



REPUBLIC OF KENYA

**KENYA NATIONAL DIALOGUE FORUM FOR PRIVATE SECTOR, CIVIL SOCIETY
AND OTHER INTEREST GROUPS**

THEME: "GOOD GOVERNANCE AND CONSTITUTIONALISM IN THE EAST AFRICAN
COMMUNITY"

August 18th- 19th, 2015

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REPORT OF THE FORUM

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INTRODUCTION

The Kenya National Dialogue Forum (NDF) was organized by the Ministry of East African Affairs, Commerce and Tourism (MEAACT), as well as dialogue partners, key among them, the East African Civil Society Organizations' Forum (EACSO) Kenya and with support from Trade Mark East Africa (TMEA). The forum was opened by Hon. Mr. John O. Konchellah, Principal Secretary, State Department of East African Affairs (SDEAA). The overall theme of the forum was, "Good Governance and Constitutionalism in the East African Community" and the following sub- themes:

- a. **Electoral Reforms in East Africa:** Topic- *Electoral reforms in the region and their implications in peace, trade and investment*
- b. **Protecting the Civic Space in the EAC:** Topic- *The place of EAC citizens in determining the affairs that affect them*
- c. **Women, Peace and Security:** Topic- *Interrogating the place of women in the EAC peace and security architecture*
- d. **Corruption and its Impact on Business in the EAC:** Topic- *The role of the private sector in fighting corruption*
- e. **Extractive Industries and Marginalization:** Topic- *Assessing extractive industries vis a vis the rights of local communities*

The overall objective of the NDF was to provide a platform where the private sector, civil society and other interest groups could dialogue and develop a consensus on the national position on the sub- themes in readiness for the 4th Secretary General's (SGs) Forum. The specific objectives of the forum were to discuss and make recommendations on the above sub- themes.

The expected outcomes of the forum were:

1. Increased number of CSOs and PSOs participating in the affairs of the EAC
2. Improved capacity by CSOs and PSOs to undertake policy advocacy through organs and institutions of the EAC, and
3. More effective horizontal and vertical linkages between and among key stakeholder groups in the integration process.

OPENING STATEMENTS

Master of Ceremony: Mr. Morris Odhiambo, EACSOF Governing Council/ EACSOF Kenya

1.1 Welcome Remarks by Ms. Alice Yalla, Director, MEAACT

Ms. Yalla begun by welcoming all the delegates to the forum, she then asked for the session to start with the singing of the EAC Anthem, which was followed by a prayer from a volunteer.

All the delegates present were then asked to introduce themselves and the director noted that there was good representation from CSOs, PSOs and other stakeholders.

The Director reminded the delegates of the theme of the Forum, “Good Governance and Constitutionalism in the East African Community” and reminded them that when discussing the various sub- themes, not to forget highlighting some of the success stories that Kenya has had.

She called upon all stakeholders present to continue with their commitment to the EAC integration process and asked that all the resolutions that would be proposed at the forum be implemented.

She thanked her colleagues for coordinating the planning of the event, EACSOF for planning and TMEA for supporting them. She wished all delegates fruitful deliberations and wished them a comfortable stay at the Hotel.

1.2 Remarks by National Dialogue Committee Chairperson, Mr. Masheti Masinjila, Collaborative Centre for Gender and Development (CCGD)

Mr. Masinjila expressed his pleasure in being at the forum as well as having many people attend the forum. He thanked all those present for taking their time to attend and contribute to the agenda.

He mentioned that in the past there had been a similar forum, the only difference being it was much smaller and for this he thanked TMEA for supporting more people to attend the Forum. He also noted that this year marked an important milestone in Kenya as it is not only the first time to have such a serious forum, but also, Kenya is the first partner state to have a national dialogue forum. He asked that we congratulate ourselves for this.

He also noted that initially there was no structured way of how the PSOs were engaged in the integration process but appreciated that the CDF encompasses the process now. He acknowledged the progress made to date being largely due to coordination from the government who has opened its doors to stakeholders and allowed them to have meetings on request. The government has also been responsible for getting other relevant government bodies such as COTU on board. He asked the government not to

tire but to keep up hosting both the PSOs and CSOs to ensure that integration takes place.

1.3 Remarks by Development Partners' Representatives, Mr. Simon Konzolo, TMEA

Mr. Konzolo began by giving the participants a brief history of who TMEA is and their objectives. He advised that TMEA engages with the public, PSOs and CSOs in order to achieve its overall objective of growing prosperity in EA through Trade.

Mr. Konzolo also gave a summary of some of their projects such as the construction of one stop border posts as well as information dissemination to cross border traders. He invited the delegates to look at their publication on Innovative Aid for Trade Programmes in East Africa that highlights more impact stories about trade for prosperity.

On behalf of the development partners, he commended the Ministry and the NDC for the successful implementation of the NDF. Mr. Konzolo expressed TMEA's privilege to be associated with the Committee and the actualization of the Forum and conveyed their commitment to continue working with the NDC.

1.4 Taking Stock of the 3rd SG's Forum, Mr. Mwangi Kahenu, MEAACT

Mr. Kahenu gave a brief background of the importance of the NDF, which was to provide a platform where we would have a national consensus on the theme and sub-themes proposed by the EAC partner states. This would ensure going to the SG's forum with agreed resolutions as a group.

He also took the delegates of through the deliberations of the last SG's forum that was held in Uganda. He mentioned some of the topics that were discussed and the resolutions that were borne from that forum. He also indicated some of the strides that have been made since the last SG's forum and was confident that with Kenya having held their national forum will have a unified front when it comes to proposing the recommendations going forward.

Mr. Kahenu also highlighted the challenges the region continues to face in the integration process and encouraged all involved stakeholders to remain committed to advancing the EA integration agenda.

He asked the delegates to point out their expectations of the forum and advised on the ground rules for conducting the forum. With that, he wished the meeting fruitful deliberations.

1.5 Official Opening by the Principal Secretary- MEAACT, Hon. John O. Konchellah

The Principal Secretary welcomed everyone to the 1st ever NDF which the Ministry and EACSOFF had organized for the PSOs, CSOs and other interest groups. He thanked all the delegates for honoring their invitation to attend the forum and for the support they have given the Ministry in implementing policies and programmes. He also thanked TMEA for availing the necessary funds to make the forum possible.

The P.S. underscored the importance of dialogue and the need to have regular meetings with key stakeholders. He informed the meeting that the inaugural forum was aimed at expanding the inclusivity of the PSOs, CSOs and other stakeholders in the EAC integration process, citing that these groups had extensive knowledge, innovative ideas and lessons they could advise on for greater prosperity.

Hon. Konchellah mentioned some of the successes of the previous SG's forums, such as the harmonization of EAC calling rates and asked that this forum gathers more views that could be escalated to the policy level. He particularly informed the meeting that the Government of Kenya (GoK) in reference to the forthcoming SG's forum was keen in the promotion of greater political will and development of policies for good governance, anti- corruption and democracy, rule of law and protection of human rights. He gave examples such as the continuous strengthening of electoral reforms and processes and that the government has sent observer missions to partner states' elections. The GoK has also been involved in the process of advocating for peace and an inclusive government in Burundi.

With reference to the relationship between economic development and peace and security, he mentioned that the EAC has put in joint strategies of information dissemination. In contributing to a conducive environment for business, the partner states have pledged to upholding good governance and free market economies. He also recognized the critical role played by women in peace and security and noted that the EAC developed a Regional Action Plan and framework to implement the United Nations Security Council Resolution 1325. The plan will assist the partner states to accelerate the implementation of existing commitments on women, peace and security.

In conclusion, the hon. P.S. noted that only a few challenges remained especially relating to the free movement of persons, expansion of the civic space, deepening intra- regional trade and elimination of existing and emerging barriers. He was however confident that with dialogue we would resolve the issues for greater prosperity.

Hon. Konchellah declared the forum open, wished the delegates fruitful deliberations and expressed hope that the delegates would come up with workable recommendations that would be shared during the SG's forum, later on this year.

PRESENTATIONS

ELECTORAL REFORMS IN EAST AFRICA

Session Chair: Mr. Masheti Masinjila, CCGD

Topic: Electoral reforms in the region and their implications on peace, trade and investment by Mr. Moses Owuor and Mr. Okero Otieno

The first presenter, Mr. Owuor began by giving an overview of some of the legislations in place that seek to promote good governance and democracy in the region, some of which include:

- the African Charter, Democracy and Governance Article 3 (3);
- the EAC Treaty on Admission pre- condition (Article 3) (3) (b);
- the Fundamental Principles Article 6 (d);
- Operating Principles of the Community Article 7;
- the Draft EAC Protocol on Democracy and Good Governance (Article 7);

Mr. Owuor then gave a synopsis of the various electoral legislations in each country and observed that all the partner states had independence around the same time and that they all faced challenges in terms of reforms that need to be addressed. He also pointed out that all partner states have an executive president and in terms of governance structures, most states have a unitary system rather than federal, with the exception of Tanzania and Kenya, which has a devolved system of governance. He also looked at women's representation in elective positions noting that Rwanda was leading with the highest number of women in elective and appointive seats. With all EAC countries having their respective national elections between 2015 and 2017, the presenter saw the importance of looking at how elections influence peace trade and investment.

He also informed the delegates of the importance of looking at the legal and institutional framework around the electoral and political systems; regulating political parties, ensuring campaign and electoral security, increasing the participation of special groups in the process, having a sound dispute resolution mechanism in place as well as regulating the media. He also advocated for civic education for the general public in good time before the elections are held. In promoting peace during the elections, the presenter saw the need to involve all stakeholders in the electoral process and maintaining integrity in managing electoral data to avoid allegations of rigging.

The second presenter, Mr. Otieno looked at some of the political reforms that have been experienced in the EA region, such as multi-party systems and new political culture, e.g., where competition is based on ethnic superiority rather than political

ideology. He noted that there have been institutional, structural and governance reforms; however, these were slow paced. He also noted the persistence of exclusive control, dominance, and presidential imperialism experienced at one point in the partner states.

In comparing the electoral processes in the EAC, he noted that all partner states suffered imperial presidencies where even some presidents had no respect to term limits and there was adverse violation of political, legal and statutory arrangements. He noted that in all the countries, the emergent political reforms were not at pace with existing market reforms, and there was a slow pace in the enforcement of integration of laws, and lack of commitment to share the democratic, governance and economic values.

Mr. Otieno cautioned that these malpractices would serve to slow down trade, economic development and peace. The politicization of ethnicities also weakens democratic and economic growth and implies continued marginalization of ethnic minorities. Poor electoral reforms would also slow down foreign direct investments and reduce the efficiency of the common market arrangements and protocols.

In looking at the possible solutions of promoting peace, trade and investment through sound electoral reforms, Mr. Otieno proposed that partner states observe rule of law, stick to political consensus and constitutional provisions, respect emergent universal governance principles and ideals as well as respect democratic values and human rights.

Resolutions

1. Advocate for a clear definition of the role of security agencies in the electoral process in all the partner states.
2. Recognition of electoral offences by the police
3. Lobby for strengthening of a dispute resolution mechanism at political party level.
4. Advocate for the full implementation of financial election campaign Act in Kenya
5. Lobby for inter-regional engagement of political parties to enhance democracy.

PROTECTING THE CIVIC SPACE IN THE EAC

Session Chair: Mr. Mwangi Kahenu, MEAACT

Topic: The place of EAC citizens in determining the affairs that affect them, by Mr. Morris Odhiambo, EACSOF Kenya Chair

The presenter, Mr. Odhiambo, defined what exactly civic space meant to the delegates and stated some of the provisions under which the EAC protects the Civic Space of its' citizens.

He then critically analyzed the rules governing the observer status in the region. He presented two areas of concern from one of his papers in 2011 on the admission and observer participation in the proceedings of the community. He looked at some of the gains of the rules such as the fact that they are progressive and capable of creating a people centered process. On the other hand he presented some of the shortcomings of the rules, some of which include how restrictive they are, for instance the organizations participating should have a track record of at least three years of active participation. Other shortcomings include the fact that the observers lack voting rights and the extreme discretion that is given to the Secretary General as well as the Chairpersons of the meetings.

The presentation also looked at both the Civic Space Mobilization and the Consultative Dialogue Frameworks, their provisions and priorities. He emphasized on the Consultative Dialogue Framework (CDF), which was adopted in 2012 and which recognizes the East African Business Council (EABC) as a focal point for PSOs and EACSOF for CSOs. Mr. Odhiambo also looked at the role of the SGs Forum in protecting the Civic Space of the EA Citizens. For instance, it provides for a structured consultation framework while providing an enabling environment for participation. The forum also strengthens the capacity of PSOs, CSOs and other Stakeholders to engage in the affairs that affect them.

The presentation was concluded by highlighting some of the socio- political factors that limit the participation of citizens in the EAC such as, conflicts, minority groups inequalities, legal limitations to participation and low levels of awareness of the EAC processes, institutions and organs.

Resolutions

1. The East African partner states to implement the EAC Dialogue Framework that was adopted in 2013 by the council of ministers.

2. All Partner States to dialogue with civil society in an environment that ensures reasoned debate on the financing of development including financing of civil society activities.
3. The Partner States to urgently finalize the Draft East African Protocol on Good Governance, which should lead to embracement of the values of transparency and accountability and participation of civil society in ensuring accountability.
4. The EAC Partner States should also formulate laws that enhance the roles and participation of civil society and not those that negatively impact on the civic space including financing civil society organizations.
5. The Republic of Kenya to shelve the amendments to the Public Benefits Organizations Act of 2013 and any future legislative and policy amendments that may curtail the work of civil society organizations.
6. The republic of Kenya to actively involve of civil society organizations to participate in amendments of policy where there is need for regulatory amendments.
7. The Republic of Uganda to shelve the NGO Bill 2015 that wrongly creates the perception that NGOs are subversive and to continually engage positively and consult with civil society organizations in dialogue on the future of citizen participation.
8. The EAC to support civil society organizations in Burundi to promote peace, stability and security of its citizens.

WOMEN, PEACE AND SECURITY

Session Chair: Mr. Masheti Masinjila, CCGD

Topic: Interrogating the place of women in the EAC peace and security architecture by Ms. Jessica Njui, Africa Youth Trust (AYT)

Ms. Njui started by justifying the need to look at the place of women in peace and security, citing that while women will endure the same trauma in conflicts, they are also targets of specific forms of abuse such as sexual violence and exploitation, by virtue of their status in society and sex. She gave some statistics in where women have been involved in sexual violence in the EAC, such as in Rwanda during the 1994 genocide and in Kenya during the 2007/ 2008 Post Election Violence (PEV). She also

observed that up to 80% of all Internally Displaced Persons (IDPs) in civil wars and conflicts are women and children, who again are at risk of gender based abuse.

The presenter also argued that women in the IDPs continue to suffer particularly when it comes to access to proper sanitation, access to contraceptives and reproductive healthcare. It is with this premise that she argues the need to involve women in peace negotiations, which is at the moment wanting. She noted that the strides made in involving women in peace processes is wanting, for instance, only eight women were allowed to observe the final stages of the Arusha negotiations, and this was after intense lobbying by Burundi women groups. In Kenya, after the PEV, only 25% of the members involved in the National dialogue and reconciliation process were women.

Ms. Njui proposed that Kenya adopt the developed Regional Action Plan and framework to implement the UN Security Council Resolution (UNSCR) 1325. The UNSCR 1325 is symbolic of the first time the UN considered the importance of women's role in peace and security. The UNSCR 1325 advocates for women's active and meaningful participation in all peace processes, protection of women, prevention of violence against women and equal access to aid distribution mechanisms and services.

She also highlighted that the UN Secretary General recommended national commitment and capacity to implement resolution 1325 be strengthened through national and regional action plans. She noted that in the EAC, only Rwanda, Burundi and Uganda have action plans to implement UNSCR with Kenya and Tanzania yet to launch their national action plans.

On the regional front, the presenter advised that the EAC was appreciating the need to include women in all peace and security matters. However, the EAC protocol on peace and security which will govern EAC cooperation in defense and security matters was passed in February 2013 without considerations of aspects of human security and gendered dimensions of conflict. This implied the exclusion of women in priority areas of action and possible lack of budgets to address gender specific issues of conflict, insecurity and peace.

Other policy frameworks in place in the region to address the issue of peace and security that the presenter mentioned included the draft EAC conflict prevention, management and resolution mechanism and the instruments on the panel on imminent persons.

Ms. Njui called on the delegates to urge the government to launch its national action plan for implementing UNSCR 1325 and establish a sound monitoring and evaluation framework.

Resolutions

1. Creation of a regional grievances complaint mechanism for women in conflict

2. Include gender dimensions and human security dimensions in the EAC peace and Security Protocol
3. Lobby for the launch of National Action Plans(NAPs) on Women, Peace and Security in EAC Partner States that are yet to launch their NAPs
4. The EAC should support gender sensitive training of military and peacekeeping missions within the EAC.
5. Operationalize the recommendations of the baseline study on Women, Peace and Security commissioned by the EAC.
6. Improving the reporting mechanism on the initiatives led by the EAC Secretariat on inclusion of women in peace and security.

CORRUPTION AND ITS IMPACT ON BUSINESS IN THE EAC

Session Chair: Africa CSO Platform on Principled Partnership

Topic: The role of the private sector in fighting corruption by Mr. Victor Ogalo, Kenya Private Sector Alliance (KEPSA)

Mr. Ogalo highlighted the practice of corruption where it usually involves businesses that want to gain undue commercial advantages over their rivals. In the end however, everyone pays a costly price for not acting on corruption. The presentation also differentiated the different types of corruption while examining the tragedy of only concentrating on the visible form, which means that our tactics for dealing with corruption are largely administrative and lacks policy intervention.

The presenter went ahead to analyze the risk of corruption in the development of any country and cited how the “black’ money lost through corruption is greater than what a developing country receives in aid and grants. This sought to show how much a country loses if it does not take care of corruption. According to the statistics presented, about 94% of Kenyan firms acknowledge that bribery and corruption happen widely in business; 34% acknowledge that it is a common practice in their own sectors and 48% identify corruption as a major constrain to their business. Moreover, every year, Kenyan firms spend 4% of their revenues on corruption which translates to Kshs. 69 Billion.

Mr. Ogalo underscored how corruption stifles the economy, for instance by reducing efficiency and decreasing tax revenues and looked at the gains the Partner States would make if they made it a priority to remove corruption. He looked at some of the measures we have had in eliminating corruption and discussed the reasons as to why they were inefficient.

He concluded by suggestion some workable strategies for fighting corruption such as strengthening the implementation of EAC Protocols on prevention and combating corruption as well as improving the quality and access of public services to close off incentives to corruption among other strategies.

Resolutions

1. Improve quality and access to public services across the counties through
 - Deploying smart technologies to reduce human contact in service provision
 - Increasing the number of Huduma Centers in Kenya to bring more services under one roof
 - Automation of process and reduce human contact in service provision
 - Cutting red tape in provision of the Public Service services

2. Civil Society and Business Sector organizations to work together to promote business sector reforms and to identify and advocate for the elimination of existing laws and policies and/or programmes that accelerate corruption in the business environment in the EAC states
 - For instance, amendment of part (f) of the Common Market Protocol of the EAC
 - Advocate for the development and enactment of an independent EAC Counterfeit Law
 - Advocate for the harmonization of the functions and roles multiple National Multiple Regulatory Institutions and recognition of the relevant authorities across member states
 - Cross Border Services Policies and treaties between member states

3. Establish a corruption free culture across EAC member states by:
 - Teaching ethics and national values in schools across all EAC member states to inculcate a culture of a corruption free society
 - Heads of State Commendation and Awards through a transparent national nomination of the winners by citizens using technology and recognition in public at a state function
 - Upscale the capacity of the CSOs to carry out and sustain the awareness creation and sustainability of corruption activities and its elimination strategies
 - Establish a vibrant constituency of Civil Society and the Political Opposition in the Legislative organizations to check on Government and “official Corruption”
 - Enhance the Whistle Blower Policies and create many anonymous corruption reporters using technology
 - Name, shame and Punish the Corruption Offenders

4. Strengthen Transparency of Government Spending through citizens participation
5. Enhance the role of antic- corruption agencies by giving them prosecution powers
6. Advocate for equitable wages and salary structures across EAC member states and balancing the salaries and management of post-employment (retirement periods) through capacity building

7. Advocate for the strengthening of the Judicial systems across EAC member states by giving the EA Court of Justice powers to punish corruption offenders within the region
8. Implementation of the EAC Protocol on the Prevention and Combating across EAC Member states

EXTRACTIVE INDUSTRIES AND MARGINALIZATION

Session chair: Ms. Brenda Nyambura, KEPSA

Topic: Assessing extractive industries vis-à-vis the rights of local communities, by Winstone Omondi, Cordaid

The presentation concentrated on petroleum development in the region and how we can have petroleum democracy and development in East Africa. Mr. Omondi's presentation concentrated on the Albertine Reserves, Lokichar Resources Development Plan and the Tanzania gas pipeline development plans as the key extractive projects in the EAC. He questioned the existence of governance structures in place to deliver the projects and whether they contribute to petroleum democratization or marginalization of minority groups.

Mr. Omondi clearly gave details on the timelines of the projects and noted some of the challenges that would hinder the timely completion of the projects such as access to community land, unmanageable weather, access to water, just to mention a few.

While advocating for participatory petroleum development, the presenter advised on EA expanding its project public consultation standards, the need to have and environmental and social impact assessment from time to time and for CSOs participation to better petroleum exploration, development and in policy and legislation standards. He also cautioned against prioritizing resources for economic use at the expense of community needs as this would bring conflict and would be against having sustainable development projects.

Whereas it makes more sense to develop projects as a regional unit, the presentation asked for the development and implementation of common environmental performance standards, common social performance standards as well as common cultural performance standards. On matters environment, Mr. Omondi advised CSOs to ensure working towards zero- flaring policies and to continuously develop and monitor the petroleum environmental and climatic impacts to the local communities.

He also proposed to build the capacities of the local communities to take up opportunities in the extractive industries through, building their business skills; engaging the CSOs in petroleum opportunities, engendering the opportunities available; simplifying information for communities in their local language and PWD formats; coordination policies across EAC governments and monitoring petroleum governance for sustainable development.

Resolutions

1. Ensure that local content is promoted/ enhanced through clear employment creation policies and strategies. Skills transfer should be well defined in the contractual agreements between the governments and the mining companies.
2. Sign onto the Extractive Industries Transparency Initiative (EITI). Transparency will lead to greater inclusion of all stakeholders and should ultimately lead to improved accountability in the mining sector.
3. Develop the Sustainable Development Goals Framework for the mining industry.
4. Establish the institutional mechanism for stakeholders' engagement for the mining sector. This could be an offshoot of the Dialogue Framework but specifically established to bring together the various stakeholders in the mining sector (governments, mining companies, PSOs/CSOs, communities, etc).

CLOSING CEREMONY

The closing remarks were done by representatives from CSOs, Mr. Morris Odhiambo, PSOs, Mr. Victor Ogallo and Development Partners, Mr. Mutunga. Both Mr. Odhiambo and Mr. Ogallo expressed their gratitude to the participants for availing their time and thanked TMEA for availing the funds needed to run the forum. They also conveyed their gratitude to the Ministry for coordinating the Forum as well as the Committee in charge of planning. Mr. Mutunga from TMEA appreciated the energy that the delegates put into the forum and asked that we demand change as opposed to just meeting to discuss on issues. He proposed to have national bi- annual meetings to discuss substantively on issues.

Ms. Doreen Mayaka, from the National Council of Persons with Disability (NCPWD) gave the vote of thanks and particularly thanked the team for including the Council in the forum. The inaugural National Dialogue Forum was officially closed by Mr. Kahenu, on behalf of the Principle Secretary, Hon. Konchellah. He stressed the importance of such a meeting and thanked the delegates for taking time to attend the Forum.