>

In this regard, Busse and Shams found that the extent of informal trade is directly correlated with the average applied tax rate (such as tariffs and value-added tax, or VAT) in the importing country.<sup>153</sup> In Uganda, for example, a one percentage point increase in the overall imposed tax rate on imported goods from Kenya led to a 3.8% increase in tax evasion on those same goods.<sup>154</sup> Some traders are also incited to trade informally as they

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<sup>151</sup> Azam, J.P. (2006), —The Welfare Implications of Unrecorded Cross-Border Trade|| in Azam, J.P. (2006), *Trade, Exchange Rate and Growth in Sub-Saharan Africa*, Cambridge University Press, Cambridge.

<sup>152</sup>Nordas, H. K., Pinali, E. and Geloso Grosso, M. (2014).Logistics and Time as a Trade Barrier|| , *OECD Trade Policy Working Paper No. 35*, OECD, Paris.

<sup>153</sup> Busse, M. and Shams R., (2010), Trade Effects of the East African Community: Do we need a transitional fund? *Hamburg Institute of International Economics (HWWA)*. Accessed January 30, 2012.

<sup>154</sup>Hunter, F. (2010). Uganda- Kenya Free Trade and Auto Industry: Effects on the Spatial Organization of production of finished Autos. *World Economy* 15(1): 65-81

are unaware or unable to apply (formal) preferential tariff rates or tax exemptions for which they are eligible in the importing or exporting country. A recent report highlights that some qualifying COMESA traders have been unable to benefit from the duty-and quota-free access in the COMESA market due to their inability to obtain the necessary documentation such as certificate of origin, to enable them to qualify for duty-free status (as key documents are issued in capital cities and large commercial centers, away from where actual cross-border trade is conducted).

Obtaining the required documents is not only expensive, but also inaccessible to small traders. As a consequence, some of these traders have been inclined to trade informally. More importantly, formally traded goods might be subject to non-transparent, complex or non-harmonized regulatory measures in the importing and exporting country, which contribute to augmenting trade transaction costs associated with formal trade and thus further increase price disparities between formally and informally traded goods.<sup>155</sup> This in turn is likely to incite traders to avoid formal trade-related regulations and duties. Several studies examining the informal economy in general indeed emphasize the strong correlation between the intensity and complexity of regulations (number of enforceable regulations) and the size of the informal economy. Trade Transaction Costs (TTCs) arising from official import and export-related procedures, including Customs compliance costs, have been estimated to range between 1 and 15% of the trade transaction value.<sup>156</sup> They include direct as well as indirect costs. Some costs are directly

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<sup>155</sup>Meagher, K. (2012), Informal Integration or Economic Subversion? Parallel Trade in West Africa. In *Regional Integration and Cooperation in West Africa: a Multidimensional Perspective*. R. Lavergne, ed. Pp. 165-187.

<sup>156</sup>Peberdy, S. A. (2010), Border Crossings: Small Entrepreneurs and Cross-Border Trade Between South Africa and Mozambique. *Tijdschrift voor Economische en Sociale Geografie*. 91 (4): 361-378.

related to the level of regulation; others arise due to differences in regulations across countries.

The extent and impact of such transaction costs actually vary depending on the quality of border processes and services in the importing and exporting country, the geographical situation of the country (landlocked or not), the type of good that is traded (agriculture or manufactured goods) and the type of company that is trading (SMEs or larger enterprises).<sup>157</sup> Trade transaction costs in intra-sub Saharan Africa trade are substantially higher (and more obstructive) than those for other African countries due to the relatively low efficiency of customs procedures and institutions in that region.

Similarly, perishable agricultural and food products are often subject to additional trade-related procedures to ensure compliance with sanitary and phytosanitary requirements. This can lead to a considerable increase in border process fees and clearance time per consignment, hence leading to higher TTCs.<sup>158</sup> In addition, perishable agriculture and food products are more vulnerable to delays at the border; hence trade in such products might be more affected by TTCs than other goods. Likewise, MSMEs often do not have a rich track record with Customs authorities and are thus classified in a higher risk category. As a consequence, they are more frequently subject to costly documentary and physical cargo checks, which, in turn, contribute to increasing TTCs (which are relatively high in proportion to their sales and turnover). Furthermore, MSMEs often have lower

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<sup>157</sup>Deardorff A.V. and Stern R.M. 2012. *Measurement of non-tariff barriers*. OECD Economics Department Working Papers 179. Paris: OECD.

<sup>158</sup>Lesser C., Leeman E.M. 2009. "Informal Cross Border and Trade Facilitation Reform in Sub-Saharan Africa Final Report OECD" Trade Policy Working Paper No. 86. Paris, France.

capacities and resources to internalize such costs. This might in part explain why often these firms are involved in informal cross-border trade.

Beyond the costs they bear, regulatory requirements are sometimes also unknown or unclear to traders. In recent surveys and workshops conducted in the East African Community (EAC) and COMESA, for example, traders have consistently cited lack of information on regulatory requirements such as quality standards, customs documents and procedures and certificates of origin and conformity, as a key constraint towards formal cross-border trade in the region.<sup>159</sup>

A recent EAC report for example notes that the lack of information on regulation compels many traders to engage in unrecorded trade across the borders. In some cases, traders are aware of the mandatory trade-related requirements yet have difficulties complying with the latter.<sup>160</sup> In Uganda, for example, the only offices that can provide phytosanitary certificates required for export are located at or near the Entebbe airport, and may thus be difficult to access for traders located in remote areas e.g. Busia. Generally, informal trade surveys pinpoint that the existence of non-transparent, complicated or costly import, export and customs formalities and charges in the importing and exporting countries constitute important obstacles to formal trade in sub-Saharan Africa, particularly for SMEs which often do not trade large quantities.<sup>161</sup>

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<sup>159</sup>United Nations Entity for Gender Equality & the Empowerment of Women. 2009. “Who responds to Women Informal Cross Border Traders?”. Geneva, Switzerland

<sup>160</sup> USAID (United States Agency for International Development). 2012. “Transport and logistics costs on the Lomé-Ouagadougou corridor”. West Africa Trade Hub Technical Report

<sup>161</sup> Ogutu C.O. Echessah P.N. 2012. “Unrecorded Cross-Border Trade between Tanzania and her Neighbour: Implications for Food Security (19-23)”. Tanzania.

Among the wide range of regulatory requirements facing traders, customs procedures, formalities and charges have often acted as important barriers to formal trade, contributing to raising TTCs. According to the United Nations Conference on Trade and Development (UNCTAD), the average customs transaction in Africa involves 20–30 different parties, 200 data elements, 30 of which are repeated at least 30 times and the re-keying of 60–70 percent of all data at least once.<sup>162</sup> On average, Africa has the longest customs delays in the world. Consignments commonly experience substantial and unpredictable delays of 30 to 40 days before release from customs control.<sup>163</sup>

Not only are the delays long, they are also costly. Recent OECD work also emphasizes that the barriers to formal South-South trade, including intra-regional trade in sub-Saharan Africa, are often more important than barriers to North-South or North-North [formal] trade.<sup>164</sup> In addition, technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS), such as quality control, packaging and sanitary requirements, might also raise the price of formally traded commodities in the importing country and as such incite entrepreneurs to trade informally. Traders in sub-Saharan Africa not only face costs for complying with such regulations or lack information on the latter, they often do not have the capacity to implement them. Many MSMEs and farmer

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<sup>162</sup>Njiwa, Timothy Nthambi and John Chirwa. 2010. “Reconnaissance Survey Report of ICBT at STR implementing borders of Zambia, Malawi and Zimbabwe”. COMESA, Lusaka, Zambia.

<sup>163</sup>Wood, S. and You, L. 2012. *Assessment of strategic land use options for Uganda. Potential economic benefits of increased agricultural productivity in Uganda*. Washington, DC: The International Food Policy Research Institute.

<sup>164</sup>Jayne TS, Zulu B, Nijhoff JJ (2006) Stabilizing food markets in Eastern and Southern the effects of NCPB marketing policies on maize market prices in Kenya. *Agric Econ* 38:313–325

groups lack the financial and human resources needed to upgrade their products to meet standards and technical regulations applied in the importing country.<sup>165</sup>

### **3.5.2 Obstructed Entry/Exit of Certain Goods and Lack of Formal Trade Finance**

Furthermore, informal cross-border trade might be motivated by the existence of import quotas in the importing country or export bans in neighbouring exporting countries. In Zimbabwe and Nigeria, the government imposed important quantitative restrictions on selected imports such as rice which limited their formal entry into the country and triggered informal trade.<sup>166</sup> When in 1995, the Nigerian government decided to lift these restrictions; it helped divert trade flows back to the formal market. Similarly, in Malawi, Zambia and Zimbabwe, the government has maintained export bans on cereals, which have limited formal export flows of these commodities to neighbouring countries in 2004-2007.<sup>167</sup>

In addition, measures that negatively affect access to foreign currency and to trade finance can also motivate small firms and entrepreneurs to trade informally. African countries that introduce foreign exchange controls when faced with balance of payment problems impede the entry of formal imports, as traders are unable to convert their currency into the currency of their trading partner. In addition, when traders have

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<sup>165</sup> Campenhout B. (2007). Modeling trends in food market integration: method and an application to Tanzania maize markets. *Food Policy* 32:112–127

<sup>166</sup> Ariga J, Jayne TS, Njuki S (2010) Staple food policies in Kenya. A paper prepared for the COMESA policy seminar on variation in staple food prices: causes, consequence, and policy options, the Comesa-MSU-IFPRI African Agricultural Marketing Project (AAMP), Maputo, Mozambique, 25–26 Jan 2010

<sup>167</sup> Ackello-ogutu, Chris (2010), “Unrecorded Cross-Border Trade between Kenya and Uganda” Implications for Food Security. SD Publication Series; Office of Sustainable Development Bureau for Africa.

difficulties in contracting formal credits, they might turn to informal sources of finance. This can in turn provide additional incentives to trade informally. Ogutu, for example, finds that when credit is used in cross border trade in the Horn of Africa, more than 95% is obtained informally from kinsmen or friends since very few traders have had access to formal sources of finance in the reviewed periods.<sup>168</sup> This finding is corroborated by the latest World Bank/IFC Enterprise Survey which indicates that more than 30% of the respondents interviewed identify access and cost of finance as a major impediment to their domestic operations.<sup>169</sup>

### **3.6 Conclusion**

The chapter has reviewed interview guides, questionnaires and secondary data findings and also some of the scholarly works on the informal cross border trade between Kenya and Uganda. From the chapter some issues have emerged that influence informal cross border trade between Kenya and Uganda- critical evaluation which are; impacts of informal cross border trade, direction and pattern of informal cross-border trade and, likely implications ICBT and liberalization policies which will be analysed in the next chapter.

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<sup>168</sup> Ogutu, Chris, (2013), “Methodologies for Estimating Informal Cross-border Trade in Eastern and Southern Africa”: A USAID SD Publication Series; Office of Sustainable Development Bureau for Africa

<sup>169</sup> Sokol (eds.) (2013), *Customs Modernisation Handbook*, World Bank, Washington D.C. tad/tc/wp(2008)13/final.



## **CHAPTER FOUR: INFORMAL CROSS BORDER TRADE BETWEEN KENYA AND UGANDA: ANALYTICAL EVALUATION**

### **4.1 Introduction**

Chapter three has discussed informal cross border trade between Kenya and Uganda as collected from the questionnaires and interview guides at the boarder point.

The chapter sets stage in order to analyse the emerging issues on ICBT; the raging debate include; impacts of informal cross border trade, direction and pattern of informal cross-border trade and, likely implications ICBT and liberalization policies are the emerging issues which will be looked at in this chapter.

### **4.2 Impacts of Informal Cross Border Trade**

Depending on border specificities, regional and local circumstances, ICBT impacts consumers, producers and the government differently. In terms of revenue collection, governments are generally on the losing end.<sup>170</sup> Countries with low revenue bases but higher incidence of ICBT along their borders such as Ethiopia, Benin, Togo, Niger, Mali, Congo, South Sudan, Somalia may experience macroeconomic imbalances due to revenue losses. Coastal countries such as Benin and Togo spend foreign exchange importing merchandise that are later informally sold across its borders on local currencies hence exerting a drain on their economies. However, this doesn't mean that governments should criminalize the practice. Uganda showed that although its government lost potential revenues from ICBT, the economy as whole was better with foreign exchange

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<sup>170</sup>Boko, S. H., Balamoune-Lutz, M. and Kimuna, S. R. eds, (2013), *Women in African Development: The Challenges of Globalization and Liberalization in the 21<sup>st</sup> Century*. Trenton, NJ: Africa World Press

earnings on ICBT amounting to (positive informal trade balances) of US\$ 717 million and US\$ 461 million respectively for 2009 and 2010.<sup>171</sup>

Consumers usually come out as winners, but not all the time. ICBT generally benefits consumers by increasing the availability of goods at affordable prices.<sup>172</sup> However, consumption of tradable goods not subjected to customs clearance and other border formalities may in some cases lead to loss of consumer welfare. Most foodstuff and other commodities traded informally are not subject to Sanitary and Phytosanitary (SPS) measures thus making consumption riskier. Failure to subject goods to standards inspection exposes consumers to health, safety and environmental risks.<sup>173</sup>

Where traded goods are counterfeits or adulterated merchandise, ICBT may have a negative effect on competition. Local producers could fall victim to copyrights infringement, or find they are unable to compete against cheaper (sub-standard) products from Asia and gradually see their market shares erode.<sup>174</sup> This is exacerbated by the fact that African countries generally have weak regulatory frameworks and capacity to protect intellectual property rights and competition. Even ICBT in foodstuff, in spite of its many food security benefits, can in some cases adversely affect the livelihoods of farmers. This is especially true when the crops are brought in more cheaply from neighboring countries,

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<sup>171</sup>Ackello-Ogutu, C. (2012). Methodologies for Estimating Informal Cross-Border Trade in Eastern and Southern Africa|| , *USAID Technical Paper No. 29*, USAID Africa Bureau, Washington.

<sup>172</sup>Peberdy, S. A. (2010), Border Crossings: Small Entrepreneurs and Cross-Border Trade Between South Africa and Mozambique. *Tijdschrift voor Economische en Sociale Geografie*. 91 (4): 361-378.

<sup>173</sup>Lesser C., Leeman E.M. 2009. "Informal Cross Border and Trade Facilitation Reform in Sub-Saharan Africa Final Report OECD" Trade Policy Working Paper No. 86. Paris, France.

<sup>174</sup>Campenhout B. (2007). Modeling trends in food market integration: method and an application to Tanzania maize markets. *Food Policy* 32:112–127

creating a glut, decreasing prices in the local market and leaving local farmers with no market for their products.<sup>175</sup>

Generally, the positive impacts of ICBT outweigh the negative ones. The knock-on effects of ICBT on employment creation, income generation and the improvement of welfare for the participants is an important contribution to the economy from informal trade.<sup>176</sup> In Southern and Eastern Africa, ICBT has proven to lessen the impact of food crises and help reduce price volatility. ICBT can lead to wider market access and a greater availability of goods at affordable prices and can also contribute to macroeconomic stabilization. The example of Uganda where ICBT accounted for 33.8% and 24.6% of total exports trade in 2009 and 2010 respectively provides empirical evidence and demonstrates how beneficial ICBT can be to some African economies.<sup>177</sup>

The following categories of people were observed;

### **Traders**

Traders consist of registered wholesalers, retailers, and informal hawkers/dealers. It will be essential to estimate the proportion of the traders' stocks meant for export as distinct from that going to the local community.<sup>178</sup> This is a particularly important point to

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<sup>175</sup>Engman, M. and Yasui, T. (2005). The Role of Automation in Trade Facilitation|| , *OECD Trade Policy Working Paper No.22*, OECD, Paris

<sup>176</sup>Little, D. (2010), The Global Dimensions of Cross-Border Trade in the Somalia Borderlands. In *Globalization, Democracy, and Development in Africa: Future Prospects*. In A.G. M. Ahmed, ed. Pp. 179-200. Addis Ababa, Ethiopia: Organization for Social Science Research in Eastern and Southern Africa (OSSREA).

<sup>177</sup>Tumuhimbise, C. and Ihiga, S. 2010. A survey of non-tariff barriers that affect Ugandan imports and exports within EAC and COMESA countries.

<sup>178</sup>Karugia, J., Gbegbelegbe, S., Nzuma, J., Massawe, S., Freeman, A., Bahiigwa, G., Berisha-Krasniqi, V., Bouet, A., Dimaranan, B., Mevel, S. and Roy, D. 2008a

consider in sampling and monitoring at border sites where frontier wholesalers and retailers target the bulk of their merchandise for the export market.<sup>179</sup>

### **Agents**

Agents may be registered firms or individuals acting on behalf of importers and exporters.<sup>180</sup> At some of the border towns, public officials double as agents, but this is usually a very closely guarded secret. The involvement of public officials in the informal trade makes it extremely difficult to stomp out the habit of non-registration of goods. It would be in the interest of the officials to bureaucratize the documentation procedures thus boosting the informal sector in which the officials are active participants. Shopkeepers and other retail dealers also act as agents for established importers and exporters by prodding temporary storage facility.<sup>181</sup>

### **Hawkers**

Hawkers generally do not have permanent structures and hence operate at the open border markets and along the roads in competition with the registered retailers. Some of the hawkers may be selling on behalf of the bigger shops and dealers.<sup>182</sup> The hawkers may carry goods which originally came into the country through the official channels, but invariably, the goods are products of smuggling routes and generally sell at relatively

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<sup>179</sup>Musonda, M. 2010. "Overview of Informal Trade in the SADC Region: Where are we now?". Regional Workshop for SADC Informal Traders 11-12 February. Harare, Zimbabwe.

<sup>180</sup>Rashid S (2014) Spatial integration of maize markets in post-liberalised Uganda. *J Afr Econ* 13:102–133

<sup>181</sup>Gunning W. (2001), Regional integration and strategies for trade policy in Sub-Saharan Africa Elbadawi and Ngulu (ed) *Economic development in Sub Saharan Africa* Palgrave

<sup>182</sup>Yaya H. and Meagher K. (2011). Cross Border Trade and the Parallel Currency Market Trade and finance in the context of Structural Adjustment, A Case Study from Kano, Nigeria|| , *Research Report No. 113*, Nordica Afrikainstitutet, Uppsala.

lower prices compared to those quoted by the retail shops. Electronics, textiles, soft drinks, utensils and cooking ware are the most popular items for hawkers. Hawkers may carry the same items back and forth across the border in search of buyers, thus disqualifying the goods they carry from the observational techniques to be described in the subsequent sections of this report.<sup>183</sup>

### **Transporters/Couriers**

This is a fairly visible group at most of the borders with the traders they serve invariably playing a seemingly innocuous role.<sup>184</sup> Transportation is done using trucks, boats, carts, bicycles or by hand/head, depending on load, route and distance. Most of the goods that pass through the unofficial channels are brought in large trucks and are subsequently broken down into smaller parcels which can readily be carried even by children who act as couriers. This method works well for maize, wheat flour, petrol, soft drinks, beer and many other bulky items originating from the commercial centres of the exporting country.<sup>185</sup>

### **Consumers**

Consumers freely cross the border with what the customs officials refer to as hand/head luggage that are never recorded or taxed.<sup>186</sup> Such consumers are not the same as the

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<sup>183</sup>Schneider F., (2006). Shadow Economies and Corruption All over the World: What Do We Really Know?|| , *Discussion Paper No. 2315*, Institute for the Study of Labour (IZA), Bonn.

<sup>184</sup>OECD (2004), *Istanbul Ministerial Declaration on Fostering the Growth of Innovative and Internationally Competitive SMEs*, OECD, Paris.

<sup>185</sup>De Wulf, L. (2005a). Ghana|| , in *Customs Modernization Initiatives, Case Studies*, World Bank, Washington D.C.

<sup>186</sup>Goorman A. (2005). Customs Valuation in Developing Countries and the World Trade Organisation Valuation Rules”, in De Wulf, L. and J.B. Sokol (eds.) (2005), *Customs Modernisation Handbook*, World Bank, Washington D.C.

couriers who also operate in the same fashion but on behalf of bigger traders or transporters, as described above. Due to the fact that border communities from two neighboring countries are generally closely integrated through common dialects and/or, movement across the border is not easy to control. The small transactions made amount to fairly large unrecorded trade between the two countries.<sup>187</sup>

### **Public Officials**

This, for various reasons, is a crucial group in cross border trade and generally consists of customs officials, police officers, provincial/district administrators and cess collectors. They are an important source of secondary information as well as information relating to how trade is conducted across the border.<sup>188</sup> Furthermore, they also operate in other nonofficial capacities which may be of interest.

### **4.3 Direction and Pattern of Informal Cross-Border Trade**

The direction and patterns of informal cross-border trade are likely to be shaped by elements that influence both formal and informal trade. Cross-border trade flows are often determined by the unavailability or low availability of certain goods, due to unfavorable climatic conditions (such as drought or erratic rainfalls) or conflict.<sup>189</sup> The World Food Programme indeed emphasizes that the low availability of certain staple commodities due to bad harvests has greatly influenced informal (and formal) flows in

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<sup>187</sup>Oyejide T.A. (2010). *Policies for Regional Integration in Africa Economic Research Papers*, University of Ibadan, Ibadan, Nigeria.

<sup>188</sup>Ndlela, D. (2006). Informal Cross-Border Trade: The Case of Zimbabwe|| , *Occasional Paper, No. 52*, Institute for Global Dialogue, Johannesburg. Business Action for Improving Customs Administration in Africa (BAFICAA) (2006), *Customs and Business in Africa: A Better Way Forward Together*, July/August 2006.

<sup>189</sup>Stern, R.E. (2005), *Designing a Small Business Tax System that Enhances Growth: Lessons from Africa*, FIAS, World Bank Group, Washington D.C.

southern Africa. Food trade has generally flowed from net food surplus to net deficit countries such as from Mozambique to Malawi). Similarly, the war in southern Somalia in the 1990s has led to a significant increase in informal cross-border cattle trade with neighbouring countries.<sup>190</sup> Likewise, the quality of road transport and communications infrastructure is also likely to influence the patterns of informal and formal cross-border trade flows.

An inefficient roads system can result in poor access to a country's own domestic market or to its established (official) border posts. Traders often choose to use the most effective and economical route, hence possibly avoiding formal border posts.<sup>191</sup> In northern and central Mozambique, for example, farmers often prefer to trade informally with neighbouring Malawi rather than formally with southern Mozambique. Similarly, in some African countries such as Mozambique and Burundi, where border posts in remote areas are not connected to the customs automated network and have low control capacity, traders are requested to go to the capital city to expedite clearance procedures. In such cases, firms might be incited to avoid custom controls and other regulatory requirements and trade informally.<sup>192</sup>

The recent World Bank Logistics Performance Index indeed points to the relatively low quality of transport and IT infrastructure for logistics (quality of infrastructure) in sub-

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<sup>190</sup>Tegegne, G. (1999). Cross-Border Livestock Trade and Food Security in the Southern and South-eastern Ethiopia Borderlands|| , *OSSREA Development Research Report Series, No. 1*, Addis Ababa.

<sup>191</sup>Ishengoma, E., and Kappel, R. (2006). Economic Growth and Poverty, Does Formalisation of Informal Enterprises Matter?|| , *GIGA Working Paper No.20*, German Institute of Global and Area Studies, Hamburg.

<sup>192</sup>Njinkeu, D., Wilson, J.S. and PowoFosso, B. (2008). Intra-African Trade Constraints: The Impact of Trade Facilitation, April 17, 2008. Paper prepared for the African Economic Research Consortium (AERC)- World Bank Workshop on Trade Costs and the Business Environment: A Focus on Africa.

Saharan Africa, and more particularly in eastern Africa.<sup>193</sup> The related survey conducted by the World Bank amongst logistics professionals confirms that the quality of infrastructure is indeed a concern for 43% of all respondents. The Index also finds relatively low scores for the competence of the domestic logistics industry (such as competence of private and public logistics service providers) in the region, particularly in eastern Africa. It is important to note that formal and informal trans-border trade often reflects longstanding relationships and indigenous patterns, which often pre-date colonial and post-colonial state boundaries.<sup>194</sup>

Cross-border trade is often conducted among people of the same clan or ethnic group. The communities spread along the territorial boundaries share a lot in common both culturally and socially.<sup>195</sup> They speak the same or similar languages, they inter-marry and own land on either side of the borders. This alone provides an incentive to these communities to engage in trade to exploit available opportunities on either sides of the border. In the absence of formal contracts and adequate market information and when other important obstacles to formal trade prevail, trust-based networks can play an important role in establishing trade relations, although informal.<sup>196</sup>

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<sup>193</sup>Hertel, T. and Keeney, R. (2006), What Is at Stake: The Relative Importance of Import Barriers, Export Subsidies and Domestic Support in: Anderson, K. and Martin, W. (eds.) (2006), *Agricultural Trade Reform and the Doha Development Agenda*, World Bank, Washington D.C.

<sup>194</sup>Chauvin, S. and G. Gaulier (2002), Regional Trade Integration in Southern Africa|| , *CEPII Working Paper No. 2002-12*, Paris.

<sup>195</sup>Hathaway, O. 'Between Power and Principle: An Integrated Theory of International Law' (2005) 72 *Univ Chicago L Rev* 469

<sup>196</sup>Amani, H. (2007) 'Challenges of Regional Integration for Tanzania and the Role of Research'. *Journal of Business Research*, 55, 301-310.



#### 4.4 Implications of ICBT between Kenya and Uganda

According to the findings in Chapter three the informal cross border trade is an integral position in the survival and basic economic arrangement of humankind is well documented. Nevertheless, Chung asserts that the sector can however no longer be considered as a temporary phenomenon.<sup>197</sup> The informal sector as in this study has been described as the unregulated and mostly unregistered sector of the economy. According to him, the trade is operated by artisans, peasants and other micro entrepreneurs, within the economy. According to Borai regardless of the level of state involvement in the economy, the informal cross border trade provides employment for a significant number of the unemployed and underemployed.<sup>198</sup>

Borai study shows that ninety percent (90%) of poorer developing countries is informal employment. According to estimates by the International Labour Organisation (ILO), 1.8 billion, compared to 1.2 billion (formal sector) people are employed in the informal sector. UNCTAD report given this interface between the informal sector and the formal sector, some complexity is obvious.<sup>199</sup> A continuum exists between the informal and the formal economy in which backward linkages and forward linkages are involved. With respect to the sustainable management of local resources hence greening the economy, the informal actors are better informed to deal with the environment given their closeness

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<sup>197</sup>Chung, O. (2010). The Lopsided International Investment Law Regime and Its Effect on the Future of Investor-State Arbitration 47 *Va J Int'l L* 953

<sup>198</sup>Borai, R. (2013) 'Cross-Border Corporate Insolvency: A Modest Proposal for An Enhanced International Approach' PhD Thesis, Queen Mary College, University of London.

<sup>199</sup>UNCTAD, *Economic Development in Africa Report 2009: Strengthening Regional Economic Integration for Africa* (UN, New York 2009)

to environmental products. Besides, sustainability embraces the notion of social justice. Kinana observes that the informal actors are commonly powerless and voiceless, particularly women hence the empowerment embedded in informal opportunities can be capitalised upon towards poverty eradication and promotion of gender equality.<sup>200</sup>

According to Harris ICBT does not only promote a developing community (through regional integration), ensure employment creation and income generation- especially for people who are unable to find formal employment due to various socio-economic reasons; but it also plays an important role in ensuring food security by moving agricultural produce and other foodstuffs across borders where they are needed the most.<sup>201</sup> With the two countries beginning to feel the realities of climate change, through high food prices, severe droughts and flooding informal trade offers people an alternative to still live in dignity. Furthermore, and often overlooked is that ICBT is a key source of empowerment for women who constitute the majority of traders. It has been found that over 70 percent of informal cross border traders are women who are either widowed, divorced or simply undertake this business to supplement their husbands' incomes.<sup>202</sup>

According to Akech one of the key factors contributing to ICBT is the interaction and mutual reinforcement between the so called labor-supply push and low-income-demand-

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<sup>200</sup>Kinana, A. (2012). The Role of the East African Legislative Assembly in Enhancing Popular Participation and Harmonisation of Laws in East Africa (Annual Conference of the East Africa Law Society, Dares Salaam, 25 November).

<sup>201</sup>Harris, J. (2007). International Regulation of Hedge Funds: Can the Will find a Way? 28 *Company Lawyer* 277

<sup>202</sup>Malik, M. (2008). Recent Developments in Regional and Bilateral Investment Treaties (A Background paper for the 2nd Annual Forum for Developing Country Investment Negotiators, Marrakech, Morocco 2-4 November).

pull.<sup>203</sup> Within the context of the present situation in Kenya – Uganda border, what is referred to as the labor-supply push is characterized by: high unemployment, resulting in an increasingly cheap labor supply; and the search for alternative or complementary income earning opportunities as a result of eroded income levels, decreases in the labor force in productive enterprises and lack of skills to enter into the shrinking formal sector.

The low-income-demand pull on the other hand has the following features: the existence of a large number of poor consumers with low effective demand for basic consumer goods offered in the formal sector; and the existence of suppressed demand for goods normally offered by the commercial networked inefficiency of formal suppliers who quite often face tremendous liquidity problems.<sup>204</sup> Despite its significant contribution to the economy, scale cross-border trade remains largely an informal sector and the voices of the traders are seldom heard.<sup>205</sup> Statistics on this subsector are still estimated and there are no clear and targeted programs to formalize and enhance competitiveness of the subsector so as to enable traders take advantage of the benefits of regional integration. Traders have not even been able to take advantage of the simplified customs processes and procedures available for them at the border under the Simplified Trade Regimes (STR) established by both the EAC and COMESA.<sup>206</sup>

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<sup>203</sup> Akech, J. (2012). The African Growth and Opportunity Act: Implications for Kenya's Trade and Development. *International Law and Politics* 651.

<sup>204</sup> Kieck, E. (2010). Coordinated Border Management: Unlocking Trade Opportunities through One Stop Border post. *World Customs Journal*, 4(1).

<sup>205</sup> Ogalo, V. (2010). Informal Cross-Border Trade in EAC: Implications for Regional Integration and Development. A CUTS publication under BIEAC Research Series.

<sup>206</sup> Martinez-Zarzoso, I. and Marques-Ramos, L., (2007), The Effect of Trade Facilitation on Sectoral Trade, *Discussion Paper No. 167, Dec. 2007*, University of Gottingen, Germany.

There is enormous potential for trade to drive growth and poverty reduction in the region. ICBT has considerable opportunities were traders can benefit from in a range of goods and services. The trade has contributed to food security and has increased employment in the two countries. Trade across borders is essential to improve access and lower prices for critical inputs into economic activities including the exports of other goods and services. ICBT between these two countries has improved access of consumers to basic food products and to increase the returns to farmers.<sup>207</sup>

All the above mentioned characteristics of ICBT in the two countries reveal a positive impact on employment.<sup>208</sup> As the findings in chapter three have shown, many people are engaged in this activity in response to unemployment. Most of them had been previously employed by the shrinking formal sector. One of the most important implications of ICBT is in relation to income.<sup>209</sup> The monthly net income obtained by informal traders has been estimated, on average, to be equivalent to more than four times the minimum salary paid in the formal sector. Furthermore, the average income earned by informal traders is about two times the cost of essential goods for a family of five people, while the minimum salary only covers about 40 percent.<sup>210</sup> As a result, many people either switch

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<sup>207</sup>Hummels, D. (2006), Benefiting from Globalisation: Transport Sector Contribution and Policy Challenges, Topic I, Global Trends in Trade and Transportation|| , paper prepared for the *ECMT/OECD 17th International Symposium on Theory and Practice in Transport Economics and Policy*, Berlin, 25-27 October 2006

<sup>208</sup>Heracleous, L. (2000). The Role of Strategy Implementation in Organization Development, *Organization Development Journal*, 18, 75-86.

<sup>209</sup>Porto, G. (2005). *Informal Export Barriers and Poverty*, Development Research Group, World Bank, Washington D.C.

<sup>210</sup>Heracleous, L. (2000). The Role of Strategy Implementation in Organization Development, *Organization Development Journal*, 18, 75-86.

from formal employment to ICBT or combine the two. Others are even unwilling to join the formal sector or do so only for purposes of social status.

Although this study did not set out to assess the number of people employed in ICBT, it was evident that many individuals of both sexes were engaged in this activity.<sup>211</sup> This trend was necessitated mainly by the structural adjustment programs taking place in these two countries. Another reason why ICBT attracts a huge number of people is the ease of entry, as there is no requirement for registration or enrolment for one to be involved. The fact that a small amount of initial capital is required is another reason that attracts the involvement of a large number of people engaged in ICBT.<sup>212</sup>

Equally important is the fact that ICBT activities are, in general, labor intensive. For example, the activities of transporting across the border small quantities of merchandise (mainly as a strategy to avoid confiscation) requires a large labor force before the goods are reassembled on the other side of the border for onward transportation.<sup>213</sup> According to the study findings ICBT trade plays a positive role on poverty alleviation by providing employment and incomes. This role is important, particularly in view of the fact that more than two thirds of the population in this two countries live in absolute poverty. It

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<sup>211</sup>Porto, G. (2005). *Informal Export Barriers and Poverty*, Development Research Group, World Bank, Washington D.C.

<sup>212</sup>Perry, G.E, Maloney, W.F., Arias, O.S., Fajnzylber, P., Mason, A.D., Saavedra-Chanduvi, J. (2007), *Informality: Exit and Exclusion*, World Bank, Washington D.C.

<sup>213</sup>International Finance Corporation (IFC) (2007a), *Designing a Tax System for Micro- and Small Businesses: Guide for Practitioners*, IFC, Washington D.C. IFC (2007b), *Reforming the Regulatory Procedures for Import and Export: Guide for Practitioners*, IFC, Washington.

could be argued that ICBT might not be the best way to address the poverty alleviation issues, but it is definitely one of the forms that people find extremely easy to adopt.<sup>214</sup>

#### **4.5 Kenya and Uganda ICBT Developments**

According to the current study findings most participants are individual traders, a large proportion of which women.<sup>215</sup> A number of these traders are not registered at all, and therefore operate entirely outside the formal economy. Others are registered in Kenya as well as in Uganda but avoid trade regulations and duties either fully or partially. This is actualized in two ways which in the first instance traders simply avoid the official border posts and use unofficial routes. This is the preferred option of small scale, small volume traders. This is made easy by the porous nature of the two countries borders.<sup>216</sup> The other option, preferred mainly by large volume traders, is to pass through the posts but resort to such illegal practices as under-invoicing, misclassification of goods or even mis-declaration of country of origin with a view to paying lower tariffs, of course with the connivance of the customs officials.<sup>217</sup>

ICBT transactions across the Kenya/Uganda and involve buyers, sellers, brokers and middlemen, transporters, loaders, couriers, store owners, security personnel, money

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<sup>214</sup>Gonzalez, A. and F. Lamanna (2007). Who Fears Competition from Informal Firms? Evidence from Latin America|| , *Policy Research Working Paper 4316*, World Bank, Washington D.C.

<sup>215</sup>Sashittal H. &Wilemon D. (2006). Marketing Implementation in Informal Cross Border Trade; an Exploratory Study, *Industrial Marketing Management* 25, 67

<sup>216</sup>Tchale, H. (2001), Informal Cross-Border Trade: The Case of Beans in Eastern and Southern Africa, paper prepared for the Bean Seed Workshop held in January 12-24, 2001 in Arusha, Tanzania

<sup>217</sup>Akilu, Y. (2006), A Review of Policies and their Impact on Livestock Trade in Ethiopia during Three Regimes, (1965-2005). In J. McPeak and Peter D. Little, eds.

changers and informal money lenders.<sup>218</sup> A significant number of these roles are performed by women and youth. At the Kenya/Uganda border, persons with disabilities play an important transportation role using their wheelchairs. Goods traded informally across Kenya's borders originate from Kenya, for example refined petroleum products; from international markets, for example electronic goods and vehicle parts; or even from the neighbouring countries, for example bananas from Uganda, beans from Tanzania and livestock from Somalia and Ethiopia. Such goods are sourced from informal sectors.<sup>219</sup>

The types of goods traded vary from one border post to another. They include small volumes transported by individuals crossing the border carrying goods on their head, back or in hand, walking on foot, pushing a cart or wheelbarrow, or riding a bicycle or motorcycle or a wheelchair. Surveys indicate that the largest share of informally traded goods is traded in small volumes. A number of cross-border monitoring survey initiatives have been mounted by various institutions over the years, notably Uganda Bureau of Statistics; The Regional Agricultural Trade Intelligence Network; and The Famine Early Warning Systems Network among many others, to monitor informal trade between Kenya and her neighbours by observing different border points.<sup>220</sup> The findings are

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<sup>218</sup>Ogutu, C. (2010), *Unrecorded Cross-Border Trade between Kenya and Uganda: Implications for Food Security*. Technical Paper No. 59, Bureau for Africa, SAID, Washington, DC.

<sup>219</sup>Ndung'u, N. (2011), *Regional Integration Experience in the East African Region* (Paris: OECD Development Centre).

<sup>220</sup>Ackello-Ogutu, C. and Echessah P. 2010. *Unrecorded cross-border trade between Kenya and Uganda: Implications for food security*. A USAID SD Publication Series; Office of Sustainable Development Bureau for Africa. Technical Paper No. 59. Washington, DC: USAID

unanimous that a substantial proportion of cross-border trade in Kenya is in staple food commodities, including maize, rice and beans.<sup>221</sup>

The surveys show that maize is the most traded good, accounting for 68 percent of all informal flows.<sup>222</sup> The volumes informally traded at times exceed many times over the volumes formally traded. In the period 2013-2014, informal maize imports from Uganda were valued at US\$73 million.<sup>223</sup> Over the same period, formal imports of maize from Uganda to Kenya were valued at US\$16.5 million. More specifically, in 2004, 92 percent of the total maize imports from Uganda were traded informally.<sup>224</sup> Petroleum products are also widely traded informally between Kenya and her neighbours. Musyoka estimates that about 25 percent of petroleum fuel (petrol, diesel and paraffin) consumed in Uganda is imported informally from Kenya.<sup>225</sup> This they estimate to cost the Uganda government about US\$1.2 million annually in lost tax revenue.<sup>226</sup> Quite a number of goods traded informally between Kenya and her neighbours are actually re-exports, which are imports

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<sup>221</sup>Karugia, J.T. Waithaka, M.M, Freeman, A.H., Prabhu, R. Shiferaw, B., Gbegbelegbe, S., Massawe, S., Wanjiku, J. and Kyotalimye, M. 2008b. Responding to the food price crisis in Eastern and Southern Africa: Policy options for national and regional action. (Draft ASARECA, ReSAKSS and CGIAR Alliance report), Nairobi, August 2008

<sup>222</sup>Wood, S. and You, L. 2012. *Assessment of strategic land use options for Uganda. Potential economic benefits of increased agricultural productivity in Uganda*. Washington, DC: The International Food Policy Research Institute.

<sup>223</sup>Barrett, C. (2008). Smallholder market participation: concepts and evidence from Eastern and Southern Africa. *Food Policy* 33:299–317

<sup>224</sup>IGAD (Intergovernmental Authority on Development). 2011. “Study on the status of Cross Border Trade in the IGAD region”.

<sup>225</sup>Musyoka, M.P. 2012. An analysis of urban household food demand in Nairobi, Kenya. Egerton University, Department of Agricultural Economics and Agri-Business Management, Unpublished Thesis.

<sup>226</sup>Mwaniki, K. (2013); the Impact Of Informal Cross Border Trade On Regional Integration In SADC And Implications For Wealth Creation.



are exported by Kenya or her neighbours without any value addition. They include low-quality consumer goods such as clothes, shoes, electronic appliances like TVs and fridges, motor vehicle spare parts, bicycles and bicycle parts.<sup>227</sup> Others include vegetable products, tea, coffee, sugar, non-alcoholic beverages, cement, tobacco, electrical apparatus, fish, and agricultural raw materials like cotton, bananas and groundnuts, among others.<sup>228</sup>

The reduction of tariff barriers following the implementation of the EAC's customs union in 2005 resulted in an increase in the use of nontariff barriers as a tool for regulating trade.<sup>229</sup> The weak enforcement of laws and regulations, the arbitrary application of trade related regulations and the pervasiveness of corruption at borders. Weak law enforcement (in fragile states and countries in conflict) can, on the one hand, facilitate the conduct of informal cross-border trade, by letting traders get away with it. In Uganda, for example, customs officials have often ignored informal trade flows in bulk foodstuff. Following the 2008 disputed elections in Kenya that resulted to some civilianised to become IDIPs; people from the two countries had to find alternative ways for doing business, and turned to a parallel system of informal trade relations.<sup>230</sup>

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<sup>227</sup>Kimenyi, F. 2008. Rwanda: Country Welcomes Kenyan Decision to Reduce Number of Weighbridges. The New Times (Kigali), 11 August 2008.

<sup>228</sup>Meagher, K. (2012), Informal Integration or Economic Subversion? Parallel Trade in West Africa. In *Regional Integration and Cooperation in West Africa: a Multidimensional Perspective*. R. Lavergne, ed. Pp. 165-187.

<sup>229</sup>Oduor, N.W (2007), *Difficulties faced by Eastern & Southern African Trade Development Bank in implementing the strategy of capital resource mobilization*: Unpublished MBA project: University of Nairobi

<sup>230</sup>USAID (2010). Report on One Stop Border Posts 2012. Retrieved in May 2013 from [www.competeusaid.com](http://www.competeusaid.com).

On the other hand, the arbitrary application of regulations and the quasi-automatic requirement of facilitation payments (bribes) at some border points might incite some traders to engage in illegal practices such as under-invoicing and/or pass through other, sometimes unofficial routes and crossings, to avoid having to disburse such payments.<sup>231</sup> In this regard, the 2006 World Economic Forum's (WEF) Executive Opinion Survey, which covered 29 African countries, indicates that corruption is still one of the most important obstacles to doing (formal) business on the continent.<sup>232</sup>

Before the importing or exporting of commodities within the EAC, a trader must obtain an import declaration form (IDF) issued by an appointed government agency in the partner states.<sup>233</sup> The issuance of IDFs involves numerous agencies (the government printer, the national bank, KEPHIS, KEBS, KPA and KRA), which conduct the procedures for the inspection, verification of dutiable value and certification of compliance. The result of having all these agencies partake in the issuance of IDFs is often duplication of effort and wasted business time. Additionally, in some cases, inspection bodies have not established inspection posts at major entryways, thus forcing traders to travel long distances for customs clearance.<sup>234</sup>

EAC member countries apply numerous certification and conformity assessments to ensure technical quality standards in intra-EAC trade. However, there are differences in

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<sup>231</sup>Little, P.D. (2007), Unofficial Cross-Border Trade in Eastern Africa|| , paper presented at the *FAO Workshop on Staple Food Trade and Market Policy Options for Promoting Development in Eastern and Southern Africa*, March 2007, FAO Headquarters, Rome.

<sup>232</sup>Hill, C. & Jones, R. (2001). *Strategic Management Theory: An integrate Approach*. 5th Edition, Boston: Houghton Mifflin.

<sup>233</sup>Trademark East Africa (2010). Trademark East Africa to Set up One Stop Border Posts 2013, retrieved in May 2013 from <http://www.trademarkea.jobballard.net>.

<sup>234</sup>Giovanucci, D. (2008), *National Trade Promotion Organizations: their Role and Functions*, World Bank, Washington.

product standards and agencies that are accredited to undertake the standardization procedures.<sup>235</sup> Some agencies accredited to conduct standardization in one country are not recognized by officers in another country a problem that adds to the cost of conducting certification and wastes time. Currently, EAC member countries do not have their own specific rules of origin; instead, they apply the ones adopted by the Common Market for Eastern and Southern Africa. These rules of origin stipulate that a good must wholly be produced or contain imported content of no more than 40% of the cost, insurance and freight value of the materials used in production. The procedure for obtaining the certificate of origin is cumbersome and lengthy, which itself is costly for the business community.<sup>236</sup>

Licenses required within the EAC include a business license, an import/export license, a road transportation license and a municipal council license. The procedures for obtaining these various licenses vary across countries. In addition, there is a lack of preferential treatment to EAC-originating businesses.<sup>237</sup> This makes cross-border registration of businesses a difficult, cumbersome and expensive process. In most EAC countries, manual processes are used in business names searches, registration and the payment of relevant charges. Moreover, multiple licenses are required for the production, distribution

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<sup>235</sup>Pearce, J. & Robinson, R. (2007).*Strategic Management: Strategy Formulation, Implementation and Control*, 10th edition, Chicago, IL: R. D. Irwin, Inc.

<sup>236</sup>Fletcher, I. (2010) 'Maintaining the Momentum: The Continuing Quest for Global Standards and Principles to Govern Cross-border Insolvency' 32 *Brook J Int'l L* 767.

<sup>237</sup>Akech, M. (2011).The Common Law Approach to Liability and Redress: Its Applicability to East Africa' (Paper presented in the Liability and Redress under Cartagena Protocol Workshop organised by International Environmental Law Research, Mombasa.

and sale of goods, resulting in duplication and prohibitive costs of doing business in the region.<sup>238</sup>

For citizens of EAC member countries, visas are not required for travel within the community. However, movement of people across the region is restricted to passport holders or those with temporary travel documents, and a majority of EAC residents do not hold such documentation.<sup>239</sup> In addition, the requirement for the yellow fever vaccination has been identified as a major bottleneck to trade. Although this is justified on the basis of health concerns, the procedures for its application and the fee of \$50 for those who apply at the entry points pose a challenge. Therefore, the cost of movement across boundaries has a significant impact on cross-border trade.<sup>240</sup>

Within the EAC, there are many roadblocks and police checkpoints along the major roads that disrupt the efficient movement of goods. For every 100 kilometers, traders encounter about two, five and seven roadblocks in Uganda and Kenya, respectively.<sup>241</sup> These stops are costly in terms of time and money. Making matters worse, police officers often solicit bribes at these locations from transporters and traders, especially those whose vehicles have foreign registrations. The mandatory weighing of goods along the transit route adds time and cost of upkeep for transporters. These costs are particularly significant on the

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<sup>238</sup>Westbrook, J. (2012) 'Priority Conflicts as a Barrier to Cooperation in Multinational Insolvencies' (2008-2011) *27 Penn St Int'l L Rev* 870.

<sup>239</sup>Abdulai, D. (2007). Attracting Foreign Direct Investment for Growth and Development in Sub-Saharan Africa: Policy Options and Strategic Alternatives' *37(2) AfriDev* 1

<sup>240</sup>Levin, J., and L. Widell (2007): "Tax Evasion in Kenya and Tanzania: Evidence from Missing Imports," Working Papers 2007:8, Orebro University, Swedish Business School.

<sup>241</sup>Clift, J. (2004). The UNCITRAL Model Law on Cross-Border Insolvency- A Legislative Framework to Facilitate Coordination and Cooperation in Cross-Border Insolvency' *12 Tul J Int'l & Comp L* 307, 322 - 346.

Kenyan and Ugandan sides of the transportation corridors. Acceptable weights per axle and the number of axles per metric ton have not yet been harmonized among the EAC member states. Numerous truck scales along the main road transportation routes like the Northern Corridor makes it difficult to move goods to destinations on time. In addition, because the EAC members have not yet harmonized gross vehicle mass, 54 metric tons are allowed in Kenya and 45 metric tons in Uganda. English is the agreed-upon language across the EAC for the purposes of administration, public trade facilitation and private transactions.<sup>242</sup>

#### **4.6 Conclusion of the Chapter**

This chapter has indicated the emerging issues of informal cross border trade between Kenya and Uganda: the raging debate include; impacts of informal cross border trade, direction and pattern of informal cross-border trade and, likely implications ICBT and liberalization policies. These issues have been discussed widely. The next chapter will contain the summary, key findings and recommendation of the study.

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<sup>242</sup>Mehdi, Z., Shahrake, O. & Bayrami, H. (2008). *Effective Factors Pattern Affecting Implementation Strategic Plans*. Persian: Islamic Azad University

## CHAPTER FIVE

### CONCLUSION

#### 5.1 Summary

The study revealed that ICBT is a major source of livelihood for people living at border posts, while for government and other institutions such as URA and Police, ICBT as illegal activity/disguised smuggling and a source of unfair competition thus a loss of revenue. ICBT is carried out by men and women of whom, 56 percent were Kenyans and 44% Uganda nationals and 88percent are able to read and write. The study further observed that 84 percent of household businesses were operating from permanent structures. This present how well ICBT thrives and benefits traders, leading to structural development.

Several reasons were advanced for engaging in ICBT, including; it's away to earn income, employment thus a major source of livelihood for people's survival. The political stability and good relations existing between the Ugandans and her neighbours also facilitated ICBT.<sup>243</sup> It was also reported that the lucrative markets offered by the counterparts in the bordering country promotes and attract people to engage in the trade. Besides it was mentioned that traders have a tendency to evade high taxes and other customs levies; bureaucratic licensing thus ICBT presents a viable alternative. ICBT is mainly dominated by women and the youth.<sup>244</sup>

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<sup>243</sup>Otsuki, T. (2003). Trade Facilitation and Economic Development: Measuring the Impact, *World Bank Working Paper 2988*, Washington D.C.

<sup>244</sup>Subramanian, U., & Matthijs, M. (2007). Can Sub-Saharan Africa Leap into Global Network Trade?, *World Bank Policy Research Working Paper 4112*, January 2007.

The study reported several ICBT activities; however, trading in agricultural and manufactured goods across the border was mentioned to be the major ICBT activity. Informal routes constituted the major crossing of goods. The majority of the agricultural and manufactured goods under ICBT are sourced from other districts other than the district where the border is located. This presupposes that there is less or no production of goods within the district where the border is located. It was also observed that seasonality was key determinant for the types and quantities of commodities traded under ICBT.

The study reported that transportation of goods was reportedly to be mainly by carts, bicycles, vehicles, and head and by hand. On how ICBT is organized, the survey found out that traders mainly work on their own while others mobilize themselves to work in groups.<sup>245</sup> The study also revealed that ICBT transactions are cash based as opposed to cheques. Across all border posts, the major beneficiaries of ICBT were reported to be women. The study presented testimonies of improved household welfare as result of women engaging in ICBT. FGD data revealed that the more male PWDs, earn from ICBT, the greater their involvement in polygamous unions because of the expected daily earnings.

As for the youths, they have not sustained their ICBT because of their uncontrollable behaviour of extravagancy, overdrinking, promiscuity and sometimes defilement as well as being robbed due to movements in the late night. The survey presents positive aspects of informal cross-border trade include availability of markets, food security, and

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<sup>245</sup>Mansour, M. (2007). Revenue Mobilization in Sub-Saharan Africa: Challenges from Globalization|| , paper presented on 15 October 2007 at the *USAID Economic Growth Officers Workshop*, Washington, D.C.

income.<sup>246</sup> However, ICBT was reported to impact negative mainly on food security. Besides, border communities have limited access to services such as education, health, agricultural extension, and finance and marketing. Increased neglect of family responsibilities by men has left many women to fend for their families.

The situation is made worse by some men who steal women's money if not kept secretly. The informal cross border traders particularly face poor socio-economic conditions, particularly the factors of vulnerability, such as gender inequality, poor living and working conditions, separation from families, exploitation and discrimination, lack of access to health and other services. Sensitization of informal traders is important, as this would facilitate easy access to information.<sup>247</sup> This would empower traders to promote business and make strategic investment decisions with the finances generated from ICBT. The traders require information on available market for their products, access to loans, value addition and the opportunities offered under EAC Customs Union. Lack of business management skills was linked to low literacy levels which was cited as a constraint to ICBT.

## **5.2 Key Findings**

The informal cross border trade is significant and contributes immensely to household welfare and the country's economic growth. Designing appropriate policies with adequate mobilization of informal traders could enhance government revenue and tap

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<sup>246</sup> Dzaka-Kikouta, T. (2004), *Focus on Cross-Border Exchanges Between Brazzaville/Congo and Kinshasa/ DRC*, Nov-Dec. 2004, Initiative for Central Africa (INICA), Paris.

<sup>247</sup> Levin, J. and Widell, L. (2007). *Tax Evasion in Kenya and Tanzania: Evidence from Missing Imports* || , *Working Paper No.8*, Department of Business, Economics, Statistics and Informatics, University of Orebro, Sweden.



from the benefits of the informal trade sector. Specific policies that acknowledge and encourage formalization of ICBT activities could exploit the comparative and competitive advantage the traders enjoy in the region.<sup>248</sup> This could impact positively on the local food security situation, attract investments in agro-processing, development of market and transport infrastructure; reduction of price volatility and market imperfections. By recognizing the importance of ICBT rather than discouraging it, the government can greatly expand its revenues through customs and tax collection at borders and market towns, and improve the welfare of its citizens at the same time.

The participation of the both Kenya and Uganda government in the guidance, monitoring and organization of the informal trade sector players impact immensely on the traders incomes and the quality of goods exported. Sensitization of traders on sanitary and phytosanitary requirements, observance of standards and quality control is of paramount importance. Moreover informal traders are not aware of their rights in the process of transacting business within the EAC region.<sup>249</sup> Further, according the survey results, the common problems encountered in transacting informal trade included; visa restrictions, duties and taxes, licensing, access to finance for trade, sexual harassment, and non-uniformity in customs and immigration regulations within EAC, which requires a multi-faceted approach to be employed in order to minimize these problems.<sup>250</sup>

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<sup>248</sup>Keen, M. (2003). The Future of Fiscal Frontiers and the Modernisation of Customs Administration|| in Keen, M. (ed.) (2003), *Changing Customs: Challenges and Strategies for the Reform of the Customs Administration*, IMF, Washington D.C

<sup>249</sup>Smith, Alasdair, and Anthony Venables (2012), Completing the Internal Market in the European Community: Some Industry Simulations. *European Economic Review* 32 (7): 1501-25

<sup>250</sup>Hummels, D. (2006), Benefiting from Globalisation: Transport Sector Contribution and Policy Challenges, Topic I, Global Trends in Trade and Transportation, paper prepared for the *ECMT/OECD 17th International Symposium on Theory and Practice in Transport Economics and Policy*, Berlin.

There also exists an urgent need to increase gender awareness and sensitivity of institutions such as Revenue Authorities to conduct their work in a way that recognizes gender issues and other targeted beneficiaries based on clearly identified needs, which may vary according to gender. It is not only ineffective but also counter-productive to continue to talk in generalities, without acknowledging the specific differences in the situations, capacities, needs and interests of traders.<sup>251</sup>

Government and private sector (Civil societies, NGOs, partnership Faith institutions, cultural groups etc) involvement in providing appropriate information and financial services could spur informal trade to unprecedented levels. The informal trader's are in dire need of market information, financial services, and understanding their role in the EAC regional integration processes. Other initiatives pursued under COMESA, New Partnership for Africa Development (NEPAD) need to be demystified to encourage participation and input from the informal traders.<sup>252</sup>

### **5.3 Recommendations**

The following recommendations will go a long way in informing policy and decision making processes for improving the livelihood of those engaged in ICBT as well as improving the ICBT exercise between Kenya and Uganda.

Information is very valuable in facilitating informal cross border trade. The governments of EAC should promote the establishment of information centers for people involved in informal cross border trade, to enable them access information on what is available,

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<sup>251</sup>Widdowson, D. (2005). Managing Risk in the Customs Context|| , in *Customs Modernization Handbook*, World Bank, Washington D.C. TAD/TC/WP(2008)13/FINAL 51

<sup>252</sup>Soko, D., (2006). Why Trade facilitation is Key to Boosting Intra-African Trade?|| , in *Africa Growth Agenda*, November 2006.

pricing systems, markets, where to access finance and so on. The policies must be reviewed within the framework of EAC policies. The information would be disseminated through some literature written in vernacular since most border areas use diversities of languages.

The mobility experiences of women differ significantly from those of men. The current social norms and practices discriminate against women in all sorts of ways, limiting their life choices and restricting their physical mobility. Therefore at operational level there is need for gender specific strategies, programs and activities that recognize the different needs and capacities of men and women traders. These should focus on improving the operating environment, access to resources and opportunities for traders, especially female traders so as to improve the efficiency and effectiveness of informal cross border traders. As many citizens from the East African States benefit from informal cross border trade by purchasing a variety of goods. However, few service agencies actually think about the quality of life led by this largely invisible population involved in ICBT. Therefore, there is need to provide the necessary service so as to facilitate the livelihoods of the Informal Traders across the various borders.

Informal cross border traders cited financial services as a critical problem. The shortage of ready finance hinders the expansion of ICBT activities. Therefore, it is necessary to explore alternative lending ways that are responsive to the unique demands of the informal cross border trade. Furthermore, experience from the Focus Group Discussions proved that microfinance institutions are not reaching out to the neediest in this sector. Their interest rates are out of reach for the poor traders involved in informal cross border trade. More so, the demand for weekly payments prohibits their movements. Hence, the

government should explore the viability of establishing a fund primarily to benefit the small-scale commodity producers, traders, exporters, artisans and artists engaged in their sustainable livelihood initiatives. The fund could also be envisaged for use in infrastructural development, such as in the improvement of feeder roads which would enhance marketing opportunities, promote small scale manufacturing and processing ventures in the informal sector. In this way, Informal traders would tremendously contribute to the achievement of the Millennium Development Goals (MDGs).

At regional level, governments should harmonize their policies to ensure effective trade integration to support the work of informal cross border traders. It is important that policy formulation processes are facilitated and promoted, and that their implementation is closely monitored by the regional bodies of EAC Customs Union. Inclusion of informal cross border trade in the vision of policymakers will help to facilitate their individual economic empowerment as well as enhancing their role as a significant component of the regional trade activities.

The movement of informal cross border traders remains a major issue of concern. The identification formalities at the various border points make it hard for the small-scale traders to operate effectively. These take a lot of time and delays business transactions. The introduction of the EAC passport and temporary business permits would come in handy to facilitate movement of people as well as trade. In addition, the Local authorities along the borders should collaborate more effectively within EAC and establish similar bye-laws to facilitate informal cross border traders as well as establish business districts to promote business development in the region.

The further expansion of intra-EAC trade will require a sustained effort toward reducing and eventually eliminating the various institutional and regulatory barriers identified in this policy brief. All the agencies operating at the border points need to have harmonized inspection processes to hasten the clearance process and reduce delays at the borders. Consideration should be made to establish a one-stop border shop. The agencies should simplify various application forms with a view to reducing lengthy and technical procedures. More point offices that are focal points for obtaining important information regarding the EAC are required. Currently, there are only two regional offices, in Busia and Namanga, and these lack adequate staff.

On regulatory barriers, Kenya and the other EAC governments should streamline customs clearance procedures, rules of origin and standards by reducing the number of trade documents required and by harmonizing the nature of the information to be contained in these documents. Such documentation should also be designed and standardized in accordance with internationally accepted standards, practices and guidelines and should be adaptable for use in computer systems. In addition, the customs departments in partner states need to harmonize information and communication technology programs. The international community can play a key role in enhancing technical capacity in the region by helping to identify, communicate and advise institutions on how to eliminate barriers to trade.

The EAC governments should encourage policies that promote processing for export markets by providing attractive incentives. Processed goods are more durable and fetch high prices. In addition, an initiative should be made by our government to provide incentives to the private sector to add value to their produce as well as stream ling food

distribution from food surplus areas to food deficit areas that are hard to reach across the country. This calls for sustained investment and maintenance of physical infrastructure such granaries, energy and roads especially in the rural areas.

The agricultural commodities transacted under informal trade like maize, beans, rice, groundnuts, and tubers (cassava, Irish potatoes, and yams) have direct implications on the country's food security situation. Building silos and applying modern preservative methods on perishable commodities in bumper harvest period could ensure availability of such foodstuffs during scarcity times is highly recommended. This would lessen the burden of the government to meet food demands during disasters when the country experiences food scarcity.

EAC countries should commission studies to create a database of informal traders to guide policy to planning process for easy access of government resources and facilitation. Lastly, government should enhance management of people's expectations through increased household awareness of alternative livelihood systems and pro-poor coping mechanisms to enhance their preparedness for any future food and nutrition insecurity. This would encourage households to take advantage of existing opportunities, programmes and projects aimed at improving their agricultural production, welfare and prosperity. The programmes among others would include access to domestic and regional markets, physical infrastructure especially rural roads through the already existing programs like the NAADS, UPE, USE, immunization as well as support to livestock and fish production. Data collection/estimation capacities should be strengthened as a basis for further economic analyses on the exact impact of ICBT and the most ideal policy responses.

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## APPENDICES

### Appendix I: Questionnaire for the Ministry Staff

Please give answers in the spaces provided and tick (✓) the box that matches your response to the questions where applicable.

#### **Section I: GENERAL INFORMATION**

1) Gender (tick as appropriate)

a) Female ( )                      b) Male ( )

2) What is your age bracket? (tick as appropriate)

Under 20 years [ ]    21 – 30 years [ ]    31 – 40 years [ ]    41 – 50 years [ ]

Over 50 years [ ]

3) Length of trade engagement? (tick as appropriate)

Less than one year [ ]    2-5 years [ ]    6-10 years [ ]    Over 10 years [ ]

4) Country of origin

Kenya                      [ ]

Uganda                    [ ]

Other country [ ] please specify.....

5) Which of the following best describes your position?

Retailer [ ] Wholesaler [ ] Distributor [ ] Manufacturer [ ]  
Other (Please State) \_\_\_\_\_

**Section II: GOVERNMENT TAXATION POLICIES**

6. Does the government tax you in your trade?

Yes [ ] No [ ]

7. To what extent do government taxation policies influence informal cross border trade?

Very great extent [ ] Great extent [ ] Moderate extent [ ]

Low extent [ ] No extent [ ]

8. According to you which government taxation policies are exorbitant to the traders?

Kenya [ ]

Uganda [ ]

Briefly support your answer

.....  
.....  
.....

9. To what extent are the current taxation policies frameworks effective for informal cross border trade?

Very great extent [ ]    Great extent [ ]    Moderate extent [ ]

Low extent [ ]    No extent [ ]

**Section III: TYPE OF COMMODITIES**

10. Kindly list some of commodities being traded in the informal cross border trade between Kenya and Uganda

- i.
- ii.
- iii.
- iv.

11 To what extent do you feel the following type of commodities should be legalised as informal cross border trade?

Agricultural products [ ]    Machinery [ ]    Livestock products [ ]

Textile products [ ]    Other specify.....

All goods [ ]

12. Which are some of the decriminalised commodities and why?

.....  
 .....  
 .....

**Section IV: LIBERALIZATION POLICIES**

13. Do trade liberalization policies influence informal cross border trade between Kenya and Uganda?

Yes [ ]      No [ ]

If yes

Positively [ ]      Negatively [ ]

14. To what extent should the following factors be considered in order to ensure liberalization of informal cross border trade? Use a scale of 1-5 where; 5 Very great extent, 4 Great extent, 3 Moderate extent, 2 Low extent and 1 No extent

	1	2	3	4	5
Volume of goods traded					
Legality of the goods					
Benefits of the product					
Safety of the goods in terms of mode of transport					
Other specify.....					

**THANK YOU FOR YOUR TIME AND PARTICIPATION**

**Appendix II: Interview Guide**

1. Kindly state you job category

Customs officials [ ]

Security [ ]

Immigration personnel [ ]

2. Country of origin

Kenya [ ]

Uganda [ ]

Other country [ ] please specify.....

3. How do you control informal cross border trade between Kenya and Uganda?

.....  
.....  
.....

4. How do you enact the government taxation policies on informal cross border trade between Kenya and Uganda?

.....  
.....  
.....

5. Kindly describe the type of commodities being traded in the informal cross border trade between Kenya and Uganda

.....  
.....  
.....

6. Briefly describe the past and the current trade liberalization policies influencing informal cross border trade between Kenya and Uganda

Past

.....  
.....

Present

.....  
.....

7. Which are some of the challenges experience in the informal cross border trade between Kenya and Uganda?

.....  
.....  
.....

8. Suggest ways of curbing the informal cross border trade so as to benefit all the stakeholders?

.....  
.....  
.....