Towards Greater Civil Society Participation in the East African Community: Challenges and Prospects

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Kampala

FOUNTAIN PUBLISHERS
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<td>AEC</td>
<td>African Economic Community</td>
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<tr>
<td>AEPTCEAC</td>
<td>Agreement Establishing the Permanent Tripartite Commission for East African Cooperation</td>
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<td>AfriMAP</td>
<td>Africa Governance Monitoring and Advocacy Project</td>
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<td>AFRODAD</td>
<td>African Network on Debt and Development</td>
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<td>AU</td>
<td>African Union</td>
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<td>AICC</td>
<td>Arusha International Conference Centre</td>
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<td>APRM</td>
<td>African Peer Review Mechanism</td>
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<td>CDD</td>
<td>Centre for Democracy and Development</td>
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<td>CDF</td>
<td>Constituency Development Fund</td>
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<td>CBF</td>
<td>Constituency Bursary Fund</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<td>COMESA</td>
<td>Common Market for East and Southern Africa</td>
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<td>DENIVA</td>
<td>Development Network of Indigenous Voluntary Associations</td>
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<td>DMS</td>
<td>Development Merchant System</td>
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<td>EAC</td>
<td>East African Community</td>
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<td>East African Community Secretariat</td>
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<td>EACSOF</td>
<td>East African Civil Society Organisations’ Forum</td>
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<td>EACJ</td>
<td>East African Court of Justice</td>
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<td>EACT</td>
<td>East African Community Treaty</td>
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<td>EALA</td>
<td>East African Legislative Assembly</td>
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<td>EALS</td>
<td>East Africa Law Society</td>
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<td>EASSI</td>
<td>East Africa Sub-Regional Support Initiative for the Advancement of Women</td>
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<td>ECOSOC</td>
<td>Economic and Social Council</td>
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ECOSOCC Economic, Social and Cultural Council
ECOWAS Economic Community of West African States
EGA ECOSOCC General Assembly
EU European Union
HIPCI Highly Indebted Poor Countries Initiative
IGAD Intergovernmental Authority on Development
IGO Inter-governmental Organisation
IO International Organisation
KCK Kituo Cha Katiba
LON League of Nations
LPA Lagos Plan of Action
LRF Legal Resources Foundation
MS TCDC Ms Training Centre for Development Cooperation
NEPAD New Partnership for Africa's Development
NGO Non-Governmental Organisation
NGOCEA Non-Governmental Organisations' Coalition for East Africa
NIEO New International Economic Order
NPO Non-Profit Organisation
NSA Non-State Actor
NUDIPU National Union of Disabled Persons of Uganda
OAU Organisation of African Unity
OSI Open Society Institute
PAI Pan-Africanist Integration
REC Regional Economic Community
SADC Southern African Development Community
SADC-CNGO Southern African Development Community Council of Non-Governmental Organisations
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<th>Acronym</th>
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<tr>
<td>SID</td>
<td>Society for International Development</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UN ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<tr>
<td>UN HABITAT</td>
<td>United Nations Human Settlements Programme</td>
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<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<td>UNGLS</td>
<td>United Nations Non Governmental Liaison Service</td>
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<tr>
<td>USA</td>
<td>United States of America</td>
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<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
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<tr>
<td>VSO</td>
<td>Voluntary Service Organisation</td>
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<td>WACSOF</td>
<td>West African Civil Society Forum</td>
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Foreword

Kituo Cha Katiba: the Eastern Africa Centre for Constitutional Development (KCK) has over the years engaged in cutting-edge research, documentation and political activism as it has through its various researches and public dialogues promoted the engagement of the citizenry in the democratisation of East Africa. Established in 1997 by a group of academics and activists from the three East African countries of Kenya, Tanzania and Uganda, the organisation initially aimed at promoting inter-disciplinary communication, dialogue and action on constitution making and democratic governance in the East African region, to be implemented through basic and applied research, information dissemination, public debate and advocacy. The ultimate aim of the organisation was to promote the active participation of civil society in good governance and to inculcate a culture of constitutionalism where the constitution is a living document that reflects the aspirations and needs of the common people.

Today, KCK’s Mission is to promote a culture of constitutionalism, where the constitution is a living document that reflects the aspirations and needs of women and men in a democratic Eastern Africa. The organisation provides fora for civil society, activists, think tanks, politicians and academics to engage in self-reflection and critical debate over issues of critical and contemporary concern in democratic development in the region. KCK is currently governed by a Board of Directors from Burundi, Kenya, Rwanda, Tanzania mainland, Uganda and Tanzania Zanzibar, and currently has its Secretariat in Kampala-Uganda.

This publication adds to the list of KCK’s extensive research and scholarly publications on various subjects relating to its mandate. It provides insights into civil society participation in the East African Community (EAC) processes and how it can be enhanced. It is a novel initiative that underscores the complimentary role of Civil Society Organisations (CSOs) in international organisations such as the EAC but most significantly, highlights the cardinal principle of people centredness, which uniquely distinguishes the revived EAC
from the defunct one. In this way, KCK hopes that the project will strengthen civil society/government partnership at the national and regional levels and thereby contribute to mitigating the re-collapsing of the EAC.

In this book, we also have a valuable resource for civil society in the region, to advocate for and demand for their space within EAC processes; for the EAC to revisit its processes in order to enhance EAC–CSO participation and collaboration; a contribution to academic and scholarly material and debate on the subject; and a reminder to governments of the key role and place of civil society within the EAC.

I wish on behalf of KCK to extend our special gratitude to Mr. Morris Odhiambo, the Executive Director of the Centre for Law and Research International (CLARION), a Non-Governmental Organisation (NGO) based in Nairobi, Kenya, for the research work that involved travel and consultations with various stakeholders throughout the region, and for authoring this publication. We also thank Mr. Busingye Kabumba, a teacher of Constitutional Law and Public International Law at Makerere University for editing the final report. I wish to also thank the staff of KCK for initiating the project idea and for all that led to its completion. Lastly, my special tribute goes to our funders, the Swedish International Development Agency (SIDA) for accepting our idea and for funding the project.

It is my sincere hope that KCK’s modest contribution through this publication will be of benefit to various stakeholders in the region as well as trigger more work that will build on this project for the benefit of all East Africans.

Hon. Sarah Bagalaaliwo
Chairperson Kituo Cha Katiba,
May 2010
Acknowledgments

A study like the one that informs this publication is often an effort by many hands and minds. The processes of conceptualisation and research design to data collection and finally publication, are made easier when more than one mind is involved. I wish to acknowledge the contribution of all those who were in one way or another involved in executing the study and publishing this book, even if they are not specifically mentioned here.

In particular, I wish to acknowledge the support of the Kituo Cha Katiba team, led by Executive Director Edith Kibalama and Programme Officer Denis Busobozi, for providing the initial conceptualisation and defining the scope and related aspects of the study. I thank KCK, the institution, for providing the necessary material support for the successful completion of the study.

Second, my special thanks go to all the key informants in the three countries – Kenya, Uganda and Tanzania – who took time off their busy schedules to give feedback to the lengthy interview guides used in gathering primary data for the study. Their more than satisfactory responses to the questions, and the very informative perspectives they shared, more than anything else led to the success of the project. Furthermore, the role played by those who made the consultations in all the five EAC partner states possible, is highly appreciated.

In the same breath, I acknowledge the feedback given through the five country consultation meetings and the regional forum held in Arusha thereafter. The feedback from the six meetings further enriched the study.

Finally, I wish to extend my personal gratitude to SIDA - the development partner who made this study possible. Indeed, without the support of SIDA, this publication would not have been realised.

Morris Odhiambo
Author/Consultant, 2010
Introduction

A Union of States or of Citizens: Reviewing Mechanisms for Civil Society (Non) Participation in the EAC Integrative Process

Busingye Kabumba¹

A lot has happened since the signing of the East African Community Treaty (EACT) on 30th November 1999 by the presidents of Uganda, Kenya and Tanzania, which points to the existence of political will at the highest levels to ultimately realize a political federation of the member states. Following the determination in 2004 to ‘fast-track’ the political federation, Rwanda and Burundi have joined the Community, a customs union has been put in place, and a common market is scheduled to enter into operation in the middle of 2010.

The question that arises is whether this ‘ever closer union’ is intended to be one of citizens or is merely at best one of states and at worst a leaders’ club. The answer to this question lies in the extent to which the citizens of East Africa have been and are involved in the unfolding integrative process, and indeed, whether there is any political will to actively seek such participation. This is a crucial enquiry since, as the EACT recognizes in its preamble, the earlier effort at creating an East African Cooperation failed in part due to the lack of participation or knowledge of the integration process and the objectives of the EAC among East African citizens.

Be that as it may, in the formative stages of the EAC meaningful participation by civil society in the Community was not paid much attention, and it took intensive lobbying by CSOs through their umbrella body the Non-Governmental Organisations’ Coalition for East Africa (NGOCEA) for these concerns to permeate into

¹ LLB (Muk), Dip. LP (LDC), BCL (Oxford), LLM (Harvard); Lecturer on Law, Makerere University & Managing Consultant, M/S Development Law Associates.
the constituent treaty. It is thus as a result of this initiative that the EACT expressly provided for participation by CSOs. In other words, provision in the Treaty for CSO participation may be viewed as having been more of a political concession than a manifestation of political commitment to such a notion. This fact may explain the disconnect between the spirit and letter of the framework put in place to effectuate this participation.

The political concession to CSO participation was apparent in Chapter 25 of the EACT which emphasized the “creation of an enabling environment for the private sector and the civil society”; “strengthening the private sector” and provided for “cooperation among business organisations and professional bodies”.

The Treaty further mandated the Secretary General to, “provide the forum for consultations between the private sector, civil society organisations, other interest groups and appropriate institutions of the Community.” It is this mandate that was effected by the promulgation in 2001 of the EAC Rules of Granting Observer Status, which are the main subject of this study.

The study critically reviews these rules with a view to ascertaining whether the political concessions won by civil society at the time the EACT was enacted have been reflected in the rules promulgated under that Treaty. In other words, whether the political concessions were accompanied by continuing political commitment to civil society participation. The study in particular considers the extent to which the rules may enhance participation of CSOs in the affairs of the EAC using as a comparator the mechanisms of granting observer status under other jurisdictions with a view to making recommendations for possible review of the EAC rules. At the same time, the study takes a look at alternative frameworks of consultation in the integration process and considers whether these can serve as an adequate platform for effective civil society engagement in the Community.

The study finds that although the promulgation of the rules underlines the continuation of the political concessions with regard to the participation by civil society, both the criteria for granting observer status and the rules for participation in the meetings of the EAC are severely limiting to civil society, resulting in the inability
of civil society groups to meaningfully participate in the affairs of EAC. Two criteria – that the organisation’s activities should bear a regional dimension with the organisation being registered in each of the partner states; and that the organisation must have a track record of regional activities of at least three years of active operation – seem to be particularly limiting to organisations. These requirements are seen to run counter to the goal of constructing a Community of citizens. Other criteria, such as that requiring organisations to be capable of “enhancing development partnerships” are observed to be vague and thus capable of arbitrary application and manipulation.

In terms of the rules relating to participation, it is observed that a lot of discretion is given to the chairpersons of meetings who determine whether an organisation granted observer status is invited to meetings, whether such an organisation is allowed to participate in proceedings of particular meetings, and the nature of that participation.

As the study points out, the picture that emerges betrays a key contradiction in the unfolding relationship between states and civil society in East Africa: on the one hand, the mere existence of the rules suggest the changing relationship between states and civil society involving recognition by states of the importance of civil society in policy formulation; on the other hand, the nature of the rules suggests lingering discomfort by state parties to the EACT to open up windows for civil society participation in a meaningful way. As formulated, the rules suggest that the political leaders behind the integration process are more concerned with “integration of states” than “integration of citizens”.

Evidently, there has been no political commitment to the essentially political concessions achieved by civil society at the start of the integration process. This can only call for increased and sustained engagement by CSOs to claim for themselves space that is evidently not going to be easily granted by the state actors that are in the driving seat of the Community process. Indeed, the lessons from NGOCEA’s early success in ensuring that the EACT recognizes the importance of civil society have not been lost on CSOs. They have mobilized themselves under an alternative and autonomous civil society consultative framework within the EAC, that is, the East African
Civil Society Organisations’ Forum on the East African Community (EACSOF), with a Steering Committee made up of organisations from the five partner states. The EACSOF has already proved to be an effective alternative to civil society engagement. For instance, through the EACSOF, civil society has managed to secure some operational space in the affairs of the EAC, for instance, participation in the Common Market negotiations. The study however finds that this forum too is not without its internal limitations, chief among which is the lack of clarity as regards representation in its national and regional structures.

As the apparently inexorable march towards political federation continues, there is a need for the various actors in the process to take stock of the kind of Community they want and reflect on how best they can get there. A couple of issues remain outstanding which require urgent resolution. Key among these is the question as to how best the citizens of East Africa be effectively engaged so as to ensure that the EAC is their community not a hazy abstract notion conceived in state houses, and owned by a couple of individuals. For sure, the conceptualisation of ‘civil society’ especially as an authoritative and legitimate avenue for citizen participation is not without problems, and there are legitimate questions regarding who CSOs really represent. However, too often critiques on the structure of operation of CSOs are either borne of bad faith or can be also levelled at the more ‘traditional’ and ‘legitimate’ democratic forms of popular representation. For instance, any questions regarding where CSOs derive their funding from lie ill in the mouth of governments whose budgets are heavily supported by ‘development partners’. What is for sure is that, imperfect as a vehicle as they may be, CSOs are an important means by which citizens can be meaningfully involved in the integration process and both civil society and the member states must find ways of enabling their full involvement. As matters stand, the EACT reflects this realization. What remains is for the rules of granting observer status to be modified to fully actualize this realization, and the recommendations in the present study are a useful starting reference in this important process.
1

Background

The revived EAC came into being upon the signing of the EACT\(^2\) on November, 30 1999, by presidents Benjamin Mkapa of Tanzania, Daniel Arap Moi of Kenya and Yoweri Kaguta Museveni of Uganda. The EACT came into effect in 2000 upon ratification by the three partner states. The signing of the EACT was preceded by the signing of the Agreement Establishing the Permanent Tripartite Commission for East African Cooperation (AEPTCEAC) and the establishment of a commission which was responsible for the “coordination of economic, social, cultural, security and political issues” among the three founding states.\(^3\) It is this commission that evolved into the Secretariat of the East African Community (EACS), one of the organs

\footnote{2}{The EACT is in the process of being reviewed “in order to make the organisation (EAC) more effective in the face of new challenges and expectations. Among areas considered for amendment by the EAC’s Sectoral Committee on Legal and Judicial Affairs is the Rules of Procedure for the Summit of Heads of State, the Council of Ministers and the Co-ordination Committee. The review is also informed by an order of the East African Court of Justice (EACJ) that the EAC revisits its Treaty to make it “consistent with the spirit and intention of the revived regional economic bloc.” (The Standard, January 26, 2009, p. 21).}

\footnote{3}{Even with the dissolution of the initial Cooperation, enough room was left for future negotiations which eventually led to the current efforts. The Mediation Agreement entered by the three states in 1984 provided room for future cooperation. Indeed, the Mediation Agreement enabled a meeting of Heads of State in Harare, Zimbabwe in October 1991. It was after a follow-up meeting in Nairobi in November 1991 that the Heads of State issued a communiqué, “to revive the cooperation and set up a Committee of Ministers of Foreign Affairs to work out the details” [East African Community, Report of the Committee on Fast Tracking East African Integration, submitted to the Sixth Summit of Heads of State of the EAC held in Arusha, Tanzania, November 26, 2004, pp. 12-13].}
of the EACT. Chapter Three of the EACT establishes the following organs of the EAC:

1. The Summit comprised of Heads of State or Government;
2. The Council of Ministers;
3. The Co-ordination Committee made up of permanent secretaries responsible for the integration process in the partner states;
4. Sectoral committees established by the Council through recommendation by the Co-ordination Committee;
5. The East African Court of Justice (EACJ);
6. The East African Legislative Assembly (EALA);
7. The Secretariat; and
8. Such other organs as may be established by the Summit.

The integration of East Africa is informed generally by the need to tackle the developmental challenges of the region. The process is part and parcel of a continent-wide integration initiative that is principally given effect through activation of Regional Economic Communities (RECs). Indeed, in its preamble, the EACT reiterates the partner states’ conviction that “cooperation at the sub-regional and regional levels in all fields of

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7 For further elaboration on the African Economic Community (AEC) see Chapter 3 of this report. Already there has been established a tripartite initiative between EAC-COMESA-SADC seen as a critical step in bringing together the three trading blocs whose membership overlaps. This could be an indication that the anticipated building of the African Union (AU) through the RECs is indeed a possibility. The first Tripartite Summit was hosted in Kampala, Uganda in October 2008. It resolved to “establish a Free Trade Area, Customs Union, Common Market and eventual merger of the three regional economic communities as a major building block of the African Economic Community that is being promoted by the African Union.” (The Standard, January 13, 2009, 'Financial Journal', p. 11).
human endeavour will raise the standards of living of African people, maintain and enhance economic stability, foster close and peaceful relations among African states and accelerate the successive stages in the realisation of the proposed African Economic Community and Political Union.”

The successive stages include a Customs Union and Common Market, which are critical entry points to political federation, planned to take effect in 2013.

The objectives of the EAC revolve around issues of development cooperation among the partner states. The EACT states that “the objectives of the Community shall be to develop policies and programmes aimed at widening and deepening cooperation among the partner states in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit.” Attainment of sustainable growth and harmonious development among member states, strengthening of cooperation in sectoral fields, consolidation of long-standing political, economic, social, cultural and traditional ties and mainstreaming of gender, are some of the key pillars upon which the realisation of the objectives stands. The various sectoral fields of cooperation include areas of agriculture and food security, environment and natural resources, tourism and wildlife management, health, and social and cultural activities. The imperative of gender inclusion in development is given effect by Chapter 21, which elaborates mechanisms of enhancing the role of women in socio-economic development.

Engagement between the partner states, civil society and business groups is covered and emphasised by the Treaty. The preamble

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8 Preamble, EACT.
9 This came into force on January 1, 2005, with the signing of the Customs Union Protocol in March 2004. It was the first step in the establishment of the East African Political Federation. Under the terms of the EACT, Kenya, the largest economy, was expected to continue paying duties on its goods entering the other four countries until 2010, based on a declining scale while a common system of tariffs applied to goods from third-party countries.
10 A Protocol on the Establishment of the Common Market was signed by the Heads of State of the EAC member countries on November 20, 2009 in Arusha, Tanzania.
recognises lack of participation by civil society and the private sector as one of the reasons for dissolution of the original East African Cooperation. The Treaty therefore provides for the creation of opportunity for civil society and private sector participation. In Chapter 25, the Treaty emphasises the “creation of an enabling environment for the private sector and the civil society”; “strengthening the private sector”; and providing for “cooperation among business organisations and professional bodies”.

The desire to involve civil society in the affairs of the EAC is further given effect by Article 7, which describes civil society as one of the crucial actors in the EAC. Article 127 envisages the creation of an enabling environment for both civil society and the private sector to participate in the affairs of the Community and specifically demands the promotion of the roles of NGOs. Recognising the importance of providing for observer status in the promotion of the role of NGOs and civil society generally, the EAC in 2001 developed rules of granting observer status, which are the subject matter of this paper. The rules of granting observer status require:

- Acceptance of the fundamental principles underlying the EAC.\(^{11}\)
- Interest in the fundamental and operational principles of the EAC.\(^{12}\)
- Contribution towards the strengthening of regional integration in East Africa.
- Ability to enhance development partnership.
- That the organisation should have objectives of common interest to the partner states.
- That the organisation’s activities should bear a regional dimension with the organisation being registered in each of the partner states.
- In its regional activities, the organisation should have a track record of at least three years of active operation.\(^{13}\)

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11 Article 6.
12 Article 7.
However, only a handful of organisations have been granted observer status under these rules partly because they are seen to be rather restrictive to civil society groups. First, the main principles seem to rotate around the question of supporting the agenda of the EAC partner states and therefore organisations have to, among others, “accept the principles of the EAC” and “have objectives of common interest to the partner states”. Though this has been criticised by civil society groups, in purely conceptual terms, the criticism might be misplaced given that the EAC is essentially an intergovernmental organisation (IGO) meant to support the intergovernmental agenda of the founding and member states. Second, civil society groups have criticised the rules of observer status purely from a procedural perspective. This criticism has focused on provisions such as that, “organisations must have a regional dimension” by being registered in all the partner states and that they must have a track record of at least three years.

The coming into effect of the EACT was the realisation of a dream that had earlier eluded the people of East Africa. The first attempt to realise the EAC ended in disarray in 1977 mainly as a result of ideological disagreements between the three member countries and the disproportionate sharing of the benefits of co-operation. During the signing of the EACT in 1999, the sense of urgency was palpable among the region’s political leadership. This was driven by the feeling of lost opportunity that marked the years after the dissolution of the original EAC. This sense of urgency was emphasised when in 2004 the political leadership embarked on fast-tracking the establishment of the political federation.

This introductory chapter has provided the general background to the study, including a brief history of the EAC, its structures and objectives. Henceforth, the chapter will elaborate the problem statement, outline the objectives of the study, and finally dwell on the methodology.

**Problem Statement and Justification**

The sense of urgency in setting up the EAC and fast-tracking the process towards a political federation has led to questions about the extent to
which the peoples of East Africa have been and are involved in these processes.\textsuperscript{14} As the Treaty states in its preamble, the earlier attempt to create an East African Cooperation failed partly because of lack of participation or lack of knowledge of the integration process and the objectives of the EAC among East Africans. The current efforts to integrate the East African countries are happening in an environment where participation in governance processes has been recognised at the highest levels of political leadership as a key governance requirement and a key pillar in dealing with development challenges not just in East Africa but in the African continent as a whole.

Secondly, and related to the above, the current efforts at integration are happening within a changed political environment in the partner states with civil society being a major actor in socio-economic and political events in all the countries albeit at differing levels. This is certainly a different political context from what obtained in the 1960s during the first EAC. This means that to be successful, current efforts cannot take for granted the roles played by organised civil society, a fact that is recognised by the EACT but which might not be properly given effect in the processes of the EAC.

Thirdly, and flowing from the first two points, the EACT declares that the Community is “people-centred”, yet it is an IGO set up through consultations within governmental bureaucracies and organs of political leadership.\textsuperscript{15} Though the Treaty provides for the creation of consultative mechanisms for participation of civil society groups in the region, it does not elaborate how this exercise should be undertaken. The detail of this has therefore been left to the EACS. The Treaty requires the Secretary General to make this provision a reality.

Fourthly, the impetus for integration in East Africa, like in many regions of the world that have attempted integration, seems to be

\textsuperscript{14} Following a study that was undertaken in the region, the fast-tracking mission was found to be ill-informed as many fears were discovered which required enhanced participation of the citizens of the region hitherto left out of the process.

\textsuperscript{15} The inclusion of civil society in the Treaty was realised after lobbying by the initial civil society formation, NGOCEA.
largely focused on the enhancement of business/commercial ties. They proceed from the neo-functional template, that is, a linear progression that begins with the customs union, common market, and monetary union to political federation. Even though the Treaty recognises both civil society and business as partners, there is a recognisable concentration on the role of business with more elaborate provisions, than the role of civil society groups, which see themselves as neither belonging to the arena of the state nor that of private enterprise.

Fifthly, the Treaty provides for observer status for civil society groups, both domestic and international, as well as foreign countries. However, as formulated, the rules guiding the granting of observer status for CSOs have been criticised for being inadequate and limiting. First of all, the rules on granting observer status limit this privilege to organisations registered in all the state parties, which seems to run counter to the spirit of building one Community. Second, granting of observer status is also limited to organisations that pursue the “objectives of common interest to the Partner States”. Third, the organisations are required to have had a track record of regional activities of at least three years of active operation.

Owing to the limitations imposed by the requirements of granting observer status elucidated above, various attempts have been made to create a consultative status for civil society in the EAC as an alternative to granting observer status to specific organisations based on the limiting rules. One of these attempts led to the creation of the EACSOF with a Steering Committee made up of organisations from the five partner states. This attempt notwithstanding, it is still


18 Creation of a consultative structure is also provided for in the Treaty. The task for realising this is given to the Secretary General who is mandated to “provide the forum for consultations between the private sector, civil society organisations, other interest groups and appropriate institutions of the Community.”
hoped that revising the rules of observer status under the statutes of
the EAC will widen civil society participation. It is in this regard
that the present study was formulated and undertaken to provide
a comparative perspective on the EAC rules of granting observer
status.

**Objectives of the Study**

The general objective of this study was to provide comparative
perspectives on the EAC rules of granting observer status. Specifically,
the study aimed to achieve the following:

- To critically review the rules of granting observer status within the
  EAC and the extent to which these rules may enhance participation
  of CSOs in the affairs of the EAC;
- To study rules of granting observer status under other jurisdictions
  with a view to making recommendations for possible review of
  the EAC rules;
- To interrogate alternative frameworks of consultation in the
  integration process with a view to making recommendations on
  the same; and
- To recommend ways of enhancing the consultative frameworks
  available to the EAC and the peoples of the region.

**Study Questions**

The study was generally guided by the following questions:

- To what extent are the rules of granting observer status in the EAC
  able to promote the participation of civil society in the affairs of
  the EAC?
- What rules exist in other jurisdictions and how can these inform
  a review of the EAC rules?
- What alternative frameworks of consultation exist and how can
  these inform the participation of civil society in the affairs of the
  EAC?
- How can the existing frameworks for civil society participation in
  the EAC be enhanced so as to enhance CSO participation?
Methodology

This was a purely qualitative study and therefore applied qualitative methods both in data collection and analysis. The approach of the study was analytical and prescriptive. It was not meant to test any hypothesis in relation to the topic of study, but to analyse existing frameworks of participation, then make recommendations on how CSOs in the East African region should approach participation within the integration effort. Chapters Four and Five which present the results of the study adopted suitable frameworks of analysis based on an analysis of perspectives, perceptions and insights gathered from the primary sources. The study used both primary and secondary data as described below.

Primary Data

The primary data was assembled mainly from key informant interviews using a standard checklist. The interviews were carried out among individuals knowledgeable about the affairs of the EAC by virtue of their involvement in either the establishment of the EAC or its subsequent activities. The researchers successfully interviewed twelve (12) key informants; of whom one (1) was a representative of the Kenyan government in the Ministry of East African Community, while eleven (11) were representatives of CSOs.

Secondary Data

Secondary data was obtained from numerous sources as follows:

- The EACT and statutes of other integration processes regionally and internationally;
- Reports of meetings of civil society groups within and without the EAC region interacting with integration processes;
- Reports of studies undertaken by the EACS as well as governmental and donor agencies within the region; and

19 See Annexures Two and Three.

20 The researchers were able to visit Tanzania and Uganda for interviews with representatives of civil society, including those who sit on the Steering Committee of the EACSOF.
• Reports of studies undertaken by civil society groups and other interested parties.

Data Analysis
Being a qualitative study, the results of the data collection was assessed using qualitative means. The data was analysed based on the different themes under investigation, which correspond to the problem as stated as well as the outlined objectives of the study. Interpretation of the data was equally guided by the themes under study. The method of triangulation\(^\text{21}\) was used in cases where data about a particular aspect was derivable from diverse sources.

National Consultations and Regional Meeting
Consultations were held in each of the five EAC partner states as well as one in Zanzibar. These national consultations served to further consolidate key issues in the findings. Through group discussions, the participants discussed in depth some of the key areas of concern. The results of these group discussions further enriched the study.

Scope and Limitations of the Study
The limitations of this study owe themselves to two related factors: the initial conceptualisation and the resources available for the study. The initial conceptualisation failed to anticipate interactive methodologies more suited to interrogation of the subject matter through discussions with representatives of the various stakeholder groups taking part in the regional integration process. The study had been conceptualised purely as a desk research undertaking with planned meetings within countries presenting an opportunity for input from various groups. This meant there were insufficient resources to undertake interviews within the region.

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\(^{21}\) Triangulation refers to the use of more than one approach to the investigation of a research question in order to enhance confidence in the ensuing findings. Data triangulation entails gathering data through several sample strategies, so that data of different times and social situations, as well as on a variety of people, are gathered.
Indeed, because of the nature of the study object, the study could have benefited from more interactions with organisations and individuals within the region as well as focus group discussions through which consensus on certain key aspects of the rules of observer status as well as the emerging consultative framework could have emerged. Though there was an attempt to ameliorate this limitation, the cure was itself limiting: the researchers were only able to conduct interviews in Kenya, Uganda and Tanzania.

Second, the study suffered what the EAC itself suffers from: insufficient knowledge and understanding of the integration processes not only by the general citizenry but also by representatives of CSOs. This was clearly illustrated in discussions on the rules of granting observer status vis-à-vis the emerging consultative framework.22 There was a tendency among the respondents to confuse the two different frameworks for participation. This was a major limitation in as far as the objects of the study involved interaction with those knowledgeable about the processes of the EAC and particularly the involvement of civil society in the activities of the regional integration effort. This necessitates a serious awareness-raising campaign on the EAC not only among the general population but also, critically, among CSOs in order to enhance knowledge, understanding and the ability to participate in the affairs of the regional body and to prepare citizens for the envisaged political federation.

**Literature Review**

There is a dearth of information on the issue of civil society participation in the affairs of the EAC, the subject matter of this study. Only one study was noted in this area. This study, conducted by Teun van Djik in 2003, aimed to “… support and facilitate the process of integration of the EAC member states as laid down in the Treaty”.23 Specifically, the study aimed to enhance the involvement of CSOs in the EAC

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22 Many times, for instance, the researchers had to send the rules of granting observer status in advance to the potential respondents before interviews.

process of regional integration as part of the community-building process in order to ensure the sustainability of integration in the EAC region.

The scope of van Djik’s study is relevant to understanding the gap that the current study sought to fill. First, the study aimed to propose a set of selection criteria that would be useful in identifying civil society groups to be involved in regional integration activities. The present study assumed that participation of civil society is on course and was premised on the existence of a framework for incorporating CSOs as observers in the EAC processes as well as efforts by civil society groups to formulate an inclusive framework for consultation.

Second, van Djik’s study aimed to propose an appropriate consultation mechanism for involvement of CSOs in the formulation of regional development policies and strategies, among other important facets. This study was not aimed at proposing such frameworks but to critically study existing frameworks – that is the rules of observer status and the emergent civil society framework (the EACSOF) – and make recommendations on how they could work better.

The prior study also had the purpose of recommending appropriate mechanisms for disseminating information to civil society groups. Even though the author of the current study recognises the importance of this undertaking, overall, this purpose could only have been incidental in the current study. Finally, van Djik’s aim of proposing monitoring mechanisms for civil society in their participation in the activities of EAC was far from the central concerns of this study.
2

Conceptual Framework

Introduction

This study was broadly concerned with international organisation and specifically with regional integration. As a regional integration process, the EAC is an aspect of international organisation since it involves the coming together of independent states pursuing common objectives. International organisation is recognised as both the integration processes and end results of those processes. Successful integration processes usually result in the formation of supranational institutions. Regional integration is seen as the process through which states within a region form trading blocks or federate politically. The EAC is a regional integration exercise that aims at attaining political federation for the state parties to the EACT, that is, Kenya, Tanzania, Uganda, Rwanda and Burundi.24

International organisation can be appreciated from different disciplinary perspectives. Whereas legal scholars would be more interested in the development of international law and specifically the treaties that arise out of integration processes, political scientists would be concerned with the role of international organisations (IOs) in global and/or regional distribution of resources and power. Sociologists would, on the other hand, view international organisation as instruments for influencing the development of basic patterns of human behaviour within and among the integrating units. Overall, IOs are a product of international politics underpinned by the need for cooperation between states. However, in studying international organisation, the structural and legal analysis of the organisations is indispensable.

This chapter outlines the conceptual framework of the study. It begins with a brief consideration of the theoretical foundations of regional integration, so as to place the discourse within some coherent foundation. In this case, it considers two important theories, realism and liberalism (specifically, functionalism and neo-functionalism), as the main theories that inform international organisation as an aspect of international relations. It then discusses the relationship between states and international organisations; the relationship between states and civil society; and, finally, participation of civil society in IGOs through various frameworks such as consultative forums and granting of observer status as provided for in treaties and other constitutive documents of IGOs.

Elements of the Conceptual Outlay

Cooperation vs. Conflict in International Relations: The Theoretical Foundations of Integration

Theories and discourses in international relations are informed by the possibilities of cooperation between sovereign states, in view of the conflictual nature of the states system. Certain theoretical paradigms in international relations consider conflict to be inherent in the state system. This is because of the nature of the system and particularly distribution of power within it, the struggles for resources as well as nationalistic tendencies among different national populations. The need for cooperation is therefore grounded on the assumption that such cooperation would minimise conflicts in the system. Secondly, it is held that some of the problems faced by states such as insecurity, poverty, climate change, environmental management and diseases, require joint solutions, hence a tendency towards cooperation. Oftentimes, too, the populations of different states share some

25 Sovereign state as construed in the Westphalian sense. The author is aware of what is sometimes referred to as the changing nature of sovereignty. However, whether one really believes that the nature of power relations is being transformed in the state system depends on their paradigmatic lenses and the subjective biases imposed therewith.
commonalities such as in areas of culture which predispose them to cooperative habits.

The task of academics in international relations is to understand, describe and prescribe ways in which relationships between states are managed or may be otherwise managed to enhance cooperation in the system described as “anarchical”. The description of the states system as anarchical derives from the fact that it is a system of sovereign states, in which each sovereign state pursues its interests, but with no overarching authority to mediate those interests. Cooperation between states is at times seen as the antidote to war and conflict, which would otherwise dominate international affairs, given the condition of resource scarcity, a critical factor that would supply an endless list of grievances and provide sufficient motivation for violent conflict.

This theoretical journey commences with realism, the theory that developed and became dominant in international relations after the Second World War upon the demise of Wilsonian idealism. The development of the realist paradigm was in fact a response to what was largely interpreted as failure of Wilsonian idealism to predict and possibly stop the Second World War. Wilsonian idealism developed after the First World War was elaborated through the “Fourteen Points”, as a prescription for peace and cooperation between states after that destructive war.

The main assumptions of realism revolved around the nature of man as being predisposed towards conflict. This contradicted the idealist premise that man was essentially good and that conflict resulted from the inability of institutions to purposely moderate and condition

26 The writer acknowledges the contentions around the sovereignty question, especially in a world that is supposed to be “globalising”. However, even with all the contentions, sovereignty and “sovereign equality” are still ingrained in the United Nations (UN) Charter of 1945 and form the backdrop of treaty formulation particularly, and the development of international law generally.

27 This is associated with President Woodrow Wilson, the inter-war American president who formulated the “14 Points”. 
the behaviour of man. In the view of idealists, the First World War resulted, not from the struggle for power and competition among states for resources, but from the failure of international institutions to regulate the conduct of states, hence the formation of the League of Nations (LON). Realists, on the other hand, thought that it was the failure by scholars to properly analyse the nature of the states system that had led to the war. The realist assumption that man’s nature is evil was not original at the time, but was derived from Machiavellian psychology.

The main thrust of the realist paradigm was to assert that states were the most important actors in world politics; that states were unitary actors; and that states acted in pursuit of interests defined as power. The realist paradigm is seen to have largely predetermined the nature of the post-Second World War world characterised by the war for economic, military and ideological hegemony in the then emergent bipolar system dominated by the United States of America (USA) and the Union of Soviet Socialist Republics (USSR). Realists saw the possibility of world peace and “cooperation” only through the lenses of power politics and its related concepts such as hegemony, hegemonic stability, and spheres of influence.

The state, as constructed by realists, was therefore an entity that was at all times prepared to enter into conflict with other states over resources in their pursuit for power. Realist assumptions negated plurality and the possibility of dissent within the state arrangement, conceptualising instead a monolith united in purpose and all-powerful. Cooperation, in realist understanding, was a zero-sum game only approximated through the cold calculus of realpolitik.

Liberal scholars, on the other hand, saw the possibility of peace in international institutions and the development of international law through codification of acceptable norms. Liberal assumptions were therefore in direct contradistinction with those of realists. The liberals assumed, for instance, that human nature was essentially good and that the outlay of institutions, and not the nature of man, was to blame for wars and conflicts. Whereas Machiavellianism understood human
beings to be selfish and egocentric creatures, the liberals saw in man a moral agent that could be moulded by institutions and whose goodness could be enhanced to avoid conflicts and promote cooperation. Unlike the realists, the liberalists considered that the individual rather than the state was at the centre of determining international affairs. Liberal scholars professed more faith in international organisation and the possibilities of cooperation than realists.

The functional theory is probably the most influential of the liberal “sub-theories” in understanding international organisation generally and regional integration specifically. Functionalists relaxed some of the key assumptions of realism, for instance the belief that states were largely driven by self-interest. They instead preferred to emphasise the common interests of states as well as the needs shared by states in an interdependent world. Functionalism is rooted in the conviction that “governance arrangements arise out of the basic, or functional, needs of people and states”. Functionalists shared a belief “that it is possible to bypass political rivalries of states and build habits of cooperation … by addressing problems requiring international cooperation for solution”. They emphasised the roles played by non-state actors (NSAs) in world politics in view of the erosion of state sovereignty. Whereas “statist” (state-centric) theories were based on the principle of territorialism, functionalism provided a supra-territorial concept of authority linking authority with needs.

David Mitrany, the pioneer functionalist, saw the task of functionalism as “not how to keep the nations peacefully apart but how...
to bring them actively together”. Mitrany foresaw “a spreading web of international activities and agencies, in which and through which the interests and life of all nations would be gradually integrated.”

But Mitrany’s assumptions, especially in regard to territoriality, proved to be too ideal for his followers. The neo-functionalists reintroduced territorialism and designed a more workable strategy specifically for regional integration seen as an incremental process. This school of thought considered that states integrate in limited functional areas but, once the process of integration is commenced, it becomes hard to stop as states find new areas of integration guided by the “invisible hand”. Two types of “spill-overs” result from this incremental process: functional and political. The functional spill-over involves integration in economic sectors or issues while the political spill-over involves the creation of supranational bodies.

It is through the lenses of the neo-functionalists that the regional integration processes such as the EAC, the Southern African Development Community (SADC), the Economic Community of West African States (ECOWAS) and the European Union (EU) can be explained, described and understood. Like the EU, the EAC envisaged a process of integration that progressed in “a systematic and sequential manner, starting with a customs union and then a common market, as transitional stages to and integral parts of a subsequent monetary union and ultimately a political federation.” After this brief exposition of the theories that inform integration, we now consider the relationship between states and intergovernmental organisations.

32 Ibid.
33 It is believed, for example, that Jean Monnet, the “father of the EU”, followed the neo-functional script.
34 Deya Donald, op cit, p. 114.
States and Intergovernmental Organisations

As espoused by functionalists and neo-functionalists, international organisation through its different manifestations, and specifically the creation of IGOs, presuppose the existence of common interests between states. Such interests may vary from economic (business/commerce) interests to political (security) and social interests (bringing communities together to enhance cultural ties and understanding). States forming an IGO recognise that their common interests can be better achieved if they integrate and pool resources towards achieving the common goals. Such states in many cases already enjoy some measure of interdependence and interactions through shared history, geographical factors, proximity, trade and cultural ties, among others.

An IO can be defined as an association of states established by a treaty between two or more states as subjects of international law. It is the states that give legal recognition to the IGOs by virtue of their being recognised as subjects of international law. Treaties as instruments of IGO formation are negotiated agreements that give life to IGOs by creating structures for their management, delimiting their spheres of functional influence vis-à-vis states parties and clearly defining their principles and objectives. The functions of international organisations transcend national boundaries with their geographical delimitation being a factor of the area of jurisdiction of the states parties.

The formation of IOs involves ceding of a measure of sovereignty of individual states since IGOs are vested with specific decision-making power and are expected to make certain decisions to advance the interests of the state parties. Ideally, states are supposed to be bound by the decisions made by the IGOs though mechanisms may exist for redress in case states are dissatisfied with such decisions.

The question of sovereignty vis-à-vis states and IGOs often creates a paradox. States enjoy the right to form, join or pull out of IGOs depending on their own internal priorities as determined by policy-makers. The Law of Treaties recognises this right and
provides procedures for the different processes such as ratification of, accession to, and repudiation of treaties. Therefore, even as states cede some amount of their sovereignty in forming IGOs, they are still allowed through the same treaties and particularly the Law of Treaties to exercise their sovereign right to repudiate the treaties. Even though many scholars have expressed the view that sovereignty has been watered down through various aspects of international law, the reality remains that the progress of international law itself still relies on the exercise of sovereign power by states.

**States and “Civil Society”**

Functional and neo-functional scholars put emphasis on the role of non-state actors in international relations. They reject the realist notions that states are unitary actors and that they are the only important actors in international relations (as held by traditional realists). The neo-realists relaxed some of these assumptions. They instead recognise the plurality of actors and their diverse interests within states and in international politics. These players include NGOs, multinational and transnational corporations, among others. This is important in understanding the current discourse on participation in IGOs by NSAs such as CSOs. This sub-section focuses on the relationship between states and civil society.

Mazrui held the view that the state is “a political organisation in which authority is substantially centralised and in which force is a fundamental part of political control”. In this sense the state is often considered the only entity that maintains and controls instruments of legitimate coercion. According to Chazan, the state is “the organised aggregate of relatively permanent institutions of governance.”

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international law, the state is an entity that has various characteristics including physical territory, government that is in control, a permanent population and the ability to enter into treaties with other states. The state can also be recognised as the superstructure, recognisable through the existence of physical territory, government and the ability to relate with other states, that supports a given population’s political, social and economic relationships.

The relationship between states and societies has been the subject of a long-drawn discourse in political science, at times acquiring ideological nuances. At the centre of the debate is the contestation between the Liberal and Marxist understanding of states and societies. These different world-views regarding the relationship between states and societies have also influenced contemporary conceptualisation of civil society. While the liberal view stresses the distinction between states and civil society, the Marxist view\(^{38}\) sees the state as being inexorably embedded in society’s socio-economic relations.

Indeed, scholars critical of the neo-liberal paradigm have criticised the view that the state and civil society are separate spheres of action. Issa Shivji, for instance, argues that the separation between state and civil society, between economics and politics, is “ideological”. For Shivji, “those who command and control the sphere of production also wield political power, that is, the state.”\(^{39}\) In his very critical assessment of NGOs in East Africa, Prof. Shivji profoundly asserts that civil society, and particularly the NGO, discourse, “or more correctly the non-discourse, is predicated on the philosophical and political premises of neo-liberalism/globalisation paradigm.”\(^{40}\)

Makau Mutua, while discussing the challenges facing NGOs, characterises the emergence of human rights NGOs as “part of a continental – indeed universal – revolution in which civil society

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40 Ibid, p. 2.
groups have come around the globe.”

Mutua situates NGOs in the liberal paradigm and argues that the human rights movement in East Africa is part of the international human rights movement which seeks to universalise liberal Western values. The definition and understanding of civil society has continued to be undermined by these different viewpoints on what civil society is, and indeed, what it is not.

The current discourse on civil society is informed largely by the neo-liberal world-view, which sees civil society as the “third sector” in contradistinction with the state and the private/business sector. Diamond, for instance, defines civil society as “a realm of organised social life that is voluntary, self-generating, self-supporting, autonomous from the state and bound by a legal set of shared rules”. The EACT borrows a leaf from the liberal world-view. It defines civil society as “the realm of organised social life that is voluntary, self-generating, self-supporting, autonomous from the state and bound by a legal order or set of shared values”.

The problems of defining civil society also emerge because of the diverse array of institutions considered to compose civil society. In the literature, many terms are used interchangeably when referring to civil society. These include NSAs such as NGOs, voluntary service organisations (VSOs) and non-profit organisations (NPOs). The use of these terminologies, and the fact that they are all not very well defined, accentuates the problem of understanding what civil society is and what it is not. The dominant and most visible group of organisations

42 Ibid.
43 The contention over what civil society is or is not has indeed been a cause of some major debates. In Kenya, the debate has been confused further by the use of various names to describe the sector such as non-profit sector, the voluntary sector, etc. There is no clear consensus over what civil society is.
in civil society is, arguably, the NGOs. The understanding of civil society has, in some cases, been synonymous with NGOs. This has been caused partly by their visibility in advocacy work, their resource endowment (mainly from a thriving development industry supported by richer countries through development agencies and embassies) and their middle-class nature.

Two broad categories of CSOs can be discerned: those that are involved in advocacy/governance and those that are involved in service provision. The advocacy groups or NGOs are the ones otherwise referred to as human rights organisations by virtue of their focus. These organisations employ various strategies to hold governments to account to citizens, especially on issues of adherence to principles of human rights and also on proper management of public affairs. The relationship between advocacy NGOs and states/governments has often been confrontational because of the latter’s perceived failure to adhere to democratic ideals and good management of public affairs. Government bureaucracies and politicians perceive foreign-funded CSOs as competitors for power internally and as a crucial cog in international politics.

On the other hand, the service-oriented civil society groups are often concerned about ameliorating adverse conditions including poverty, disasters and diseases suffered by citizens without delving into the causal factors for those conditions. These groups act to fill the void left, in terms of providing crucial public services, by the state. Unlike advocacy groups, these groups enjoy cordial relations with governments and governmental agencies, bureaucrats and politicians. This is because their work does not threaten the positions of power-wielders and therefore is considered “not political” as opposed to the work of advocacy organisations.

**The Concept of Participation**

Participation is a concept that has gained prominence in the recent past. In Africa, this has happened within the context of the wave of pluralisation of politics (to some, “democratisation”) that started after the end of the Cold War in the late 1980s. From the early 1990s,
many African states were forced by the confluence of various historical factors to liberalise political participation. All the countries of East Africa, for instance, embraced multiparty forms of governance and opened up political competition.\textsuperscript{45}

In spite of the critical emphasis on participation that has happened in the recent decades, participation itself spans many centuries and is a product of the concept of direct democracy long propounded by some Western liberal philosophers. It assumes that even in representative democracy, there is room for direct participation in decision-making and rationalisation of actions by citizens. It is recognised in democratic theory that when citizens participate in elections to assign responsibilities of governance to individuals, they only cede part of their sovereignty, hence the opportunity still exists for citizens to directly determine their own governance.

The concept of participation deviates from statist theories to embrace non-statist theories in political rationalisation. Participation is, therefore, in line with the liberal theory which emphasises the individual as the principal actor (individual level of analysis) as opposed to the statist realist paradigm with its emphasis on the state (state level of analysis). In the East African region, participation has become a catchword with the liberalisation of politics that happened in the early 1990s. Participation in the sense it is used in the region includes notions of “stakeholder participation” in development programmes which hitherto were the domain of governmental bureaucrats.\textsuperscript{46}

The proliferation of NGOs and other non-governmental formations in the last two decades in East Africa is seen as both a result of and a contributor to the trend of political liberalisation that has taken place

\textsuperscript{45} Except Uganda which was ruled under the Movement system for many years.

\textsuperscript{46} In Kenya, various fiscal decentralisation policies have been promulgated. These funds, which include the Constituency Development Fund (CDF), Constituency Bursary Fund (CBF), etc., have to some extent actualised citizen participation in development processes.
in the countries of East Africa. This signifies a relationship between participation or “the opening up of political space” and civil society activities. The overall development in the relationship between the state and civil society is in line with the postulations of neo-functionalism in regard to the place of NSAs in national and international politics.

**Consultative/Observer Status of Civil Society in IGOs**

In order to actualise the participation of civil society groups in the affairs and activities of IGOs, the treaties and other constitutive documents of IGOs have specific provisions that facilitate such participation. Mechanisms are then usually created to anchor such participation. The common ways of anchoring such participation is through granting of observer status, and through a consultative framework which could take the form of an Economic and Social Council (ECOSOC) or other related structure.

Consultation of civil society within IGOs is in line with the emphasis of the neo-functionalist theory on the role of NSAs in international relations. In this regard, the emphasis on civil society consultation within IGOs stems from the realisation that states on their own cannot undertake the important developmental responsibilities. Therefore, the participation of civil society is seen as crucial in augmenting the roles of states. In actual fact, many IGOs now create room for civil society participation from the time they are formed.

Provision for observer status for CSOs in IGOs has a long history. Perhaps the most enduring of these histories is that of the United Nations Economic and Social Council (UN ECOSOC) which has elaborate provisions for consultation with CSOs. The current UN ECOSOC consultative framework is guided by UN ECOSOC Resolution 1996/31 of July 25, 1996. The first UN ECOSOC consultative framework was codified in 1950 via UN ECOSOC Resolution 288 X (B) of February 27, 1950.47

47 The ECOSOC consultative framework will be revisited in later sections.
Consultative arrangements are often guided by principles embedded in the diverse frameworks with the main principles revolving around facilitating the work of the IGO in question. In many cases, the organisations that are granted consultative status are those that operate in certain specialised fields and their contribution to the IGO is seen in light of their areas of specialisation and the skills and capacities they acquire over time in undertaking their activities.

Conclusion

This chapter has elaborated the conceptual framework of the study. The chapter has placed the study within a coherent framework by explaining the broad parameters of study. It has weaved through the theoretical foundations of integration, the relationship between states and IGOs, the relationship between states and civil society and the provision of consultative frameworks for civil society groups in IGOs.

The proliferation of civil society groups, particularly NGOs, in East Africa has taken place within the context of political liberalisation. The civil society groups have been both a catalyst for and beneficiaries of political liberalisation, which has created space for political participation. Both the proliferation of civil society groups and their participation in IGOs are in line with the functionalist and neo-functionalist theories of international relations which support the participation of NSAs in the affairs of IGOs. The functionalist and neo-functionalist theories provide a strong explanatory framework for the unfolding processes of integration in Africa and East Africa particularly. The functionalist and neo-functionalist theories are sub-theories of liberalism which puts emphasis on the individual as the key focus of socio-economic relations (individual level of analysis) as opposed to the realist paradigm which emphasises the state (state level of analysis).

It is difficult to determine, without specific studies designed to do so, the general impact of the existing RECs on the development of African countries. However, this study took place in the context of various developments in the integration of Africa. The next chapter
therefore focuses on these integration efforts, referred to as Pan-
Africanist Integration (PAI) in this study, and the conditions they
are meant to counter in order to move the continent forward on the
path to development. The chapter generally builds on the conceptual
context of the study.
Africa’s Underdevelopment and Pan-Africanist Integration

Introduction

The imperative of embracing PAI is informed both by Africa’s history and unique socio-economic reality in today’s “globalising” world. Looked at in relation to other parts of the world, Africa stands as a condemned continent with its often globally paraded negative socio-economic indicators, with imposed models of socio-economic improvement that never work, with development policies being seen as a prerogative of donors and not governments, and with general cynicism about its ability to extricate itself from the yoke of poverty, disease and general powerlessness in spite of its resource endowment. The discourse about Africa and its development is oftentimes cynical if one considers the formidable setting of Africa’s history and economy in the international political economy.

The purpose of this chapter is to review the steps and initiatives that have been taken by the continent’s leaders to integrate the continent in

48 The International Bank for Reconstruction and Development, Can Africa Claim the 21st Century?, 2000, p. 14; Professor Adebayo Adedeji blames this partly on the “development merchant system” (DMS), “under which foreign-crafted economic reform policies have been turned into a new kind of special goods which are largely and quickly financed by the operators of the DMS, regardless of the negative impact of such policies on the African economies and polities. Assistance is readily available from the DMS to operationalise the paradigms emanating from its operators and favouring the development route that it has mapped out for Africa, including the mode of its integration into the global economy” [Adebayo, A., “From the Lagos Plan of Action to the New Partnership for Africa’s Development and From the Final Act of Lagos to the Constitutive Act: Wither Africa?”, in Peter Anyang’ Nyong’o, et al (eds), New Partnership for Africa’s Development, NEPAD, A New Path?, Heinrich Boll Foundation, 2002, p. 6].
order to deal with its developmental paradoxes against the backdrop of the global socio-political and economic reality. The chapter begins by examining the nature of the developmental paradox, by looking at the history of underdevelopment, and the resource question, before proceeding to deal with PAI and how it has understood this problem and attempted to respond to it through broad policy frameworks. This second task therefore involves a review of the different frameworks based on the understanding of the developmental paradox. By so doing, the chapter also links the revival of the EAC with PAI. Indeed, the African Union (AU), which provides the blueprint for Africa’s current integration efforts, recognises the EAC as one of the RECs, the ultimate building blocks for the anticipated union.49

**The Nature of Africa’s Developmental Paradox**50

Africa’s development challenges are historical as much as they are driven by both internal and external factors. The colonial foundations of African states, and its continued subjugation in the international economic realm, have continued to define the destiny of the African people. Africa’s development and socio-economic progress is indeed characterised by a big dilemma; on the one hand, the acknowledgement that Africa’s resources to a large extent drive global development, and, on the other hand, continued failure by African states to use these same resources to lift their citizens out of poverty and helplessness. It is recognised, for example, that “Africa has a treasure trove of raw materials, which will give it a large share of the global commodity

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49 The AU recognises the following as RECS for purposes of continental integration: The Economic Community of Central African States, ECOWAS, the Common Market for Eastern and Southern Africa (COMESA), the Intergovernmental Authority for Development (IGAD), the Arab Maghreb Union, EAC, the Community of Sahelo-Saharan States, and SADC.

50 This is not meant to be an exhaustive exposition on the development problems facing Africa for this would require more work and space. Rather, it is a summary of the main issues, global and local, that help to link with the issue of integration currently seen as the panacea to Africa’s development.
production far into the future.”51 However, paradoxically, it contains “a growing share of the world’s absolute poor, who have little power to influence the allocation of resources.”52

For the most part, colonial and neo-colonial exploitation and the continuation of the same under the current neo-liberal globalisation phase have continued to define Africa’s relationship with the world. Africa’s integration into the world economy was informed by the need to exploit its resources to develop western economies. During an earlier phase, Africa’s human resources were exploited through slave trade to serve and develop other lands to the continent’s disadvantage. Current dominance of the neo-liberal framework of development which favours capital and the market has ensured subordination of the development interests of African states to multinational businesses and foreign interests because of strictures against protection of weak economies. Concepts such as self-determination, self-reliance and sovereignty are frowned upon by the existing world order.53 Combined with the resultant powerlessness of African states, this status quo has

51 For instance, South Africa has 88% of the world’s platinum reserves, 72% of chromium, 80% of manganese, 30% of titanium, 40% of gold, 44% of vanadium and 19% of zircon. Guinea has a third of the world’s bauxite, Botswana has 25% of the world’s diamonds. Zimbabwe has 12% of the world’s chromium as well as large platinum deposits. Niger is the world’s third largest supplier of uranium, and so on.


53 In subsequent reviews of the different frameworks, emphasis has been placed on self-determination and self-reliance as critical to Africa’s development. This view is, however, in competition with a world order defined by neo-liberal globalisation whose critical tenets revolve around liberalising economies, generally to the detriment of weaker economies. We consider that neo-liberal globalisation has been an agenda for powerful states content with and aiming at sustaining the status quo of international power relations, and that a key lesson in the international trade regime is that protectionism has become essentially a function of power with powerful states protecting their markets but demanding opening up of their markets by weaker states.
ensured that the continent’s economies continue to be dominated by western multinationals to the extent that “… about 40 per cent of African countries are servants to others outside Africa”.54

Capital flight as well as aid and debt crises have a direct relationship with Africa’s underdevelopment and are a result of the history of exploitation of resources from the continent. Capital flight not only means the expropriation of profits from Africa by multinationals but also the holding of assets by African elites outside Africa. It has been noted, for example, that “Africa has suffered from capital flight to the tune of US$193 billion (figures from 1996), and Nigerians have held assets outside the country worth 2.8 times its external debt.”55

The most visible and sustained consequence of external aid to African states, for many years, has been the debilitating debt crisis passed on from generation to generation. For a while now, various formations have demanded debt relief for African states. After decades of ineffectiveness of aid in financing Africa’s development, the debate on aid effectiveness has now taken centre stage, and, as expected, overshadowed the debt relief debate.56

The internal element of Africa’s development paradox has of late been encapsulated in the “good governance” discourse, propelled mainly by external actors including multilateral institutions such as the World Bank, but also seemingly accepted by African scholars. Thus for the World Bank, “improving governance and resolving conflicts” stand as the most basic requirements for Africa’s development.57 Leading scholars such as Adebayo Adedeji have criticised African leaders for not showing commitment to their own development agenda.58 Simply put, it is the question of legitimacy of the state and democratisation, that is, creating conditions within African states that would enable

55 Ibid.
56 A number of debt relief initiatives have been put in place including the Highly Indebted Poor Countries’ Initiative (HIPCI).
57 The International Bank for Reconstruction and Development, op cit, p. 2.
58 Peter Anyang’ Nyong’o, et al (eds), op cit, p. 36.
the realisation of better livelihoods for African people under political systems and leadership that enjoy popular legitimacy. The political nexus to this debate has been captured by Professor Anyang’ Nyong’o thus:

To retain political power that is won illegitimately, to keep away from public hearing those who are opposed to the misdeeds of the rulers, the African ruling classes specialised in political repression and the settling of political disagreements in violent and destructive ways. All this has adversely affected possibilities and opportunities for development in Africa. Wars, internal conflicts, internally displaced persons, people imprisoned without trials, coup d’état, lack of respect for the sanctity of human life: all these have been the enemies of progress in Africa.59

The question of the legitimacy of the African state springs from its colonial origin as well as the post-colonial reality. Many scholars have characterised the African state as an alien entity.60 Ruling elites have basically encouraged a status quo that favours their interests to the detriment of the rest of society. In the above quote, Professor Nyong’o explains the relationship between the legitimacy of leadership and the question of socio-economic progress in Africa. His view not only links political legitimacy to socio-economic progress, but underlines the need for democratisation of African states.

The link between democratisation of the African state and the quest for integration has now been clarified. Whereas the Organisation of African Unity (OAU) was founded principally to “defend the sovereignty, territorial integrity and independence of African states and to eradicate all forms of colonialism from Africa”, the AU intends to create

...a united and integrated Africa; an Africa imbued with justice and peace; an interdependent and robust Africa determined to map for itself an ambitious strategy; an Africa underpinned by political, economic, social and cultural integration which would restore to Pan-Africanism its full meaning and composed only of democratic states respectful of human rights and keen to build equitable societies.\(^{61}\)

This developmental paradox is clearly outlined in the Lagos Plan of Action (LPA), which notes as follows: “... our continent has 97 per cent of the world reserves of chrome, 85 per cent of the world reserves of platinum, 64 per cent of the world reserves of manganese, 25 per cent of world reserves of uranium and 13 per cent of world reserves of copper…” The LPA further notes the exploitation that the African continent had been subjected to during the decades under colonial rule as well as the continuation of that exploitation “through neo-colonialist external forces which seek to influence the economic policies and direction of African states.”\(^{62}\)

### Pan-Africanist Integration: Africa’s Reaction to the Development Paradox

PAI, in its intentions and application, is Africa’s reaction to the developmental paradox outlined in the sub-section above. Since the 1960s, African leaders have struggled to define the African developmental crisis, and to provide alternative development paradigms in opposition to the globally dominant paradigms defined mainly by international financial institutions. At least in its intentions, PAI has encompassed most of the areas described above. What has largely been

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lacking is the application of some of the proposed solutions, itself a result of a myriad of factors.\footnote{Indeed, the challenge of implementation of agreed frameworks cannot be overemphasised. One source points out that “inadequate political commitment” to agreed frameworks has been a key constraint to integration. Other factors of importance have also constrained integration efforts. [See Economic Commission for Africa, The EAC and Africa: Accelerating a Continent’s Development, 1999, p. 55].}

The initial attempts to unite Africa happened within the context of the Cold War or the economic and ideological rivalry between the East and West. This attempt saw Pan-Africanist leaders like Kwame Nkrumah propound the vision of a United States of Africa amid debilitating tensions and contradictions experienced after many states became “independent” of imperial territorial occupation. The neo-colonist phase of imperialism was averse to a united Africa that would command the power needed to neutralise the forces of imperialism through engagement in international realpolitik. These initial attempts marked the beginning of the contention between African nationalism and continued subjugation.

Kwame Nkrumah, bolstered by the Pan-African vision through proponents such as George Padmore, W.E.B. Du Bois, and others, organised the All Africa People’s Conferences which brought together independence political parties and trade unions.\footnote{Shivji, I. G., op. cit., p. 7.} In pushing forward the idea of a Union of African States, Nkrumah argued that left to their own devices, the freshly independent states in Africa would become pawns on the “imperialist chessboard”.\footnote{Ibid, p. 8.} The first president of Ghana further warned that “… without a serious commitment to a people-centred development process and collective self-reliance … and without political unity at the continental level, neo-colonialism would continue to balkanise and under-develop Africa, and poverty would be perpetuated.”\footnote{Peter Anyang’ Nyong’o, et al (eds), op. cit., p. 20.} Nkrumah’s efforts ended with his own overthrow
Africa’s Underdevelopment and Pan-Africanist Integration

from power. Later, the All Africa People’s Conference turned into the Conference of Independent African States, eventually becoming the OAU.

It is under the aegis of the OAU that African leaders presided over a number of conferences that sought solutions to the African development predicament and, specifically, the underdevelopment of the continent. Pan-Africanism, the driving force behind the founding of the OAU, continues to stimulate activities and efforts towards integration. The AU, the most concrete expression of integration efforts, continues to proclaim the ideals of Pan-Africanism. As Professor Anyang' Nyong'o notes, Pan-Africanism “has come back as the only viable continental ideology for saving Africa from sinking further into the dungeon of political, social and economic decay.”

The AU, as already stated, was a culmination of a number of initiatives started in the 1960s. These initiatives include the 1976 African Declaration of Cooperation, Development and Economic Independence; the Monrovia Declaration of 1979; the 1980 Lagos Plan of Action for the Development of Africa; and the 1991 Treaty establishing the African Economic Community (AEC), also known as the Abuja Treaty. Both the Lagos Plan of Action and the Abuja Treaty were prompted by the Monrovia Declaration and provided a comprehensive plan for the integration of Africa. The Lagos Plan of Action envisaged the development of Africa through regional integration and provided the legal basis for the creation of RECs. The Abuja Treaty, on the other hand, envisaged the creation of a continental economic community, bolstered by the RECs, by 2030. Below, we review some of the defining initiatives.

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69 Ibid.
The Monrovia Declaration\textsuperscript{70}

The Monrovia Declaration was made during the Sixteenth Ordinary Session of the Heads of State and Government in Monrovia, Liberia, against the backdrop of concerns over the developmental path of the continent and introduced the idea of a New International Economic Order (NIEO).\textsuperscript{71} The meeting was informed by and carried forward the agenda encapsulated in the African Declaration of Cooperation, Development and Economic Independence adopted during the 10\textsuperscript{th} Ordinary Session of the OAU held in Addis Ababa and the follow-up 11\textsuperscript{th} Extraordinary Session of the Council of Ministers of the OAU held in Kinshasa in 1976.

The Sixteenth Extraordinary Session took cognisance of the resource endowment of the African continent, the need to enhance the living standards of the people of the continent by transforming the economies of African countries, as well as the need to integrate African economies in order to achieve “... rapid socio-economic change and to establish a solid domestic and intra-African base for a self-sustaining, self-reliant development and economic growth”.\textsuperscript{72}

The declarations made revolved around the question of socio-economic development and achievement of “self-reliance” and “self-sustainment” through the integration of Africa’s economies. In the second declaration, it was stated: “That we commit ourselves individually and collectively on behalf of our Governments and

\textsuperscript{70} The Declaration, to give it its full title, was the “Monrovia Declaration of Commitment of the Heads of State and Government of the OAU on the guidelines and measures for national and collective self-reliance in economic and social development for the establishment of a new international economic order”.

\textsuperscript{71} The session was held from July 17-20, 1979.

peoples to promote the economic integration of the African region in order to facilitate and reinforce social and economic intercourse”.

The declarations further touched on areas of natural resource management, industrialisation, cooperation in the conservation and protection of the environment and integration of socio-cultural values into development initiatives. It is the Sixteenth Ordinary Session of the Heads of State and Government in Monrovia that decided to hold the Extraordinary Session of the Assembly of Heads of State and Government in Nigeria the following year, which in turn came up with the Lagos Plan of Action.

**The Lagos Plan of Action**

In its preamble, the Lagos Plan of Action elucidated its background and justification, based on the challenges that the continent faced in socio-economic development. Noting that the continent had suffered from the effects of unfulfilled promises of global development strategies and that its economy had stagnated, the Plan declared that its approach was to adopt a “… far reaching regional approach based primarily on collective self-reliance”.

It reiterated the commitments made by the Monrovia Declaration on the promotion of socio-economic and social development and specifically:

1. To promote the economic integration of the African region in order to facilitate and reinforce social and economic intercourse; and
2. To establish national, sub-regional and regional institutions which will facilitate the attainment of the objectives of self-reliance and self-sustainment.

During the meeting the following guidelines were worked out:

i) Africa’s huge resources must be applied principally to meet the needs and purposes of its people;

ii) Africa’s almost total reliance on the export of raw materials must change. Rather, Africa’s development and growth must be based

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73 Ibid
74 Organisation of African Unity, op.cit., p.4
on a combination of Africa’s considerable natural resources, her entrepreneurial, managerial and technical resources and her markets (restructured and expanded) to serve her people. Africa, therefore, must map out its own strategy for development and must vigorously pursue its implementation;

iii) Africa must cultivate the virtue of self-reliance. This is not to say that the continent should totally cut itself off from outside contributions. However, these outside contributions should “only supplement our own effort: they should not be the mainstay of our development”;

iv) As a consequence of the need for increased self-reliance, Africa must mobilise her entire human and material resources for her development;

v) Each of our states must pursue all-embracing economic, social and cultural activities which will mobilise the strength of the country as a whole and ensure that both the efforts put into and the benefits derived from development are equitably shared; and

vi) Efforts towards African economic integration must be pursued with renewed determination in order to create a continent-wide framework for the much needed economic co-operation for development based on collective self-reliance.75

The above guided the formulation of the Plan of Action. The Plan of Action elaborated actions on various sectoral issues such as food and agriculture, industry, natural resources, human resource development and utilisation, science and technology, energy, trade and finance, transport and communication, women and development, and environment and development.

75 Reproduced to convey the emphasis placed on the development of the continent and specifically on the use of the continent’s resources for the development of the continent. OAU, Lagos Plan of Action for the Economic Development of Africa, op. cit.
The Final Act of Lagos\textsuperscript{76} reconfirmed the commitment of the Assembly of Heads of State and Government to the implementation of the Plan of Action and especially in relation “to the setting up of regional structures and the strengthening of those already existing for an eventual establishment of an African Common Market as a first step towards the creation of an African Economic Community.” The Abuja Treaty\textsuperscript{77} was the follow-up instrument to the Final Act of Lagos that finally elaborated and recommitted African leaders to the establishment of the AEC.

**The Constitutive Act of the African Union**

The AU, was founded through the Constitutive Act of July 11, 2000, as adopted by the 36\textsuperscript{th} Ordinary Session of the Assembly of Heads of State and Government in Lomé, Togo. It was founded in line with the Declaration adopted during the Fourth Extraordinary Session of the Assembly of the OAU held in Sirte, Libya, which “…decided to establish an African Union, in conformity with the ultimate objectives of the Charter of our continental organisation and the Treaty establishing the African Economic Community”.\textsuperscript{78} The AU replaced the OAU which had existed since 1963.

The founding of the AU happened in a different political context from that of the OAU and this is reflected in their different aims. Whereas the OAU was more concerned with the realities of newly independent African states within the context of the Cold War and hence tended to emphasise protection of the territorial integrity of African states, the Constitutive Act of the AU emphasises building democratic states that respect human rights and ensure “good

\textsuperscript{76} Final Act of Lagos, Annex 1, OAU, Lagos Plan of Action for the Economic Development of Africa, op. cit.


governance”. The focus has thus changed from concern with the sovereignty of states to concern with building democratic regimes that would be effective building blocks for the envisaged Union.

The Constitutive Act of the AU took cognisance of the principles and objectives as expressed in the Charter of the OAU, and the Abuja Treaty. In addition, the founders of the AU restated the need to accelerate the process of establishing the AEC “in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalization”. They also noted the importance of working with all segments of civil society, particularly “… women, youth and the private sector, in order to strengthen solidarity and cohesion among our peoples”.

Two objectives of the AU stand out and are relevant to this discussion. Objective (c) is to “accelerate the political and socio-economic integration of the continent”, while objective (l) is to “coordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union”.79 These two objectives not only underline the intention of Africa’s political leaders to unite the continent politically but also solidify the place of the RECs in the unity scheme. The AU adopted both the 1980 Lagos Plan of Action for the Development of Africa and the Abuja Treaty leading to the emphasis on integration through the existing and new RECs. The AU therefore took on the agenda of promoting RECs and concluding the process towards the formation of the AEC.

Within its principles, the AU puts particular emphasis on issues such as common defence, conflict resolution, social justice, gender equality, sanctity of human life, sovereign equality, respect for democratic values, peaceful co-existence and self-reliance. Among the most progressive aspects of these principles is the participation of citizens in the affairs of the Union. Principle (c) emphasises the “participation of the African peoples in the activities of the Union”, while principle (h) elaborates the “the right of the Union to intervene

79 Ibid.
in a Member State pursuant to a decision of the Assembly in respect of 
grave circumstances, namely: war crimes, genocide and crimes against 
humanity.”  

The AU has, in efforts to achieve its reasons for being, adopted 
the New Partnership for Africa's Development (NEPAD) \(^{81}\) and the 
African Peer Review Mechanism (APRM) \(^{82}\) so as to ensure compliance 
with treaties and other standards. \(^{83}\) It has also created two institutions 
– the Pan-African Parliament and the Economic, Social, and Cultural 
Council (ECOSOCC). \(^{84}\) The former is the legislative body of the 
Union while the latter is the body whose mandate is to enhance the 
voice of the African people in the affairs of the Union. In order to 
further engender participation in the affairs of the Union by the 
African people, the AU also adopted the African Charter for Popular 
Participation in Development, formulated at Arusha in 1990 after the 
International Conference on Popular Participation in the Recovery 
and Development Process in Africa. \(^{85}\)

**The East African Community Treaty**

The EAC is one of the RECs that are recognised by the Constitutive 
Act of the AU. It is therefore one of the building blocks of the 
continental Union. The EACT recognises the importance of working 
with CSOs in the region and, in line with the African Charter for

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80 Ibid
81 NEPAD has since come under heavy criticism for de-emphasising the values 
of self-reliance and self-determination by putting emphasis on foreign aid 
receipts and foreign investments as the key to Africa's development. The 
initiative, which in essence presented a begging bowl, or “Marshall Plan”, 
presented a strategy too dependent on charity from the developed world for 
Africa's development [see, generally, Peter Anyang’ Nyong’o, et al (eds), op 
cit].
82 A number of African countries have already submitted themselves to the 
APRM process. These include Kenya, Ghana, South Africa and Uganda.
84 Ibid.
Popular Participation in Development, provides for the participation of CSOs in its activities via a number of provisions. Below are some of the provisions for the participation of CSOs:

Table 3.1: How EACT provides for participation of CSOs in its activities

<table>
<thead>
<tr>
<th>Article</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.3 (g)</td>
<td>… the Community will ensure, <em>inter alia</em>, the enhancement and strengthening of partnerships with civil society, so as to achieve sustainable socio-economic and political development</td>
</tr>
<tr>
<td>127.1</td>
<td>… the Partner States agree to provide an enabling environment for the participation of civil society in the development activities within the Community</td>
</tr>
<tr>
<td>127.3</td>
<td>… the Partner States undertake to promote a continuous dialogue with civil society at both the national and the Community level</td>
</tr>
<tr>
<td>127.4</td>
<td>… the Secretary General shall provide the forum for consultations between civil society organisations, the private sector, other interest groups and appropriate institutions of the Community</td>
</tr>
</tbody>
</table>

**Source:** EACT various articles

The EACT recognises in its preamble that lack of participation of civil society and other actors was one of the reasons that led to the collapse of the initial integration effort. Participation of CSOs can therefore be seen in this light. The twin challenges of development and democratisation run through the text of the EACT in a similar manner as the Constitutive Act of the AU. Even though, as Prof. Peter Anyang’ Nyong’o states, Pan-Africanism has come back as the only viable ideology for Africa’s development, the challenge of implementation of the agreed frameworks will persist in line with Prof. Adedeji’s criticism of the priorities of African leaders. 86 This study was itself prompted by the fact that key CSOs, particularly those that have

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86 Peter Anyang’ Nyong’o, et al (eds), op. cit., p. 36.
been granted observer status with the EAC, view the rules for granting observer status as restrictive and therefore not capable of sufficiently promoting participation of CSOs.

**Conclusion**

As the above review has shown, the key values enshrined in the various frameworks that have informed the integration of Africa are: cooperation, self-reliance, collective security of African countries, gender equality, self-determination, independence as well as democratic participation. It remains to be seen whether these values will be adhered to by the leadership of African countries. For African states to have a successful integration process, depends on ideals elucidated under the AU as presently constituted and how rapidly and skilfully the integration effort is carried out to avoid the stalemate engendered during the immediate post-independence integration effort.
Civil Society Consultation within the EAC: Some Preliminary Lessons

Introduction

The practice of civil society consultation within IGOs has a long history, with the UN ECOSOC statute for non-governmental organisations being one of the most elaborate and enduring frameworks. Apart from providing an avenue for organised representation of citizens in decision-making through CSOs, the practice is based on the realisation that organisations with interest in particular issue areas develop capacities and skills in those areas that may be harnessed to achieve the objectives of IGOs. This is in line with the tenets of neo-realism/liberalism in regard to the roles of states in international relations as well as neo-functionalism in regard to the role of non-state actors in international relations. Various participatory frameworks have thus been attempted by IGOs and civil society formations to enhance participation by CSOs.

There are generally two distinct categories of participatory frameworks: those that are put in place by the IGOs themselves, and those that are largely formulated by CSOs and are therefore autonomous from the IGOs. The first type is usually given recognition through the

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88 Established through Resolution 1996/31, July 25, 1996 (See Peter Willet, Centre for International Politics, School of Social Science, City University, 2001, http://www.staff.city.ac.uk/p.willetts/NGOS/RES31-96.HTM#Xvii accessed on July 11, 2008. Many of the UN agencies rely on the ECOSOC for their relationship with CSOs, especially those involved in social and economic matters. However, the rest have other mechanisms. The United Nations Environment Programme (UNEP) hosts the global civil society forum prior to the meetings of the Governing Council. This presents an entry point for CSOs dealing with matters of the environment for participation at governance level.
treaties forming the IGO, or formal separate statutes or declarations made by the relevant organs of the IGO. Some of the participatory frameworks in this category will usually be embedded within the structures of the IGO. The second type is autonomous from the IGO though it may also be given recognition by the IGO. Some within this category could be initiated by the IGO but as autonomous entities. In this case, the IGO plays a facilitative role but the actual planning and organising is undertaken by the CSOs themselves. The models that have been attempted include the Economic and Social Council, for example, as implemented by the United Nations and the African Union89 and the idea of an autonomous NGO/CSO Forum that has been attempted by IGAD, ECOWAS, the EAC and SADC.90

In line with the EACT, the EAC Secretary General spearheaded the formation of a consultative structure for CSOs.91 The initial efforts culminated in a draft of recommendations towards the formation of the EAC NGO/CSO Steering Committee, an Economic and Social Committee, an EAC NGO/CSO Forum, a secretariat to coordinate

89 Unlike its predecessor, the OAU, the AU through its Constitutive Charter recognises the role of CSOs. Article 22 states that: “The decision (Decision AHG DEC.160 (XXXII), July 2001) to involve civil society organisations in the integration process was made in the 2001 Assembly of Heads of State and Government which stressed the importance of ‘involving African Non-Governmental Organisations, socio-economic organisations, professional associations, and civil society organisations in Africa’s integration process, as well as in the formulation and implementation of the programme of the Union’”. (See CSO AU-ECOSOCC Process Briefing, http://www.sarpn.org.za/documents/d0001629/index.php, Accessed October 9, 2008.

90 In SADC, this was done through the Southern African Development Community Council of Non-Governmental Organisations (SADC–CNGO).

91 In fulfilment of its mandate to provide a forum for consultations between the private sector, civil society organisations, and other interest groups, as provided for in Article 127 (4) of EACT, the EAC Secretariat hosted the first regional workshop for civil society organisations between July 28 and 29, 2005. The theme of the workshop was “Civil Society Mobilisation for Effective Participation in the EAC”.

the affairs of the forum and a People’s Forum. Further proposals were 
an annual meeting of CSOs as part of the EAC Calendar of Activities 
and the introduction of a Consultative Status for CSOs “… which 
do not have to be subjected to the requirements of the observer status 
criteria”.  

The aim of this chapter is to critically appraise the emergent 
consultative framework for CSOs in the EAC, through the EACSOF 
and the anticipated Economic and Social Committee. The chapter 
borrows from the various existing modes of consultation between 
CSOs and IGOs as a basis for appraising this emergent framework. 
The chapter proceeds by first carrying out an assessment of various 
consultative frameworks based on identified themes and drawing 
relevant lessons. It then subjects the emergent EACSOF to assessment 
based on these themes and the key lessons learnt.

Comparative Thematic Assessment of Consultative 
Frameworks

The assessment of consultative frameworks is based on the 
following themes:

1. Principles of Engagement;

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92 EAC, First Workshop for Civil Society in East Africa, Arusha International 
Conference Centre (AICC), Arusha, Tanzania, July 28 – 29, 2005, Workshop 
Recommendations, Ref. EAC/01/CSO/2005.

93 At the time of compiling this report the ECOSOC idea had not been 
actualised or given institutional form. However, plans to institutionalise the 
EACSOF were advanced with several meetings having taken place within 
interim structures spearheaded by the East Africa Law Society (EALS). The 
difference between the ECOSOC and the EACSOF is the level of autonomy 
of the two. Whereas the ECOSOC as anticipated will be a structure “within” 
the structures of the EAC (See EAC, First Workshop for Civil Society in 
East Africa, AICC, Arusha, Tanzania, July 28 – 29, 2005, Workshop 
Recommendations, Ref. EAC/01/CSO/2005), the EACSOF is intended 
to be more autonomous even though it has representation from relevant 
government ministries.

94 Assessment of EACSOF will be based on the existing interim constitution.
2. Bases of Engagement;
3. Levels of Consultation;
4. Consultative Categories; and
5. Participatory Structures.

On the basis of this thematic treatment, the chapter makes recommendations on how EAC consultation should be institutionalised. Key lessons are highlighted within the text.

**Principles of Engagement**

Assessment of consultative frameworks shows that engagements between CSOs and IGOs are often based on properly and clearly articulated principles. In the case of consultative frameworks initiated by IGOs, the IGOs themselves will formulate the principles upon which basis they accept CSOs into the consultative orbit. CSOs formulating consultative frameworks should ideally formulate principles upon which they engage the IGO and which also govern relationships among the CSOs. For CSOs, the additional motivation for clearly formulated and articulated principles is a matter of practicality and utmost concern: to safeguard their “independence” from the state, which enhances their participation in the deliberations of the IGO and, specifically, agenda-setting within the IGO.

Even though the neo-functional approach recognises and emphasises the participation of civil society groups in IGOs, there are usually suspicions between state agents and NSAs. For state actors, this is mainly because of concerns with the sources of influence and agenda of CSOs.\(^5\) NSAs consider state actors to be duty bearers in human rights parlance in which case they must be taken to task to ensure both respect for human rights and a governance regime that promotes the welfare of all citizens based on the principle of equity. Because of the intricate interests interwoven within the fabric and institutions of the state and the practice of patronage in politics,

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there is a continuous tussle between state and non-state actors for the realisation of these basic tenets.

The UN ECOSOC, through Resolution 1996/31 of July 25, 1996, elaborated “Principles to be applied in the establishment of consultative arrangements”,96 and “Principles governing the nature of the consultative arrangements”.97 The first set of principles has 17 clauses and revolves around the following core issues:

- The organisation will be concerned with matters that fall within the core competence of the ECOSOC;
- The aims and purposes of the organisation to be in conformity with the purpose, spirit and principles of the UN Charter;
- That the organisation undertakes to support the UN’s work in line with its own aims, purposes and competence;
- There is clear emphasis on regional representation and especially representation of organisations from developing countries;
- There is emphasis on the representative organs of the organisation as well as internal democratic management and accountability; and
- The resource base of organisation to be mainly from membership of organisation with provision for disclosure of amounts and sources of other contributions.

**Key Lessons**

1. Consultation must be based on well articulated principles that enhance participation in decision-making, but also preserve the independence of organisations vis-à-vis state institutions.

2. Organisations involved in the initiative must have clear membership since membership is an avenue for feedback and information-sharing.

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96 UN ECOSOC Resolution 1996/31, Part 1. This resolution provides the framework for obtaining consultative status (accreditation) by NGOs wishing to contribute to the UN’s work in the economic and social fields.

97 Ibid, Part 2.
Bases of Engagement

Various threads run through the participatory mechanisms for CSOs in IGOs in terms of bases of engagement. Of critical importance is the aspect of representation of citizen voices in decision-making within the organs of the IGO. CSOs provide united and organised citizen voices for this manner of participation. This is an aspect of direct or participatory democracy in which citizens aggregate in communities of interest. This approach gives voice to those interests, which may not find expression in more traditional systems and practices of representative democracy.

Second, is the aspect of competence and experience in particular issue-areas? This is a much emphasised factor. Examples of such issue-areas are: environmental issues, gender issues, research capacities, and climate-related issues. Organisations that seek consultative status in IGOs are those that have competence in certain areas that are also related to the activities of the IGO. This enables such organisations to contribute to the agenda of the IGO. The ideal scenario is where there is clear confluence in terms of the agenda of the CSO and the IGO, a situation that provides both organisations with opportunities to advance their objectives in a complementary manner.

Organisations affiliated with the UN ECOSOC will therefore be required to “… support the work of the UN and to promote knowledge of its principles and activities, in accordance with its own aims and purposes and the nature and scope of its competence and activities”. It also provides that:

…consultative arrangements are to be made, on the one hand, for the purpose of enabling the Council or any of its bodies to secure expert information or advice from organisations having special competence in the subjects for which consultative arrangements are made, and, on the other hand, to enable international, regional, sub-regional and

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national organisations that represent important elements of public opinions to express their views.\textsuperscript{99}

In this regard, these organisations bring their own key competences to bear on the work of the ECOSOC. Organisations affiliated to the United Nations Human Settlements Programme (UN HABITAT) are “those that can provide expertise and local knowledge to the identification, design, implementation and evaluation processes of the programmes and projects”.\textsuperscript{100}

Participatory frameworks, whether designed by IGOs or by CSOs, have to take account of the particular bases of consultation, not only to enhance the work of the IGO but for meaningful participation that is issue-oriented and -based. Organisations seeking membership in any emergent framework should have as wide an array of issue-focused representation as possible to avoid concentration on a few issues to the detriment of other deserving issues.

<table>
<thead>
<tr>
<th>Key Lessons</th>
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<tbody>
<tr>
<td>1. The participatory framework should be designed to achieve as wide an issue base as possible. This adds value to participation by CSOs.</td>
</tr>
<tr>
<td>2. It is useful to delineate the areas of competence for organisations as an entry point to participation.</td>
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<tr>
<th>Levels of Consultation</th>
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<tr>
<td>Opportunities for consultation exist within the various organs of the IGOs. This means that, depending on the issue at hand, particular organs within the IGO could be consulted. It is therefore appropriate that opportunities and mechanisms of participation within the organs of an IGO are properly delineated to enhance participation. In the organisational formats of IGOs there is clear delineation in terms of</td>
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\textsuperscript{99} UNECOSOC Resolution 1996/31, Part II, (20).

policy-making, coordination and implementation.

Van Dijk has attempted a framework of participation in EAC processes based on a juxtaposition of functions and opportunities created through observer status. The levels (in this case, functional areas) he identifies are: policy preparation, policy decision-making, policy operationalisation, policy implementation and monitoring and evaluation. He further makes suggestions on which CSOs could be consulted, and at what levels.

UN ECOSOC Resolution 1996/31 provides the different levels of consultation within the ECOSOC system. A CSO can therefore consult with the Council, commissions and other subsidiary organs of the Council, as well as ad hoc committees of the Council. This system provides clarity in terms of whether an organisation is consulting at the policy level or at the level of operationalisation of policy.

**Key Lesson**

It is useful to map out the organs that may be consulted by CSOs and define the processes involved in consultation.

**Consultative Categories**

In this case, it is possible to distinguish categories for organisations to be granted consultative status. The consultative arrangements under the UN ECOSOC distinguish between three categories of consultative status as follows:

102 One critical observation of Dijk’s suggestions is that they are not based entirely on the available framework of participation, that is, the Rules of Observer Status for CSOs in the EAC, which, as we have seen, are rather limiting.
103 UN ECOSOC Resolution 1996/31, Part IV.
104 Ibid., Part V.
105 Ibid., Part VI.
106 This is relevant for the anticipation ECOSOC arrangement.
Civil Society Participation in the East African Community

- General consultative status
- Special consultative status
- Organisations on the roster

The first-category organisations are those that are concerned with most of the activities of the Council and are therefore in a position to make substantive contributions to its work. Category two organisations are those that have competence in only a few areas while category three organisations comprise those that are capable of making only occasional contributions to the work of the Council. This categorisation provides a way of dealing with a situation where there are many organisations seeking consultative status in the emergent frameworks, particularly the ECOSOC arrangement within the EAC.

**Key Lesson**

Having various categories of consultative status may help to deal with many organisations seeking consultative status and also to create a clear link between issues and competences.

**Participatory Structures**

Each consultative scheme provides structures of participation in the activities of the IGO. Apart from clarifying what is required of CSOs and in what ways they contribute to decision-making, such structures also provide clarity in terms of “what is and what is not on offer” for CSOs playing a role in the participatory scheme. The West African Civil Society Forum (WACSOF), for instance, has the following structures:

- The People’s Forum made up of representatives of all member civil society organisations as the top decision-making organ. The forum meets annually prior to meetings of the ECOWAS Authority and Council of Ministers and has the following functions:

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108 Dijk T. op. cit.p.7
109 WACSOF was formed in 2003. The formation was facilitated by the
◊ Reviews the activities of the ECOWAS Secretariat and member states;
◊ Makes appropriate recommendations to the summit;
◊ Considers the report of the Secretary General as submitted to it by the Executive Committee;
◊ Appoints, annually, a civil society focal point in each member state of ECOWAS; and
◊ Elects the Executive Committee.\textsuperscript{110}

- The Executive Committee, which is the management organ, is elected every two years by the People’s Forum. The Executive Committee is generally responsible for the running of the WACSOF. Some specific functions include:

◊ Appointment of the Secretary General;
◊ Attending meetings of the organs and components of ECOWAS; and
◊ Organising meetings of the People’s Forum.\textsuperscript{111}

ECOWAS Secretariat following consultations with the Centre for Democracy and Development and International Alert. The ECOWAS Secretariat organised a consultative meeting to “analyse issues of regional human security and propose strategies to address them…” (See AFRIMAP, AFRODAD & OXFAM, Towards People-Driven African Union: Current Obstacles and New Opportunities, 2007, pp. 27/28). The Forum “sets out to galvanise the initiatives of CSOs and partner with ECOWAS for the improvement of human security, regional integration, as well as economic and social development in West Africa” and to “facilitate the building of dense associational networks, promotion of solidarity, trust, and reciprocity among CSOs both nationally and at regional level aiming to empower civil society to exploit the public space in a liberal democracy, to which WACSOF aspires, where the sovereignty is the people”. See East African Law Society and Society for International Development, and EAC, Report of The 2nd Annual East African Civil Society Organisations’ Forum, November 21 and 22, 2007, Ngorodo Mountain Lodge, Arusha, Tanzania, p. 14.


\textsuperscript{111} Ibid.
One of the general considerations for involving CSOs in the activities of IGOs is the assumption that the structures of CSOs are representative of certain interests which are therefore given space for expression. The UN ECOSOC statute requires an organisation to have “… a representative structure and possess appropriate mechanisms of accountability to its members, who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision making processes.”

It is important that any structure that is put in place is capable of maximising participation so as to further pluralise the voices and interests that are expressed within the structure, hence enhancing the legitimacy of decision-making outcomes. This, ideally, should also apply to organisations seeking observer status in an IGO.

Even though the IGAD NGO/CSO Forum failed to take off as intended, a number of lessons can be learnt from the processes that went into its formation. In terms of structure, it had three levels as follows:

- National Steering Committee
- Regional Steering Committee
- The Assembly of the Forum

This structure was meant to enable participation by CSOs at national as well as at the regional level.

The National Steering Committee was to be composed of representatives of NGOs/CSOs in member states, which fulfilled membership criteria for the forum. Under the IGAD NGO/CSO Forum statutes, each country was to determine the structure and the terms of reference of the National Steering Committee. The Regional Steering Committee was to comprise fourteen NGO/CSO representatives from member countries, and seven government representatives comprising IGAD technical focal persons. The

112 UN ECOSOC Resolution 1996/31, Part III (12).
113 The founding assembly of the IGAD NGO/CSO Forum was held in Nairobi between July 15 and 16, 2003. The founding of the Forum was triggered by a declaration made at the 8th Summit of Heads of State and Government of IGAD. The declaration stated as follows: “We recognise the need for our countries and peoples to come together and join efforts to meet
Assembly of the Forum was similar to the People’s Forum under the WACSOF. The one weakness with the IGAD NGO/CSO structure was the requirement that the national and regional structures have representatives of government, which would compromise decision-making by CSOs.

The AU ECOSOCC has an elaborate structure of participation even though it has often been criticised for its limited advisory role in the AU.\textsuperscript{114} The overall decision-making organ is the ECOSOCC General Assembly (EGA). The Steering Committee is elected by the General Assembly and is composed of 12 members, including 10 representatives of the Sectoral Cluster Committees, a representative of the Diaspora and the president of ECOSOCC.\textsuperscript{115} Finally, the Sectoral Cluster Committees are established as key operational sectors for CSO Members of ECOSOCC.\textsuperscript{116}

\begin{center}
\textbf{Key Lessons}
\end{center}

1. The participatory structures have to be formulated in a way that ensures participation of as many CSOs as possible.

2. The organs of the participatory structure should be constituted through elections for credibility and legitimacy.

3. There should be as wide representation as possible of CSOs at the national level from which pool the regional structures are constituted.

4. A civil society consultative structure should be autonomous both in its resources and its functions. Government representation within a civil society consultative structure is therefore undesirable.

the challenges that confront our region as we enter the new millennium. We are therefore convinced that our people have the right to live in peace and rekindle their aspirations for stronger and cohesive unity transcending cultural, ideological, ethnic and national differences. We further commit ourselves to promoting participatory democracy and adopt it to suit local conditions in our member states. We also dedicate ourselves to promoting freedom of expression, and association, transparency, and good governance in our member states.”

\textsuperscript{114} AFRIMAP, AFRODAD & OXFAM, op. cit, p.27.
\textsuperscript{115} AU-CSOPWG /Draft/ECOSOCC Statutes/. Rev 1, Article 7.
\textsuperscript{116} Ibid., Article 9.
The EACSOF and the Proposed ECOSOC for EAC

The ECOSOC as proposed during the first workshop for civil society in East Africa facilitated by the EAC was to be entrenched in the organs of the Community.\textsuperscript{117} It was therefore to take a similar approach as the AU ECOSOCC or the UN ECOSOC which are both organs of the respective IGOs. Whatever the acronym used in any case, these bodies provide a vessel for participation in the deliberations of the IGOs by CSOs. The UN ECOSOC statute entrenched through Resolution 1996/31 is a realisation of the ECOSOC as envisaged in the Charter of the UN.\textsuperscript{118}

The EACSOF resembles the West African WACSOF\textsuperscript{119} which in design and conceptualisation is an autonomous civil society initiative as opposed to the idea of an ECOSOC, which would be embedded within the EAC structures. A key strength of WACSOF is that it is not an organ of ECOWAS but a “free-standing body”, though given formal recognition by the ECOWAS partner states.\textsuperscript{120} The WACSOF meets strategically before meetings of the Summit of Heads of State of ECOWAS state parties.\textsuperscript{121} It gives recommendations which are processed through the Council of Ministers so as to influence decisions

\textsuperscript{117} Apart from the establishment of ECOSOC, the meeting also proposed formation of the EAC NGO/CSO Forum, a secretariat to coordinate the affairs of the Forum and a People’s Forum. Further proposals were an annual meeting of CSOs as part of the EAC Calendar of Activities and the introduction of a consultative status for CSOs, “which do not have to be subjected to the requirements of the observer status criteria.”

\textsuperscript{118} Chapter X, Charter of the UN.

\textsuperscript{119} The formation of WACSOF in 2003 was facilitated by the ECOWAS Secretariat following consultations with the Centre for Democracy and Development (CDD) and International Alert. The ECOWAS Secretariat organised a consultative meeting to “analyse issues of regional human security and propose strategies to address them…” (See AFRIMAP, AFRODAD & OXFAM, op. cit., p. 27). Some observers believe this is one of the best models and should inform the EACSOF (for instance, author interview with Ibrahima Kane, Open Society Institute, Kenya, on October 30, 2008).

\textsuperscript{120} AFRIMAP, AFRODAD & OXFAM, op. cit. p.27.

\textsuperscript{121} Author interview with Ibrahima Kane, op. cit.
made by the Summit. It is also funded externally and therefore is not encumbered by the political dynamics of state support. This gives it operational autonomy even though the question of funding (particularly from external sources) and agenda-setting among CSOs remains a contentious one.\textsuperscript{122} The key advantage of the ECOSOC idea is that it would be readily acceptable by partner states. Since it is to be entrenched within the organs of the IGO, it is easy for the partner states to control its agenda.\textsuperscript{123}

EAC civil society should strive to institutionalise the EACSOF in a way that would maximise participation by civil society groups. One option would be to model it along the lines of the WACSOF. The experience of putting together the EACSOF so far has proved to be rather convoluted and contentious. Initial attempts to organise the East African civil society to take part in the activities of the EAC seem to have been held hostage by suspicion among the organisations involved as well as insufficient financial resources.\textsuperscript{124} The current initiative spearheaded by the EALS seems to be rather hurried and there are those who feel that the initiative has been turned into a “project” of the EALS though this could as well be a manifestation of the political dynamics within the civil society informed by the struggle for resources and space.\textsuperscript{125}

\begin{footnotesize}
\textsuperscript{122} Some observers reason that because of the poverty in African countries generally, there is no other way to sustain people’s initiatives and guarantee their independence from state interference. However, this remains an area of contention since state agents view the relationship between local initiatives and their foreign sources of funding with suspicion and this affects the way they interact (for instance, author interview with Ibrahima Kane, op. cit).
\textsuperscript{123} Note, for instance, that the AU ECOSOC is only advisory, which limits its roles and the extent to which it provides genuine prospects for participation (for instance, author interview with Ibrahima Kane, ibid.).
\textsuperscript{124} Author interview with Professor Jassy Kwesiga, DENIVA, Uganda on July 29, 2008.
\textsuperscript{125} Ibid.
\end{footnotesize}
Strengths and Weaknesses of the EACSOF

The EACSOF idea has both strengths and weaknesses in its current formulation. Below we present these strengths and weaknesses based on the themes discussed above.
Summary Synthesis of Strengths and Weaknesses of EACSOF based on the Five Thematic Areas

<table>
<thead>
<tr>
<th>Thematic area</th>
<th>Strengths</th>
<th>Weaknesses</th>
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<tbody>
<tr>
<td>Principles of Engagement</td>
<td>Has elaborated principles that are mainly “inward”-looking addressing relationship between the civil society participants in the consultative framework.</td>
<td>Lacks broad principles that address relationship with the EAC.</td>
</tr>
<tr>
<td>Bases of Engagement</td>
<td>Puts clear emphasis on enhancing participation in decision-making and implementation of EAC policies, participation of citizens in conflict management, protection of human rights within the EAC jurisdiction, information-sharing and raising awareness of citizens on the EAC.</td>
<td>Is not clear how the capacities of organisations within the EAC will be harnessed to advance the agenda of the EAC or as a basis for influencing such agenda. This weakness is also discernible in the design of the meetings of the General Assembly. To be quorate, the General Assembly needs 5% of the member organisations, “… provided there is as much equitable representation of members from each of the five EAC countries as possible amongst the members present.” The threshold for quorum is rather low.</td>
</tr>
<tr>
<td>Levels of Consultation</td>
<td></td>
<td>The constitution does not specify the levels of consultation. There is need for this to be included or for a separate document to indicate this. This document will specify the EAC organs to be consulted by the EACSOF.</td>
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</table>

126 Constitution of EACSOE Article 7 (2) (4).
### Consultative Categories

Delineating categories of consultation for civil society will be useful in three ways:

1. To engender more relevant consultation within EAC structures by matching organisational interests and capacities to consultation on various issues.
2. By managing the large number of organisations that would seek consultation.
3. By enhancing the relevance of EACSOF’s recommendations to EAC.

Consultative categories could be formulated in a separate document.

The constitution does not specify consultative categories for civil society.

### Participatory Structures

<table>
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<th>Has a three tier structure made of:</th>
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<tbody>
<tr>
<td>• General Assembly</td>
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<tr>
<td>• Governing Council</td>
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<tr>
<td>• Secretariat</td>
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</table>

This structure presents opportunities for participation though not on a wide scale.

The structure is not elaborate enough to maximise participation of CSOs. The EACSOF should revisit the initial structures that were recommended during the first regional workshop for CSOs facilitated by the EAC, particularly the establishment of both national and regional structures for more effective consultation. This will ensure representation of national issues in accordance with one of the objectives of EACSOF, that is, “to promote the visibility of national issues from a CSO perspective in the EAC.”

The WACSOF with its idea of a People’s Forum could be useful as a lesson for the EACSOF. It is also important to link the meeting of the policy-making forum to the meetings of the organs of the EAC. In the case of the People’s Forum under the WACSOF, the annual meetings take place prior to meetings of the ECOWAS Authority and Council of Ministers. In this way they are able to inform the decisions of this organ.

### Source:

Author, 2008

Conclusion

The purpose of this chapter was to appraise the emergent consultative framework for CSOs in the EAC, that is to say, the EACSOF and the anticipated ECOSOC. Borrowing from a number of existing participatory frameworks, the chapter drew lessons and proceeded to assess the emergent EACSOF based on those lessons. The chapter finally presented a comparison between the EACSOF idea and the anticipated ECOSOC. After weighing the two ideas, the chapter's conclusion was that CSOs are better off with the autonomous EACSOF than with the ECOSOC idea. If both are implemented they could complement one another and present better prospects for representation of CSOs. However, the EACSOF needs to be made truly participatory by enhancing the participatory structures in accordance with some of the key lessons presented in this chapter.
5

Rules of Observer Status in the EAC: Appraising the Existing Framework

Introduction

The practice of providing opportunities for observers in IOs has a long history. It is informed by the need to enhance participation of civil society, states and other IGOs in the affairs of IGOs. This is in turn informed by the realisation that CSOs can make a positive contribution to the work of IGOs by tapping into their various capacities. Allowing other states and IGOs to participate as observers encourages cooperative behaviour among states and is also seen as one way of minimising conflictual relationships. It also encourages interdependence among states.

Even though requirements of observer status in IGOs suggest the pluralisation of initiatives away from the ambit of state functionaries by giving importance to other actors, it also suggests the lingering dominance of states in the affairs of societies in line with the assumptions of traditional realism and neo-realism. Provision of opportunity to participate in the affairs of IGOs through granting observer status is generally in line with the neo-functionalist approach: it recognises that states are not the only actors in international relations generally and in the formation of regional entities in particular.128 It is within this context that the EAC was restarted.

The EACT recognises in its preamble that failure to provide for participation by civil society is one of the reasons that led to the collapse of the initial integration effort in the 1970s. Even so, in the initial stages of restarting the EAC, CSO participation was minimal. Civil

128 Theoretically, this presents a relaxation of one of the key assumptions of traditional realism: that states are the only actors in international relations. Note that the neo-realist approach, in reasserting some of the tenets of
society through the NGOCEA umbrella had to lobby for recognition of the sector in the integration process. As a result of this initiative, the Treaty expressly provided for the participation of CSOs. Thereafter, the rules of observer status were formulated. These rules enable civil society groups to participate in the affairs of the EAC. However, the rules have been criticised as being overly restrictive. The existence of the rules of observer status and their formulation betrays a key contradiction in the unfolding relationship between states and civil society in East Africa: on the one hand, the mere existence of the rules suggests a changing relationship between states and civil society, involving recognition by states of the importance of civil society in policy formulation; on the other hand, the nature of the rules suggests lingering discomfort by state parties to the EACT to open up windows for civil society participation in a meaningful way.

As stated, the rules of observer status for CSOs in the EAC are informed by provisions in the EACT. Specifically, under Chapter 25 the Treaty emphasises the “creation of an enabling environment for the private sector and the civil society”; “strengthening the private sector”; and providing for “cooperation among business organisations and professional bodies”. The formulation of the rules of observer status was one step towards creating an enabling environment for CSOs to participate in the affairs of the Community.

This chapter appraises the existing rules of granting observer status for CSOs in the EAC jurisdiction. The chapter looks at the rules critically and assesses their ability to enhance the participation of CSOs in the EAC. It begins with a review of the rules of observer status as contained in the Procedure for Granting Observer Status in the

realism, has argued that the formation of IGOs is in itself a confirmation of the continued primacy of states in the state system since states form IGOs for their own benefit, and specifically so in the pursuit of power.

12 The EACT provided for inclusion of CSOs in the activities of EAC through various articles. The initial design of the Treaty did not have such provisions and these had to be pushed via civil society advocacy by groups such as the NGO Coalition for East Africa – NGOCEA (Dijk, T., op. cit, pp. 12-18; author interview with Professor Kwesiga, op. cit.).

130 Various reports of CSO meetings at the regional level attest to this fact.
EAC document formulated in 2001, before presenting a framework for assessment. The actual assessment is undertaken at the end.

**Summary of Procedures for Granting Observer Status**

The rules of observer status were formulated in 2001 with the aim of providing clear guidelines for inclusion of CSOs as observers in the affairs of the EAC. The document containing the rules is divided into seven articles as follows: Interpretation, Principles to be Applied, Criteria, Administrative Procedure, Observer Participation in the Proceedings of the Community, Suspension and Withdrawal of Observer Status, and Entry into Force. The “principles to be applied” are basically the principles encapsulated in Article 3 of the EACT. These are:

- Acceptance of the Community as set out in this Treaty;
- Adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice;
- Potential contribution to the strengthening of integration within the East African region;
- Geographical proximity to and interdependence between it and the partner states;
- Establishment and maintenance of a market-driven economy; and
- Social and economic policies being compatible with those of the Community.  

Of particular importance to this study are the rules on the “Criteria” and “Observer Participation in the Proceedings of the Community”. Article 3 (Criteria) gives power to grant observer status to the Summit

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131 The rules of observer status document defines observer as “… a foreign country, inter-governmental organisation, or civil society organisation granted observer status. Observer status is the entitlement conferred upon a foreign country, inter-governmental organisation, or civil society organisation to send observers on invitation to the meetings of the organs of the Community”. [Article 1, Procedure for Granting Observer Status in the East African Community].

132 Article 3 (3) of EACT.
in case of a foreign country, and to the Council in case of IGOs and CSOs.\textsuperscript{133}

The specific criteria for granting observer status are elaborated in an annex to the procedures and are as follows:

- Acceptance of the fundamental principles underlying the EAC;\textsuperscript{134}
- Interest in the fundamental and operational principles of the EAC;\textsuperscript{135}
- Contribution towards the strengthening of regional integration in East Africa;
- Ability to enhance development partnership;
- The organisation should have objectives of common interest to the partner states;
- The organisation’s activities should bear a regional dimension with the organisation being registered in each of the partner states;
- In its regional activities, the organisation should have a track record of at least three years of active operation.\textsuperscript{136}

The above are the conditions that an organisation has to fulfil to be granted observer status.\textsuperscript{137}

Article 5 (Observer Participation in the Proceedings of the Community) provides the procedures for actual participation by observers. Two overarching conditions for such participation are:

- Presence at official openings and closings of all meetings of the Community, and
- Attendance of meetings of the organs of the Community dealing with subjects of interest to observers.\textsuperscript{138}

\begin{flushleft}
\textsuperscript{133} Article 3 (5a&b), ibid.
\textsuperscript{134} Article 6, ibid.
\textsuperscript{135} Article 7, ibid.
\textsuperscript{137} These conditions are the subject of appraisal in subsequent sub-sections of this chapter.
\textsuperscript{138} Article 5 (1&2) of Procedure for Granting Observer Status, op. cit.
\end{flushleft}
Specific conditions for participation are as follows:

- Observers may, with the express authority of the chairperson, participate in the proceedings of the meeting to which they are invited;

- Observers may, at the request of the chairperson of a meeting, make a statement on a matter of particular concern to them, provided that the text of such statement shall have been furnished to the chairperson of the meeting through the Secretary General before it is made;

- The chairperson of the meeting may give the observers an opportunity to reply to questions which may be directly addressed to them in a meeting; and

- Observers shall not have the right to vote.139

It is evident that a lot of discretion is given to the Secretary General and chairpersons of particular meetings both in granting opportunity to participate and in defining the nature of participation. The participation itself is limited to two steps: making a statement on an issue of particular interest in the meeting, and replying to questions when granted opportunity (and required) to do so by the chairperson. The nature of the discretion given to the Secretary General and the chairpersons, shows that participation under these rules is not guaranteed. Article 5 of the procedures ends with the issue of access to information and confines CSOs to access of information, that is, “not of a confidential nature” and information that deals with matters of “interest to the observer concerned”.140

The Summit and the Council also have powers to suspend or withdraw observer status from foreign governments or CSOs.141 Suspension or withdrawal of observer status is pegged on two factors:

- “Fundamental change in the objectives and mandate of such regional or international organisation to an extent of contradiction with the objectives and mandates of the Community …” and

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139 Article 5 (4a-d), ibid.
140 Article 5 (5a&b), ibid.
141 Article 6 (1a&b), ibid.
• Failure to “… observe the terms and conditions attached to the grant of observer status.”¹⁴²

Framework For Assessment

This assessment of the rules of observer status is based on the overarching need to build a community of citizens (people-centred; bottom-up approach and process) of the EAC instead of a community of states and governments (bureaucracy and elite-centred; top-bottom approach and process). Building a community of citizens of the EAC is in line with the professed need by the EAC to take advantage of the close cultural and commercial relationships of the peoples of the region in forging unity. Any participatory framework, including granting of observer status, should aim at achieving this ideal. Though the action of integrating EAC is itself a positive step towards building a community of citizens, bureaucratisation of processes and tendencies to close up space for engagement ultimately will render the process futile, especially given the suspicions harboured by citizens in some of the countries.¹⁴³

The framework of assessment combines a “Critical Questions Approach” and an analysis of weaknesses and strengths based on the critical questions. The framework revolves around the following three pillars:

• Approximating (aiming towards) direct participation of citizens in EAC decision-making processes;
• Diversifying agenda at meetings of organs of the EAC; and
• Multiplying opportunity for consultation and feedback with and among citizens of the EAC.

¹⁴² Article 6 (2b&3), ibid.
Explanation of the Three Pillars

Approximating direct participation in the EAC decision-making processes will ensure both the legitimacy of the EAC and its ability to further the interests of the citizens of East Africa. Since it is acknowledged that lack of participation is one of the factors that led to the collapse of the initial integration effort, it is important that the legitimacy of the EAC flows directly from the people of the region. As much as possible, the Community has to be “brought close to the people” through their various groups.

Diversifying agenda in meetings of the organs of the Community will aid in the building of a community of citizens by ensuring that the Community organs take into account, in decision-making, as many interests as possible. It will also ensure that the institutions of the EAC evolve in a manner that reflects the social, economic and political conditions and interests of citizens in the region.
Finally, multiplying opportunity for consultation and feedback will ensure that the people of East Africa, through their various organisations, are part and parcel of the consultative processes of the Community.

**Critical Questions**

The critical questions, which are derived from the three pillars vis-à-vis the EAC Rules for Granting Observer Status, are as follows:

- Does the rule help to approximate direct participation of citizens in EAC decision-making processes?
- Does the rule help to diversify the agenda at meetings of organs of the EAC?
- Does the rule help to multiply opportunities for consultation and feedback with and among citizens of the EAC?

**Assessment**

Those interviewed for this study presented both the strengths and weaknesses of the guidelines. Some of the guidelines were considered to be too restrictive while others were considered to be facilitative of a people-centred integration process (community of citizens) as envisioned by the EACT. The rules are generally conceived around the idea of accepting the Community as designed by the EACT and assisting the state parties to achieve their objectives through the integration effort. The wording of many of the provisions of the rules leaves no doubt that there is little opportunity to fundamentally transform the Community itself in its design. The opportunities for civil society participation are basically interwoven in the operational aspects involved in the day-to-day running of the affairs of the Community and decision-making through its various organs.

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144 In analysing the strengths and weaknesses of the various provisions in line with the critical questions above, the provisions were looked at in terms of their closeness to the three pillars since not all rules are supportive of all the pillars in the same way.
Overview of Strengths and Weaknesses of Rules for Granting Observer Status

Strengths
There is considerable emphasis on interest in and support to issues related to the integration exercise, which is wholly justified since integration is about both institutions and people. For instance, the “broad criteria” require that organisations interested in acquiring observer status should accept the fundamental principles underlying the EAC, and must have an interest in the “fundamental and operational principles of the EAC”. Further, the organisations must “… be able to contribute to the strengthening of regional integration in East Africa”. These are basic requirements without which the integration exercise may be futile. Appraised from the point of view of the state parties, adherence to the principles of the EAC is a critical requirement without which the integration itself might collapse and organisations may not contribute much to the process.

The three elements in the broad criteria auger well for the requirements of the assessment criteria. The broad criteria assert the principles that have been described as progressive, that is, they are capable of creating the desired people-centred EAC. The broad criteria also reinforce the aspect of contributing towards strengthening of the EAC, an important principle that should be invoked to enhance the participation of citizens in the EAC.

Weaknesses
Though some of the provisions appear to be progressive, a close scrutiny reveals vagueness and vast room for misinterpretation and/or arbitrary application. This includes the requirement that an organisation be able to promote “development partnerships”, which, apart from being vague, does not add value to the participation of CSOs or the integration process itself. The requirement that organisations must have objectives

145 Author interview with Duncan Okello, Society for International Development (SID), Kenya, on July 10, 2008.
of “common interest” to partner states might prove to be too limiting for organisations that have been in existence in individual states for long but may indeed have something to contribute to the integration effort. This requirement is also open to arbitrary interpretation and abuse.\textsuperscript{146} Save for a few organisations, organisations seeking observer status are those that have been in existence in individual states and whose objectives have been defined within the area of interest, that is, the national boundaries.

This requirement also raises a fundamental issue in regard to the place of “national agendas” in the scheme of things at the EAC. Some organisations may see the EAC arena as one in which national issues without apparent regional bearing could find resolution. To some extent, what is a regional and what is a non-regional issue may not be easy to define. Environmental concerns, for instance, may seem to be confined to individual states yet they affect whole ecosystems across countries. Conservation of the Mau ecosystem, for instance, even though of direct concern mainly to Kenya and Tanzania, is in fact a concern to all countries that share Lake Victoria since some of the waters of that lake flow from this complex.

The understanding among the key informants was that such issues of concern at the national level are usually processed through individual states.\textsuperscript{147} For an agenda to be made a regional agenda, organisations with an interest in such agenda are supposed to lobby their own governments. This presents a dilemma for CSOs, particularly when they pursue issues that may not be of interest to their governments or issues that are contentious in national politics. As matters stand today, there is a huge difference in the way civil society formations are appreciated in the five East African countries. Some countries continue to stifle the activities of civil society while some are fairly open.\textsuperscript{148} These elements of the criteria fail to satisfy the requirements of approximating direct participation by citizens, agenda diversification and multiplication of opportunities for consultation and feedback.

\textsuperscript{146} Ibid.
\textsuperscript{147} Author Mini Group Discussion with representatives of the EALS, Arusha, Tanzania, August 5, 2008.
\textsuperscript{148} Author interview with Ibrahima Kane, op. cit.
Two requirements – that the organisation’s activities should bear a regional dimension with the organisation being registered in each of the partner states; and that the organisation must have a track record of regional activities of at least three years of active operation – seem to be particularly limiting to organisations. Apart from being wasteful in terms of resources, the registration of organisations’ activities in all partner states may not add any value to the participation of organisations to the affairs of the EAC or even to the organisations themselves. Mere registration in all partner states does not guarantee that an organisation has an agenda that is relevant in the affairs of the Community or the capacity to engage at the regional level. This provision also runs counter to the spirit of building a community of citizens as opposed to a community of states and governments and the breaking down of barriers to economic, political and cultural integration. The three-year-active-operation requirement is similarly limiting. Even though it may be argued that organisations with such a track record have developed the requisite capacity, this is far from being guaranteed. It is not clear how the “active” will be determined. The provisions fall short of the requirements of approximating direct participation by citizens, agenda diversification and the multiplication of opportunities for consultation and feedback.

149 Author interview with Akatsa-Bukachi, Executive Director, the Eastern African Sub-Regional Support Initiative for the Advancement of Women (EASSI), Uganda, on July 30, 2008; author interview with Duncan Okello, op. cit.
150 Author interview with Jedidah Wakonyo, Executive Director, Legal Resources Foundation (LRF), Kenya, on July 2, 2008.
Table: 5.1: Summary Synthesis of Strengths and Weaknesses of Observer Status Criteria

<table>
<thead>
<tr>
<th>Rule</th>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptance of the fundamental principles underlying the EAC.</td>
<td>Ensures proper emphasis on the principles of the EAC and adherence to those principles as the entry point to participation in the EAC.</td>
<td>Closes window to possible challenges on the principles and design of the Community by CSOs.</td>
</tr>
<tr>
<td>Interest in the fundamental and operational principles of the EAC.</td>
<td>Ensures adherence to the set principles of EAC as an entry point to participation in affairs of the Community.</td>
<td></td>
</tr>
<tr>
<td>Contribution towards strengthening of regional integration in East Africa.</td>
<td>This is fundamental since it is at the core of participation in the affairs of the EAC. It puts emphasis on the integration process to ensure adherence to the core principles.</td>
<td>This provision is vague and does not seem to specify those attributes that will enable an organisation to contribute to strengthening the Community. It is the kind of provision that may be used to limit participation instead of enhancing it.</td>
</tr>
<tr>
<td>Ability to enhance development partnership.</td>
<td>The assumption is that the organisation will participate more meaningfully in the affairs of the EAC if it is able to network.</td>
<td>This requirement is vague. It is also not clear what it is meant to achieve. It is the kind of provision that may be used to limit participation instead of enhancing it.</td>
</tr>
</tbody>
</table>

151 A number of the key informants described the principles as “progressive”, meaning they are in line with the desire to construct a Community of citizens that will work for citizens and specifically for the realisation of justice for citizens in their pursuit of livelihoods. These principles are documented in Article Six of the EACT as follows: (1) mutual trust, political will and sovereign equality; (2) peaceful co-existence and good neighbourliness; (3) peaceful settlement of disputes; (4) good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people’s rights in accordance with the provision of the African Charter on Human and People’s Rights; (5) equitable distribution of benefits; and (6) co-operation for mutual benefit.
<table>
<thead>
<tr>
<th>The organisation should have objectives of common interest to the partner states.</th>
<th>Has to contend with the place of national agendas in the regional scheme. How do national agendas find their way to the regional platform? Also, some issues may not be of common interest to all the states. Indeed, in recognition of this reality, some agreements are only negotiated by some and not all of the states.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The organisation’s activities must bear a regional dimension with the organisation being registered in each of the partner states.</td>
<td>This provision is capable of enhancing the representativeness of organisations and the agendas they pursue.</td>
</tr>
<tr>
<td>Registration of CSOs in all partner states undermines the people-centredness of the EAC – if the idea is to integrate people with the ultimate goal of political federation, then this requirement is counterproductive. It undermines the same ideal it intends to create. It also directs emphasis to form – that is, the way an organisation is constituted – as opposed to what the organisation stands for or pursues in terms of agenda.</td>
<td></td>
</tr>
<tr>
<td>In regional activities, the organisation should have a track record of at least three years of active operation.</td>
<td>This provision will exclude organisations that are formed to pursue specific emerging issues on the basis of longevity of existence. Furthermore, it is not necessarily the case that longevity of existence is an indicator of relevance of issue areas being pursued by CSOs.</td>
</tr>
</tbody>
</table>

**Source:** Author, 2008
Strengths and Weaknesses of Observer Participation Framework

Strengths
The framework provides space for participation in official opening and closing of all meetings and organisations may be invited to meetings of organs of the Community dealing with a subject in which they are concerned. Participation in the opening and closing meetings is crucial since important policy directions are often pronounced in these meetings. During the opening meetings, the agenda of a particular organ is set while in the closing meetings, the resultant policy decisions are pronounced.

Many CSO participation frameworks in IGOs emphasise areas of strength of CSOs in an attempt to manage participation, especially in situations where there are many organisations vying for space. The provision that a CSO will be invited to meetings dealing with subjects in which they have an interest flows from this rationale. This is also partly informed by the need to avoid participation for the sake of it, for instance, participation by CSOs in areas in which they lack expertise or interest.

Participation of CSOs in the proceedings of meetings require authorisation of the chairperson of such a meeting. Participation is limited to making statements on a matter of particular concern to the CSO, and being accorded the opportunity to reply to questions directed to them. In a strict sense, this provision enables management of the participating organisations by making sure that meetings are relevant to the organisations and that they are able to articulate issues of concern in their areas of expertise.

152 Article 5 (1&2).
153 Article 5 (4a).
154 Article 5 (4c).
Weaknesses

The framework gives a lot of discretion to the chairpersons of meetings, who determine whether an organisation granted observer status is invited to meetings, whether such an organisation is allowed to participate in proceedings of particular meetings, and the nature of that participation.\textsuperscript{155} Having been granted room to participate in proceedings of particular meetings, an organisation is then limited to making a statement in that meeting,\textsuperscript{156} with the rider that the text of such a statement shall have been furnished to the chairperson by the Secretary General before it is made. Apart from making a statement in a meeting, observers may be granted opportunity to reply to questions addressed to them in a meeting.\textsuperscript{157}

The above provisions, taken together with the fact that observers have no voting rights, seem to render the whole participation exercise futile especially given the critical decision-making roles of the meetings of the organs of the EAC. This is further compounded by the level of discretion given to the Secretary General and the chairpersons of the various meetings of the organs. The repeated use of the word “may” in all the provisions under this Article, cements the discretion given to the two since it means there is no obligation even to actualise this minimalist participation framework. Participation of CSOs in the deliberations of the organs of EAC is simply not guaranteed in these provisions and would rely mainly on the goodwill of the officers concerned. One key informant characterised participation under this framework as “very limited”.\textsuperscript{158}

If the criteria for granting observer status are supposed to enhance participation by CSOs, the observer participation procedures completely close the room for participation. It is possible that organisations may find themselves sitting in meetings with no voting

\textsuperscript{155} Author interview with Jedidah Wakonyo, op. cit.
\textsuperscript{156} Article 5 (4b).
\textsuperscript{157} Article 5 (4d).
\textsuperscript{158} Author interview with Jedidah Wakonyo, op. cit.
rights and unable to even issue statements on issues of interest to them since this depends on the discretion of the chairpersons of meetings. The chairpersons should be obligated in all situations to provide room for actual participation of CSOs in the proceedings.

Table 5.2: Summary Synthesis of Strengths and Weaknesses of Observer Participation Requirements

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observers may be invited to be present for official opening and closing of all the meetings of the Community.</td>
<td>This enhances participation since important agenda items of meetings and policy pronouncements are likely to be made during the opening and closing sessions.</td>
<td>The use of the word “may” puts discretion on the part of the Secretary General, in this instance meaning that even if an organisation has been granted observer status, attending meetings of the Community is still not guaranteed. The observer status may just remain a status.</td>
</tr>
<tr>
<td>Observers may be invited to attend meetings of all the organs of the Community dealing with a subject in which they are concerned.</td>
<td>The advantage is to enable management of participation so that organisations follow up with issues in which they have interest and capacity and in which they are able to positively contribute.</td>
<td>Participation, even in meetings dealing with subjects of interest, is not guaranteed because of the high level of discretion in giving invitations. This could be ameliorated by simply having a roster of organisations with interest in particular issues and making it mandatory that they be invited to meetings.</td>
</tr>
</tbody>
</table>
Observers may, with express permission of the chairperson, participate in the proceedings of the meeting to which they are invited.

The level of discretion placed on the chairperson of particular meetings may render the participation illusory in this case.

The discretionary management of participation also means it is difficult for organisations to participate in the deliberations since it is not clear at what point they become assured of participation in any particular meeting.

An organisation wishing to participate in a particular deliberation requires time to prepare, for instance, statements. However, it is not guaranteed that such an organisation will be able to present whatever it has prepared.

Observers may at the request of the chairperson, make a statement on a matter of particular concern to them: provided that the text of such statement shall have been furnished to the chairperson of the meeting through the Secretary General before it is made.

This makes it easy to manage participation since documents shall have been availed early enough.

It is difficult to ascertain at what point the information or instruction to prepare statements on issues of interest is availed. It might be difficult to organise a communiqué or statement without adequate preparation.

The wording of this provision also implies that even once prepared, a statement may or may not be read in the meeting since this depends on the discretion of the chairperson.

159 Author interview with Edith Kibalama, Kituo Cha Katiba, Uganda, on July 29, 2008. As one of the organisations granted observer status, KCK
The chairperson of the meeting may give the observers an opportunity to reply to questions which may be directly addressed to them in a meeting.

Availing opportunity to provide more insight into issues that have been raised in a statement by a CSO is in itself a positive approach.

The discretion given to the chairperson is limiting in terms of participation and there are many reasons that could lead to denial of opportunity to respond to issues raised.

It is also curious that the CSOs may not be able to raise their own queries pertaining to issues of importance to them during the deliberations. This obviously limits participation.

| Source: Author, 2008 |

## Conclusion

This chapter has assessed the rules for granting observer status to the EAC. The chapter applied a criterion that utilised a “Critical Questions Approach” based on three pillars. The questions were then applied in determining the strengths and weaknesses of the framework for granting observer status. The chapter has established fundamental weaknesses of the framework for granting observer status. In a few cases suggestions have been made as to how the weaknesses may be dealt with.

has already experienced challenges in how the processes are managed. She mentioned delays in sending invitations to organisations about pending meetings making it difficult to organise the organisation's participation. Apart from short notices, she also pointed out that many times it was difficult to receive documents in good time from the EAC Secretariat and that the EAC Calendar of Events and Activities keeps changing so that it is difficult to be certain about forthcoming events.
Summary, Conclusions and Recommendations

Introduction

The last two chapters have concentrated on providing critical perspectives on the EAC rules of observer status and the alternative civil society consultative framework within the EAC, that is, the EACSOF. Specifically, Chapter Four critically appraised the EACSOF as an alternative consultative structure based on lessons learnt from analysis of other frameworks of civil society participation in the affairs of IGOs globally. Chapter Five presented the weaknesses and strengths of the rules for granting observer status based on the criteria of granting observer status and the participatory framework thereof. This chapter details the summary of the major findings of this study and presents conclusions and recommendations.

Summary of Major Findings

Being analytical in nature, this study was not interested in describing what happens in the EAC or indeed how civil society participates in the integration effort, but rather with analysis of existing frameworks for participation. The study found that the rules of observer status are limiting to civil society and are therefore incapable of enhancing participation. Some of the rules are clearly formulated to hinder civil society participation. A good example is the requirement that civil society organisations register their activities in all the partner states. As formulated, the rules suggest that the political leaders behind the integration process are more concerned with “integration of states” than “integration of citizens”. This explains why the integration approach has largely been top-down, with minimal involvement of citizens whose awareness of the integration process has remained low.

On the other hand, the EACSOF, which is the alternative, autonomous civil society structure for consultation within EAC, is
yet to be developed to a level where it can be the main vessel for civil society consultation within the EAC. However, the potential for developing the EACSOF to serve this purpose exists and the key players have shown interest in developing it. The EACSOF suffers from a number of limitations as established in this study. For instance, the link between national CSOs and the regional formation is not clear; thus this study’s recommendation that EACSOF should have organs of representation at the national level from which the regional organs are constituted through participatory processes of constituting leadership. However, it was also noted that through the EACSOF, civil society has managed to secure some operational space in the affairs of the EAC, for instance, participation in the Common Market negotiations. This is a positive development that needs to be built on in order to make EACSOF more effective as the voice of civil society.

**Answers to Study Questions**

**To what extent are the rules of granting observer status in the EAC able to promote the participation of civil society in the affairs of the EAC?**

This study evaluated the rules of granting observer status. Promulgation of the rules a few years after the EAC was restarted is important because it signifies the intention of involving civil society in the integration effort as per the provisions of the EACT. However, it was observed that the inclusion of civil society in the affairs of the EAC itself was resisted at first and that inclusion was realised only after lobbying by civil society groups. The analysis of specific rules revealed their strengths and weaknesses in facilitating a community of citizens in East Africa. Even though the intention of involving civil society in the affairs of the EAC is emphasised in the EACT, the formulation of the rules leaves no doubt that there is a contradiction in the actualisation of those intentions. The analysis of the rules demonstrates that they were not wholly intended to enhance participation but, in some cases, to stifle the voice of civil society. As formulated, the rules may only promote token participation. If the intention of integrating citizens is
to be achieved, the rules need to be reviewed in line with the findings of this study. Such review should target the identified areas of weakness and should be done in consultation with civil society.

**What rules exist in other jurisdictions and how can these inform a review of the EAC rules?**

Because of the limitations of this study, the author relied on the analysis of weaknesses and strengths of the existing rules. This approach created a sound basis for making recommendations. The analysis concentrated on two main areas in the rules for grant of observer status: the criteria for granting observer status and the criteria for participation of observers in the affairs of the EAC, that is, once granted observer status. It was noted generally that some of the guidelines are too restrictive while some were considered to be facilitative of a people-centred integration process (community of citizens) as envisioned by the EACT. The rules are generally conceived around the idea of accepting the Community as designed by the EACT and assisting the states parties to achieve their objectives through the integration effort. There is clear need to relax some of the rules, for instance, the rule requiring the registration of CSOs’ activities in all partner states. Some of the rules, for instance, one requiring organisations to be capable of “enhancing development partnerships”, were found to be vague and thus capable of arbitrary application and manipulation.

**What alternative frameworks of consultation exist and how can these inform the participation of civil society in the affairs of the EAC?**

This study analysed participation of civil society not just from the perspective of the rules of observer status but also in regard to alternative frameworks for participation in this case the proposed EACSOF. The study borrowed lessons from other frameworks such as the IGAD NGO/CSO Forum, the SADC–CNGO, the UN ECOSOC and the AU ECOSOCC. The WACSOF was particularly found to be a useful reference point for EAC civil society. These are alternative consultative frameworks which provide more opportunity for civil society participation within their separate jurisdictions.
Analysis of these alternative frameworks of participation was based on five relevant themes: principles of engagement, participatory structures, levels of consultation, consultative categories, and bases of participation. Lessons were drawn based on these themes. These lessons include: basing consultations on well articulated principles of engagement; engaging organisations with membership bases that enable broad-based sharing of information; designing participatory frameworks to achieve as wide an array of issues as possible as well as a clear link between national-level civil society and regional-level formations; delineating areas of competence for organisations as a basis of participation; and mapping out the organs that may be consulted within the IGO and clearly defining the processes of consultation. The analysis of the strengths and weaknesses of the EACSOFF framework based on these lessons revealed both strengths and weaknesses. It was observed, for instance, that the EACSOFF does not properly elucidate principles of engagement between civil society and the EAC organs.

How can the existing frameworks for civil society participation in the EAC be strengthened so as to enhance participation?

Both the rules of granting observer status and the emerging EACSOFF were found to have strengths and weaknesses. On the rules of granting observer status, both the criteria and the rules of participation were found to be limiting to civil society. It was found that some of the provisions are vague and capable of misinterpretation and/or arbitrary application. Two requirements – that the organisation’s activities should bear a regional dimension with the organisation being registered in each of the partner states; and that the organisation must have a track record of regional activities of at least three years of active operation – seem to be particularly limiting to organisations. These requirements were seen to run counter to the goal of constructing a community of citizens. Integration assumes movement towards a common jurisdiction – both political and legal – as is indeed stipulated under the EACT. Requiring organisations to register in all the partner states re-emphasises the “separateness” of the partner states jurisdictions. The requirement that a CSO should have been in existence for three years
is positive only in terms of managing participation, that is, in case of many organisations applying for observer status. However, in terms of catering for discourse on as many issue-areas as possible, it is negative. Longevity of existence in and of itself is not an adequate criterion for determining an organisation’s ability to participate meaningfully in the affairs of the Community.

Conclusions

This study makes the following conclusions:

Promulgation of Rules underlines intention to enable participation by civil society

In and of itself, the promulgation of the rules granting observer status demonstrates intention on the part of EAC partner states to enable participation of civil society in the affairs of the EAC. Participation of civil society is anticipated in the EACT. The framework for granting observer status is intended to actualise that envisaged participation. The EACT recognises in its preamble that lack of participation of civil society in the initial EAC scheme in the 1960s/70s is one of the reasons that led to the collapse of that scheme. Providing space for civil society participation therefore signifies the intention to learn from the collapsed EAC.

The Rules of Granting Observer Status are limiting to Civil Society

Both the criteria for granting observer status and the rules for participation in the meetings of the EAC are limiting to civil society. Thus civil society groups may not participate meaningfully in the affairs of EAC. The experiences of the organisations granted observer status demonstrate that the framework is not sufficiently facilitative. Whereas the promulgation of the rules showed an intention to involve civil society in the affairs of EAC, the translation of that intention through the rules of observer status created serious limitations.
**Rules are vague and therefore capable of misinterpretation and arbitrary application**

In any participation scheme, clarity in terms of key provisions is important to avoid misinterpretation. Rules such as “ability to enhance development partnerships” are vague and do not seem to serve any function. Such rules could be employed by bureaucrats to stifle the voice of civil society in the EAC instead of enhancing it.

**There is healthy emphasis on the fundamental and operational principles of the EAC**

The rules of granting observer status emphasise adherence to the principles of the EAC which some of the key informants described as “progressive”. The fundamental principles include: mutual trust, political will and sovereign equality; peaceful co-existence and good neighbourliness; and peaceful settlement of disputes. The operational principles include: people-centred and market-driven cooperation; the principle of subsidiarity with emphasis on multilevel participation and the involvement of a wide range of stakeholders in the process of integration; and the principle of complimentarity. The importance of putting emphasis on these principles in the rules of granting observer status is to ensure clarity and understanding among those organisations wishing to participate in the scheme.

**The EACSOF is yet to be developed to a level where it is capable of carrying the aspirations of civil society**

The EACSOF is “work-in-progress”. It is yet to reach a level of development where it is accepted as the vessel for civil society participation. The potential for this to happen, however, exists. Some of the weaknesses singled out in this study, such as the lack of clarity between representation at the national and regional levels, need to be ironed out if the EACSOF is to become the vessel for civil society participation.
Recommendations

This study makes recommendations to CSOs, the governments of the EAC partner states, the EAC Secretariat, the EACSOF and the Kituo Cha Katiba Secretariat as follows:

CSOs in the Region

- Should lobby for funding from government sources for their activities since they have been recognised as key players in integration. This can be achieved through a common voice for all CSOs in the region.

- Need to enhance dialogue among themselves on participation in EAC activities and the benefits thereof. The EAC must be seen as an opportunity to handle some of the developmental concerns in the region. This dialogue will enhance understanding of the importance of integration in tackling developmental concerns in East Africa, the link between the integration of East Africa and continental integration within the AU, as well as the provisions of the EACT and the various frameworks that have been crafted, including the observer participation frameworks.

- Should take advantage of every existing opportunity to take part in the affairs of the EAC. Even though the rules for granting observer status are limiting, organisations should take a proactive stance vis-à-vis these rules with a view to lobbying for them to be changed to enhance participation. This in itself is a form of participation.

- Should continue striving to create an alternative structure of consultation through the EACSOF based on the lessons presented in this study. The challenges facing EACSOF are not merely how to formulate structures that are more representative but also include intra-sector politics (struggles for space and resources). More dialogue within the sector should iron out differences and level out the expectations of key players.

- Should take part in awareness-raising activities to enhance awareness of the EAC and its activities so as to further increase the level of participation by citizens.

- Should commission more studies on the various aspects of the EAC with a view to critically informing citizens about integration.
Such studies should target different levels of integration, that is, within the RECs as well as the continental integration effort through the AU.

- Need to dialogue on integration at the continental level. The AU approach to continental integration is fairly elaborate and the use of the RECs fairly pragmatic (though the author is more inclined towards immediate integration than the more nuanced approach), taking into consideration some of the difficulties African countries face, especially in terms of intercontinental transport (air transport is the most problematic) and communication networks.

**Governments of Partner states**

- Need to further their own appreciation of civil society and its role in integration. Even though participation of civil society is directly provided for under the EACT, there is reluctance on the part of government bureaucrats to fully embrace civil society as an equal partner in the regional integration process.

- Need to harmonise legislative and policy frameworks for managing CSOs. The different legislative and policy frameworks in different countries – some fairly limiting to the growth of civil society – are not conducive to the development of common civil society structures at regional level. With the anticipated continent-wide integration process, this action should be reflected at continental level.

- Should strive to understand the views of civil society as far as the integration effort is concerned. The integration process so far has been fairly top-down. This does not augur well for the success of integration, particularly bearing in mind that insufficient participation is one of the factors that led to the collapse of the initial integration effort.

- Should provide the resources needed for civil society participation in the EAC. The official recognition of civil society in the EACT is testimony that civil society is considered important in integration. However, this recognition needs to be backed with more tacit actions to enable civil society to contribute positively to integration. The partner states should therefore make provisions for civil society in the budgets of the EAC. Such resources could go into supporting regional formations such as the EACSOF.
• Need to dialogue with civil society towards reviewing the rules of granting observer status and a common understanding of the role of civil society in integration. Current processes of participation, particularly through the granting of observer status, are characterised by unnecessary bureaucratisation.

East African Community Secretariat

• Should immediately lead a process of reviewing the rules of granting observer status based on the weaknesses identified in this study and the processes should involve civil society participation.
• Should continue to provide assistance to the EACSOF as it gets better established as the voice of the EAC civil society.
• Should lobby governments of partner states to provide budgetary allocations to support individual organisations and regional civil society formations.
• Should through its CSO desk, and working together with civil society, lead a process of harmonising the legal and policy frameworks for CSOs in the countries of the region.
• Should act as the anchor for dialogue between civil society and the partner states.

EACSOF

• Should strive to develop itself into a credible, common platform for civil society in the region by addressing the weaknesses identified through this study and in line with the lessons presented.
• Should specifically ensure enhanced participation in regional integration by civil society by:
  • Creating better and credible structures of participation from the national level to the regional level.
  • Encouraging democratic participation where regional-level officials are elected from national pools.
  • Enhancing communication to member organisations (and within member organisations) within the region through its e-newsletter and other channels of communication. Such communication should encompass activities of the EAC and of EACSOF itself.
  • Involving member organisations in litigation actions through the EACJ on specific issues of concern.
• Should take a proactive role in encouraging civil society formations at continental level.
• Use its structures and capacity to enhance discourses on Pan-Africanism.

**Kituo Cha Katiba Secretariat**

• As a regional think-tank, KCK should use the results of this study to interact with civil society within the East African region and also in other RECs.
• Should undertake similar studies in other RECs if such studies have not been undertaken.
• Should enhance intra-civil society dialogue on integration within and outside the East African region.
• Should take an active part in strengthening the EACSOF to be the common voice for civil society in the region.
• Should lobby for implementation of the recommendations contained herein, especially those targeting governments.
• Should propagate Pan-Africanism through public fora, in academic institutions and within civil society.

**Suggestions for Further Research**

The area of participation by civil society in integration, particularly in Africa, is fairly un-researched. This is partly because many integration efforts, at continental level or within the RECs, are fairly young. Scarcity of funds to undertake studies is another reason, particularly because governments have not invested in such studies. Nonetheless at continental level, there is an emerging body of researched literature with some aspects – such as the NEPAD – attracting a fair amount of intellectual curiosity. There is evidently need for more research into integration in Africa generally and within RECs in particular. Some areas of interest are:

• The perceptions of citizens of African states generally and within specific RECs about integration and its benefits to citizens.
• The implications of political federation both at continental level and at the level of RECs.
• The adequacy of civil society formations at continental level and at the level of RECs in participating in integration.
• The economic and social implications of integration.
• Sector-specific studies: such as the role of integration in environmental conservation, the implications of integration for food security in East Africa, the implications of integration for the spread of HIV/AIDS and so on.
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Annex One

Terms of Reference for Study on Civil Society Participation in the EAC

a) A desk review on CSO rules of granting observer status of the EAC vis-à-vis the practices in different supra-national bodies in Africa and of international organisations’ level, including a consideration of the extent to which the current EAC-CSO is an effective vehicle of CSO-EAC interaction. The desk review shall catalogue best practices, lessons and challenges faced, as well as recommendations of enhancing CSO interaction at EAC regional level.

b) To complement the desk review, an examination through interviews of the views of a cross section of key informants among civil society and other key stakeholders in the countries of Kenya, Tanzania and Uganda, on how to enhance CSOs participation at EAC level.

c) An examination and analysis of findings of the desk study and views collected from the key informant interviews and their compilation into a draft report.

d) Dissemination and discussion of the study findings with civil society and other key actors at national level in the EAC countries of Kenya, Tanzania mainland, Rwanda, Burundi, Uganda and Tanzania Zanzibar.

e) Incorporation of comments and recommendations of national workshops into the draft report.

f) Dissemination of revised draft report at a regional workshop in order to stimulate further discussion on the subject as well
as to strategise on the best way forward on consolidating CSO participation at EAC level.

g) Incorporation of comments and recommendations of regional workshop into a draft report.

h) Compilation of a final report with analysis of the findings and specific proposals on the most appropriate way to enhance CSO participation at EAC level.

i) To contribute to the designing of programmes at the national workshops and regional dissemination workshop.

j) The contract period for the above activities shall be seven (7) months commencing from June 9, 2008 to December 2008.

i) The desk study and key informant interviews shall be undertaken in a period of two months from June 2008 to August 2008.

ii) The national dissemination workshop shall be held over a period of two months from August 10, 2008 to October 9, 2008.

iii) Dissemination of the study findings at a regional level will take place in November 2008.

iv) Submission of final report shall be in December 2008.

k) To observe the time limit of the contract period.

l) To apply KCK internal referencing style.
Annex Two

Checklist for Civil Society Organisations and the Private Sector

General

1. A general discussion of the East African Community and its objectives as outlined in the EACT.
2. A general discussion of the Community’s “people-centredness”, what this means to Civil Society and how it is given effect through the Treaty and the organs of the EAC.
3. What are the factors that are likely to promote civil society participation in the EAC as currently constituted?
4. What are the factors that are likely to undermine civil society participation in the EAC as currently constituted?
5. How prepared is civil society in the EAC area to participate in the affairs of the Community?

Relationship with Private Sector and CSOs

6. A more specific in-depth discussion of the Community’s relationship with CSOs and the private sector. Specifically:
   a. The Treaty seems to assign more significance to the private sector as opposed to civil society.
   b. The role of civil society is barely elaborated in the Treaty as opposed to that of the private sector.
   c. The requirements for civil society groups to acquire observer status are more stringent than those for business entities and governments, including, for instance:
      i. the requirement that such organisations should be registered in all the EAC countries in order to acquire observer status.
      ii. that such organisations should have objectives of common
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interest to the partner states.

iii. that such organisations should have been in operation for three years
d. In what specific ways can the above be remedied?

7. Discuss the extent to which key actors are satisfied with the modes of participation in the affairs of the East African Community.

8. Dwell on the major concerns with the modes of participation by civil society groups in the affairs of the Community.

**Specific Proposals and Models of Participation**

9. Elaborate the various proposals to enhance the participation of civil society groups.

10. What are the other models that could be appropriate for EAC? Ask for elaboration of the following frameworks:

   a. The ECOSOC consultative framework
   b. The West African CSO Forum
   c. The IGAD NGO CSO Forum
   d. The SADC Council of NGOs’ model

**Observer Status**

Very specific discussion on EAC CSO rules of granting observer status.

11. What does the observer status for civil society groups entail?

12. Is this sufficient to promote the participation of civil society?

13. What are the shortcomings of the current provisions?

14. How can the current provisions be enhanced?

**Consultative Status**

15. Very specific discussion on the possibility of establishing a consultative mechanism for civil society through establishment of an Economic and Social Committee.

16. What would a consultative status entail and how would it be structured?

17. Would this be a sufficient forum for civil society?
18. Discuss any other ideas that would improve the participation of civil society at the EAC.
Annex Three

Checklist for Government Officials

General

1. The EACT proclaims that the Community is “people-centred”. How has this been given effect through the Treaty and through the various activities of the Community and its organs?

2. Being an IGO formed by states, why is it important to have a framework for CSO participation in EAC?

3. What are the factors that are likely to promote civil society participation in the EAC as currently constituted?

4. What are the factors that are likely to undermine civil society participation in the EAC as currently constituted?

EAC and Relationship with CSOs & Rules of Observer Status

5. What are the duties and privileges of CSOs under the EAC rules of observer status? (For instance, can they influence the agenda of the various meetings of the organs, can they access records, etc?)

6. Civil Society groups involved in the integration process have criticised the rules of observer status as rather restrictive on the basis that:
   i) they require organisations engaging with the EAC to be registered in all the member states which is essentially contrary to the need to build an East African Community of citizens;
   ii) they require organisations to have “objectives of common interest” to the partner states (there is an emphasis on the activities of states as opposed to civil society); and
   iii) they require organisations to have been in operation for three years:
a. Is this an accurate assessment? Please explain, if possible, quoting specific requirements.

b. Many organisations consider a relaxation of these restrictive rules to be an important step towards creating a more civil society-friendly EAC. Is this something that the state parties have considered? What proposals exist in this regard?

7. What general steps have the five East African States taken to enhance the participation of civil society in the EAC especially at country level?

8. The EACT provisions concentrate significantly more on the private sector than on the civil society:
   a. Why is this so?
   b. Is civil society really considered a necessary partner in the EAC?

The East African Civil Society Organisations’ Forum on the EAC

9. The EAC Secretariat has played a role in the formation of the EACSOF as a consultative forum. What specific roles do you foresee for this structure in regard to the activities of the EAC?

10. What privileges would CSOs that are part of the EACSOF enjoy in activities of the EAC? (For instance, can they influence the agenda of the various meetings of the organs, can they access records, are they allowed to lobby for specific issues, and so on?)

11. What is the perspective of the states and state agencies on the EACSOF as a consultative forum for EAC CSOs?

12. Has the idea of forming an Economic and Social Committee been considered? Are there any plans in this regard?

13. What would participation in an ECOSOC entail?

14. Are there alternative ways in which civil society participation in the EAC may be enhanced?

15. Are there any lessons from other jurisdictions, say the UN ECOSOC, and other systems that are useful for EAC regarding participation of civil society?
Annex Four

List of Persons Interviewed

Kenya
Ibrahima Kane, African Union Advocacy Director, Open Society Institute (OSI).
Duncan Okello, Regional Director, Society for International Development (SID).
Jedidah Wakonyo, Executive Director, Legal Resources Foundation (LRF).
Peter Kasango, Deputy Chief Economist, Ministry of East African Community.

Uganda
Professor Jassy Kwesiga, Executive Director, Development Network of Indigenous Voluntary Associations (DENIVA).
Marren Akatsa-Bukachi, Executive Director, East African Sub-Regional Support Initiative (EASSI).
Michael Sebuliba, Executive Director, National Union of Disabled Persons of Uganda (NUDIPU).
Tito Byenkya, Executive Director, Uganda Law Society (ULS).
Edith Kibalama, Executive Director, Kituo Cha Katiba (KCK).

Tanzania
Bobi Odiko, Information and Communications Officer, East Africa Law Society (EALS).
Joyce Kevin Abalo, Programme Assistant, Regional Integration, East Africa Law Society (EALS).
Francois J. Godbout, Programme Officer - Responsibility to Protect, East Africa Law Society (EALS).
Annex Five

Rules of Granting Observer Status at the East African Community

Procedure for Granting of Observer Status in the East African Community

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Procedure for Granting of Observer Status in the East African Community

Pursuant to the provisions of article 3(6) of the treaty establishing the East African Community, the procedure for granting observer status on the East African Community is hereby prescribed:
Article 1

Interpretation
All terms and phrases defined in the Treaty shall have the respective meanings set forth therein as if the same were transposed herein and reproduced verbatim; save for the following additional terms that shall have the meaning set forth herein.

“Observer” means a foreign country, inter-governmental organisation or civil society organisation granted observer status;

“Observer status” means entitlement conferred upon a foreign country, inter-governmental organisation or civil society organisation to send observers on invitation to the meetings of the organs of the Community;

“Organisation” refers to civil society organisations and non-governmental organisations at the national and regional levels;

Article 2

Principles to be Applied
The granting of observer status in the Community shall be guided by the Provisions of Article 3 of the Treaty.

Article 3

Criteria
The criteria for granting observer status in the Community to a foreign country shall be as set out in the Treaty and for an inter-governmental organisation and a civil society organisation as set out in the Annex to these Rules.

Article 4

Administrative Procedure
1 Any country, inter-governmental organisation or civil society organisation intending to seek observer status shall submit an application in writing, to the Secretary General.
2 Any application made pursuant to the provisions of paragraph (1) of this Article shall:
(a) clearly state the reasons for the application;
(b) in the case of a foreign country affirm its commitment to the principles of the Treaty and in particular acceptance of the Community as set out in the Treaty and adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice; and
(c) in the case of an inter-governmental organisation or civil society organisation clearly state its objectives and append a copy of the constituting legal instrument of the organisation.

3 The application shall be circulated by the Secretary General to all the Partner States.

4 No application for observer status shall be submitted for consideration of the Summit or Council, unless it has been fully processed through the Secretary General.

5 An application for granting observer status to a foreign country shall be included in the agenda of the Summit.

6 An application for granting observer status to an inter-governmental organisation or civil society organisation shall be included in the agenda of the Council.

7 No application shall be considered by the Summit or the Council as the case may be unless it is submitted six months prior to the Summit or meeting of the Council.

8 The decision of the Summit or Council on an application for observer status, together with terms and conditions attached thereto, shall be communicated to the applicant by the Secretary General.

9 The foreign country, inter-governmental organisation or civil society organisation shall communicate acceptance of the terms and conditions of the observer status to the Secretary General.
Article 5

Observer Participation in the Proceedings of the Community

1 Observers may be invited to be present for official the opening and closing of all the meetings of the Community.

2 Observers may be invited to attend meetings of the organs of the Community dealing with a subject in which they are concerned.

3 An observer at a meeting of an organ of the Community may participate in the proceedings of that meeting only in accordance with the conditions laid down in paragraph 4 of this Article.

4 (a) Observers may, with the express authority of the Chairperson, participate in the proceedings of the meeting to which they are invited.

(b) Observers may at the request of the Chairperson of a meeting, make a statement on a matter of particular concern to them: provided that the text of such statement shall have been furnished to the Chairperson of the meeting through the Secretary General before it is made.

(c) The Chairperson of a meeting may give the observers an opportunity to reply to questions which may be directly addressed to them in a meeting.

(d) Observers shall not have a right to vote.

5 An observer may have access to the documents of the Community provided that they are:

(a) not of a confidential nature; and

(b) dealing with matters of interest to the observer concerned.
Article 6

Suspension and withdrawal of Observer Status

1 (a) The suspension or withdrawal of observer status, to a foreign country is the prerogative of the Summit.

(b) The suspension or withdrawal of observer status to an inter-governmental organisation or civil society is the prerogative of the Council.

2 (a) The Summit may suspend or withdraw observer status from a foreign country if in the opinion of the Summit such foreign country does not observe the principles laid down in the Treaty.

(b) The Council may suspend or withdraw observer status from an inter-governmental organisation or civil society organisation if in the opinion of the Council; there is a fundamental change in the objectives and mandate of such regional or international organisation to an extent of contradiction with the objectives and mandates of the Community.

3 The Summit or Council as the case may be shall suspend or withdraw observer status to a foreign country, inter-governmental organisation or civil society organisation, if the foreign country, inter-governmental organisation or civil society organisation fails to observe the terms and conditions attached to the grant of observer status.

4 The Secretary General shall communicate to the foreign country, inter-governmental organisation or civil society organisation as the case may be the notice of suspension or withdrawal of the observer status.
Article 7

Entry into Force
This Procedure shall enter into force upon its signature.

DONE at Arusha, Tanzania, on the ____________ day of ______________, in the year Two Thousand and One.

WHEREOF the undersigned have appended their signatures hereto:

For The United Republic of Tanzania
Hon. J M Kikwete, MP
Minister of Foreign Affairs and International Co-operation
United Republic of Tanzania

For The Republic of Kenya
Hon. K N K Biwott, EGH, MP
Minister of Tourism, Trade and Industry
Republic of Kenya

For The Republic of Uganda
Hon. Amama Mbabazi, MP
Minister of State for Foreign Affairs (Regional Co-operation)
Republic of Uganda
Annex

1.1 Criteria

The following broad criteria are applicable:
(a) Acceptance of the fundamental principles underlying the East African Community;
(b) Interest in the fundamental and operational principles of the East African Community;
(c) Contribution towards the strengthening of regional integration in East Africa; and
(d) Ability to enhance development partnership.

For individual entities the following specific Criteria have to be considered:

Regional inter-governmental organisations
(i) The organisation should be having, in its membership, one or all of the three Partner States;
(ii) The organisation’s objectives and activities should be compatible with, and complementary with those of the East African Community;
(iii) The organisation should be willing to co-operate with the East African Community for mutual benefit.

International organisations
(i) The organisation should be having, in its membership, all the three Partner States;
(ii) The organisation’s mandate should include issues of common interest to the Partner States.

East African Non-Governmental Organisations/Civil Society Organisations (NGOs/CSOs)
(i) The organisation should have objectives of common interest to the Partner States;
(ii) The organisation’s activities should bear a regional dimension with the organisation being registered in each of the Partner States;
(iii) In its regional activities the organisation should have a track record of at least three years of active operation.

1.2 Effect of Grant of Observer Status

An observer status would entitle any institution or organisation to participate upon invitation at specified meetings of the Permanent Tripartite Commission or of those of any other organs and institutions of the East African Community without a right to vote.

With regard to international organisations observer status should be extended to only those meetings when issues of specific interest are being discussed.
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