

# **CATHOLIC UNIVERSITY OF EASTERN AFRICA**

**INSTITUTE OF REGIONAL INTEGRATION AND DEVELOPMENT**

**LOCAL GOVERNMENTS AND THE EAC INTEGRATION: PARTICIPATORY  
OPPORTUNITIES AND CHALLENGES FOR COUNTY GOVERNMENTS OF KENYA.**

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**15TH JULY 2019**

## **DECLARATION**

I hereby certify that this dissertation is the result of my original work and has not been submitted for a higher degree in to any other university, institution or any other award.

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## Table of Contents

DECLARATION .....	i
LIST OF TABLES AND FIGURES.....	v
ACKNOWLEDGEMENT .....	vi
ABBREVIATIONS .....	vii
ABSTRACT.....	viii
CHAPTER ONE: INTRODUCTION TO THE STUDY .....	1
1.1    Introduction.....	1
1.2    Problem Statement .....	2
1.3    Research Question .....	4
1.4    Research Objectives.....	5
1.5    Justification/Significance of the study .....	5
1.6    Scope and Delimitation of the Study .....	5
1.7    Limitations and challenges of the study.....	6
1.8    Chapter outlines .....	6
CHAPTER TWO: LITERATURE REVIEW .....	8
2.1    Introduction.....	8
2.2    Literature review .....	8
2.3    Literature Gaps.....	11
2.4    Conceptual Framework.....	12
2.4.1 <i>Defining the concept of participation</i> .....	12
2.4.2 <i>Variables</i> .....	13
2.4.3 <i>Indicators of measurement</i> .....	13
2.5    Theoretical Framework.....	13
2.6    Chapter summary .....	14
CHAPTER THREE: RESEARCH METHODOLOGY .....	16
3.1    Introduction.....	16
3.2    Research Design.....	16
3.3    Sampling technique, procedure and sample size.....	16
3.4    Methods of Data collection and procedures.....	18
3.5    Data Analysis methods and procedures .....	19
3.6    Chapter summary .....	20
CHAPTER FOUR: FINDINGS AND INTERPRETATIONS .....	21
4.1    Introduction.....	21
4.2    The EAC participatory framework and the participation of county governments .....	21
4.2.1    The EAC Treaty and Institutional Framework.....	21

4.2.2	EAC Participatory framework .....	25
4.2.2.1	<i>Participation in EAC National consultative process in Kenya</i> .....	25
4.2.2.2	<i>Participation in EAC Consultative dialogue framework (CDF)</i> .....	29
4.2.2.3	<i>Participation in EALA legislative procedures and Public hearings</i> .....	31
4.2.2.4	<i>Current discussions/efforts on engaging county governments in EAC integration</i> .....	34
4.3	Domestic intergovernmental cooperation and frameworks on EAC Matters .....	34
4.3.1	Intergovernmental cooperation on EAC Matters .....	35
4.3.1.1	<i>Implementation of EAC activities</i> .....	35
4.3.1.2	<i>Participation and inclusion in Bilateral/Multilateral talks</i> .....	37
4.3.1.3	<i>County government and EAC partner state cooperation</i> .....	38
4.3.2	Intergovernmental structures and the EAC integration:.....	39
4.3.2.1	<i>Intergovernmental Relations Act and the Intergovernmental Relations and Technical committee</i> .....	39
4.3.2.2	<i>The Council of Governors</i> .....	41
4.3.2.3	<i>County regional economic blocs</i> .....	42
4.3.2.4	<i>County Assemblies Forum (CAF)</i> .....	43
4.3.2.5	<b><i>Establishment of National Trade Negotiations Council (NTNC)</i></b> .....	44
4.4	Key challenges facing county governments’ participation in EAC .....	45
4.4.1.	<i>Lack of institutionalization of local governments in EAC structure</i> .....	45
4.4.2.	<i>Lack of adoption of the Regional integration policy for Kenya</i> .....	46
4.4.3.	<i>Absence of intergovernmental structures on EAC matters at national level</i> .....	47
4.4.4.	<i>Absence of EAC technical experts at the county level</i> .....	49
4.4.5.	<i>EAC integration a Nairobi Affair</i> .....	49
4.4.6.	<i>Inadequate establishment of regional integration centers</i> .....	50
4.5	Lessons Kenya can learn from UK government cooperation with devolved administration on EU matters .....	51
4.5.1.	<i>Implementation of EU obligations</i> .....	51
4.5.2.	<i>Representation and participation in EU</i> .....	52
4.5.3.	<i>Establishment of Joint Ministerial Committee (JMC)</i> .....	53
4.5.4.	<i>Scrutiny of EU legislation:</i> .....	55
4.5.5.	<i>Financial repercussions for failure to implement EU obligations by devolved administrations</i> .....	55
4.5.6.	<i>Limitations associated with UK-devolved administration cooperation on EU matters</i> .....	56
4.6	Chapter Summary .....	57
CHAPTER FIVE: SUMMARY OF MAIN FINDINGS, RECOMMENDATIONS AND CONCLUSIONS.....		59
5. 1	Summary of Main Findings .....	59

5. 2	Recommendation .....	63
5. 3	Conclusion .....	65
	REFERENCE.....	66
	ANNEXES:.....	71
	Annex 1: Interview Schedule.....	71
	Annex 2: Research Permit and Authorization letter .....	73

## LIST OF TABLES AND FIGURES

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### TABLES

Table 1: Variables .....	13
Table 2: Indicators of Measurement .....	13
Table 3: Number of respondents interviewed .....	18

### FIGURES

Figure A: County governments of Kenya (Border & Non-border Counties) .....	17
Figure B: Data collection process .....	19
Figure C: EAC Organs and Key institutions.....	22
Figure D: EAC participatory framework .....	25
Figure E: relationship between EALA clerks and those of partner states .....	32
Figure F: Extracted from IGRTC Strategic plan 2016-2020, pg.3 .....	40
Figure G: Key challenges facing county governments' participation in EAC integration.....	45

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## **ABBREVIATIONS**

AU	African Union
ASEAN	Association of Southeast Asian Nations
CENSAD	The Community of Sahel-Saharan states
COMESA	Common Market for Eastern and Southern Africa
CRA	Commission on Revenue Allocation
EAC	East African Community
EAGLA	East African Local Government Association
EALGF	East African Local Government Forum
EU	European Union
IGAD	Intergovernmental Authority on Development
KEBS	Kenya Bureau of Statistics
NAFTA	North American Free Trade Area
NTBs	Non-Tariff Barriers
MERCOSUR	Mercado Comun del Sur



## **ABSTRACT**

The establishment of devolution in Kenya brought to light the intersection between EAC matters and functions of county governments thereby changing the landscape of how EAC matters are handled at the national level. The early phases of devolution brought significant compliant challenges in implementation of Kenya's obligations under the EAC, as county governments engaged in legislations and activities that hindered free movement of goods thus contravening provisions of the EAC common market protocol that seeks to liberalize trade. On the other hand, county governments raised concerns on the impact of EAC treaty and protocols on their functions as well as county budgets. While some of these challenges were resolved, county governments are constantly been urged to remove blocks and constraints they have put in place that frustrates regional integration efforts six years into the implementation of devolution in Kenya. This raises a major concern on participation and inclusion of county governments in EAC integration as well as roles accorded to them, bearing in mind foreign affairs is a function of national government and, knowing that certain areas of EAC intersect with devolved functions. This research therefore, examined how county governments have been involved in EAC integration by analyzing their participation through the EAC participatory channels and domestic intergovernmental cooperation, policies, legislation and frameworks as well as the challenges that have limited their participation.

# CHAPTER ONE: INTRODUCTION TO THE STUDY

## 1.1 Introduction

The EAC is an intergovernmental organization comprising of the nation states of Kenya, Uganda, Tanzania, Rwanda, Burundi and South Sudan. In its reformation in 1999 that led to re-establishment of the EAC, participation of various stakeholders was seen as a crucial factor in the practical achievement of the objectives of the community as established under the principle of subsidiarity in Article 7 1 (a) and (d) of the EAC Treaty,2000. Thus, provisions for participation of the private sector, civil society, business organizations and associations, employees and employers' organization, professional bodies, and other interest groups in its integration process were enshrined under Article 127-129 of the Treaty. Further, the representation and inclusion of political parties through election to EALA as community legislators secured their role and place in the EAC integration process as enshrined in Article 50 of the EAC Treaty, 2000. However, local governments were and still are locked out of the integration process as their roles and place are yet to be formalised and institutionalised within the EAC framework.

The importance of local governments in regional integration is seen in its capacity and ability to facilitate or hinder implementation of regional agreements within their jurisdiction in particular those that enjoy some level of autonomy and have own legislatures. Under the EAC, Kenya's local governments (county governments) enjoy a higher level of autonomy compared to their counterparts within their domestic context. The establishment of devolution in Kenya not only established two levels of government but also brought to light political friction and major misunderstandings between the two governments in the discharge of their functions and interrelationships. However, amidst all the friction and political conflicts between the two levels, there was a general support from the newly established county governments on the importance of EAC integration not only to the country but to the counties as well, and the realisation by the national government on the importance of inclusion and involvement of county governments in EAC integration.

The national government through the ministry of East African Community and regional development called on counties attorney to “come up with laws that are in tandem with national government commitment towards EAC integration, and acknowledged that counties must be brought on board on the integration agenda” (Ojwang,2019). Further, this ministry organised and held sensitization forums with all the border counties as well as some of the non-border counties to create awareness on the EAC integration amongst the county governments' county

executive and county legislatures. On the other hand, majority of the County governments' governors and executive members acknowledged that devolution complements regional integration and committed themselves to ensure EAC integration is achieved and is beneficial to all to an extent that one of the governors, H.E Salim Mvurya who was the vice-chair of the Council of Governors at that time "pledged to rally his counterparts in making EAC an agenda for all counties" (Meac, 2016).

Contrary to their commitment to support the EAC integration, county governments engaged in activities and legislations that posed challenges in the implementation of Kenya's obligations under the EAC bringing to light the intersection between EAC and devolved functions, and the continuous impact of EAC protocols and resolutions on county government. Six years into the implementation of devolved governments in Kenya and the two levels of government (national and county) are yet to make significant structural, legal and policy changes to resolve the continuous negative impacts and formalize participation and inclusion of county governments in EAC integration.

## **1.2 Problem Statement**

The Constitution of Kenya, 2010 Chapter 11 established devolved governments creating two levels of governments (national and county governments) with their mandates, roles and functions clearly stipulated in the fourth schedule. Under the Fourth schedule, the national government has the sole function over foreign affairs, foreign policy and international trade thus granting it the decision-making powers to enter into bilateral and multilateral agreements. However, the operationalization of the forty-seven county governments in 2013 brought to light the impact of EAC Customs union and Common Market on their functions posing significant challenges in upholding Kenya's obligations under the EAC as county governments engaged in activities and legislations that were contrary.

The County governments' constitutional right under Article 209 (4) to impose charges for the services they provide and enact local legislation and policies to raise revenue resulted to imposition of levies and charges on goods transiting their counties territories. This constituted NTBs that contravened Kenya's obligations under the EAC Common market and Customs union that seek to liberalize trade through free movement of goods within the EAC region. As a result, in 2015, Tanzania reported Kenya to the EAC that its county governments of Kajiado and Kwale reintroduced country transit fee while in 2016, Burundi reported Kenya to EAC for charges imposed on transit trucks waiting to load cargo in the parking yard of Kshs. 500 per

day and transit fee charged of Kshs. 6,000 for transit cargo truck by county government of Mombasa, ([https://www.tradebarriers.org/resolved\\_complaints/](https://www.tradebarriers.org/resolved_complaints/) page 6 and 8)

The NTBs introduced by county governments arose from the fact that the 47 county governments function independently from national government and independently from each other resulting to existence of unharmonised different multiple taxes, charges and requirements that differ across counties for a similar good/service. These include: parking fees, transit permits (Calabrese & Parra, 2016); special passage fee charged per head of cattle transiting parcels of lands or borehole, requirements for further certification of goods even where such goods have been certified by KEBS (Omondi, 2015); demands for multiple single business permits for distribution of goods, vehicle branding charges in each county that truck passes through; entry charges, pass through charges and port levies (Waithera, 2015). Further, traders traversing Kenya have to put up with the multiplicity of identical charges levied by both the national and county governments for concurrent services (Waithera, 2015) leading to double taxation problem. This is because the domestic trade-licensing regime is not yet harmonized and consists of different requirements under county and national government (KIPPRA, 2017).

Therefore, this situation was brought to the attention of the Intergovernmental Budget and Economic Council (IBEC) of Kenya in 2014, which mandated National treasury and Commission for Revenue Allocation (CRA) to organize a conference on its behalf to resolve the matter (Waithera, 2015). This conference took place in 2015 with the aim of developing a policy document to guide county governments Tax/revenues collection and these efforts culminated to the proposed County Governments (Revenue Raising Regulation process) Bill of 2017 by National Treasury. The Bill was later gazetted as The County governments (revenue raising process) bill 2018 at the time of the research for introduction to the national assembly (Kenya Gazette, 2018).

The bill aimed to ‘cushion people from being subjected to arbitrary local levies’ (Mwere, 2018) by requiring counties to seek approval from the national treasury before introducing taxes was rejected by county governors at the time of this research because

‘it violated the constitutional functions of counties and it countermands how counties levy their taxes, and further alleging that the national government wanted to have a say on how counties should generate revenue through taxes’ (Mwere, 2018).

This strengthened the already existing tension between the two levels of government and affirms that any perceived attempt by national government to regulate or interfere with County

governments interests will face stiff rejection even where such attempts would contribute to removal of NTBs and liberalization of trade.

While the country and traders traversing Kenya grappled with the unresolved challenges brought about by county governments' that hinder free movement of goods, the county governments on the other hand encountered the impacts associated with the free movement of people under the EAC common market protocol. Busia and Kisii county governors expressed their concerns

“for taking the burden for provision of health services to (East African citizens) who flock into their counties seeking access to health services such as medical treatment; and this has an effect on their budgets as the county does not have extra money in the budget to cater for the foreigners’ (Shilitsa, 2018).

The above examples have shown evidence of how the EAC integration and county governments have affected each other. These negative impacts were anticipated even before the inception of devolution, as county governments were urged not to impose non-tariff barriers by the national government through the state department for EAC integration when they assume office (Kitimo, 2013). However, six years into their operationalization and county governments are still urged to stop double taxation and ‘imposing illegal taxes on transit goods (Obare, 2018) and not to levy charges that contravene free movement of goods in the region particularly those bordering EAC partner states of Tanzania and Uganda. This raises a concern of whether there have been efforts by the two level governments to involve the participation of county governments in EAC integration, and whether this participation has been effective to resolve the challenges county governments pose for the EAC integration process, or whether the lack of their participation is the fundamental reason for the problems caused by county governments in the integration process.

### **1.3 Research Question**

The central research question of this study is ‘to what extent has the participation and inclusion of county governments in EAC integration resolved the challenges they pose for the integration processes?’

Other key questions that the study seeks to answer include:

- (i) What participatory channels have the EAC and the national government put in place that facilitates participation of county governments in EAC integration?
- (ii) What challenges do county governments face in their participation in EAC integration?

- (iii) What lessons can Kenya learn from UK's involvement of devolved administration of Scotland, Wales and Northern Ireland in EU matters?

#### **1.4 Research Objectives**

The overall goal of this study is to determine the extent to which county governments of Kenya have participated in EAC integration and whether their participation has resolved the challenges and impact the EAC integration poses on their function;

##### *Specific Objectives*

- (i) To examine the participation of county governments in the EAC participatory channels;
- (ii) To analyse domestic intergovernmental cooperation in EAC matters between national and county governments; and challenges faced by county government's participation in EAC integration;
- (iii) To highlight lessons Kenya can learn the UK involvement of devolved administration of Scotland, Wales and Northern Ireland in EU matters.

#### **1.5 Justification of the study**

The study was designed to respond to the reality of the significant impact county governments have in realization of EAC objectives. This study is important as it seeks to show how county governments have participated in EAC integration since their inception in 2013 and how they have contributed to the realization or impediment of Kenya's obligations under EAC. The findings from this study are intended to inform policy on institutionalization of county governments in regional integration processes to ensure sustainable and inclusive integration efforts at the national level.

#### **1.6 Scope and Delimitation of the Study**

Kenya is party to numerous regional integration blocs such as Common Market for Eastern and Southern Africa (COMESA), Intergovernmental Authority on Development (IGAD), African Union (AU), CENSAD, and COMESA-EAC-SADC tripartite among others. While the 47 county governments border member countries of IGAD and EAC, the study will only look into the participation of county governments in EAC within their domestic context. The county governments are members of the EALGF that brings together local government associations in EAC partner countries to mainstream local government sector into the EAC institutional framework among other objectives. However, the study will not examine the influence of EALGF in EAC integration but the participation of county governments in this forum and the contribution they have made to facilitate fulfillment of its objectives.

### **1.7 Limitations and challenges of the study**

Three limitations were experienced that posed great challenges for this study. The first focused on respondents for this study that were drawn from both the national and county governments. As a result, the challenge and limitation posed by the unavailability of targeted respondents due to busy schedule was experienced. This situation was resolved by scheduling interviews very early in the morning before office hours for those respondents affected. Secondly, some county governments requested for extra requirements such as county government research permit besides that issued by NACOSTI which was to be paid for, however, since this was unforeseen requirement, I approached the individual departments who participated out of their own will. Thirdly, the research permit from NACOSTI which was issued by the national government indicated a timeline for the research for one year, this made some respondents claiming a much later dates for interview, however, I managed to convenience them and scheduled interviews at their earliest available time.

### **1.8 Chapter outlines**

This study is organized into five (5) chapters:

Chapter one (1) introduces the general area of study, analyses the problem that the study seeks to address and the importance of such as study. It further provides for the research questions, objectives, justification of the study, scope and delimitation of the study, limitations and challenges experienced in the carrying out of the study.

Chapter two (2) presents and analyses available literature that supports the participation of local governments in the integration processes around the globe and within Kenya and highlights the literature gaps that the study seeks to fill up. Further, the chapter provides a short description and linkage between the theories of regional integration that support their involvement as well as the conceptual framework that provide definition of key terms used in the study as well as variables and indicators of measurement.

Chapter three (3) presents the research design, sampling procedures and techniques as well as sample size, number of respondents interviewed, methods of data collection, data analysis and procedures used in the study.

Chapter four (4) is dedicated purely on presentation, discussion and interpretation of research findings. The chapter provides findings on the EAC participatory frameworks and structures established that have facilitated participation of county governments (both county government

executive and legislatures) in EAC matters as well as providing an analysis of their actual participation. It also highlights the current discussions and efforts in engaging county governments in EAC integration by the EAC institutional framework. Moreover, it presents findings, discussion and interpretation on the intergovernmental cooperation and frameworks on EAC matters within the domestic context by looking at involvement of county governments in implementation of EAC activities, participation in Bilateral and Multilateral agreements, and challenges faced by county governments in their inclusion and participation. It further highlights lessons for Kenya from the domestic context of other countries such as the UK and how their local governments are involved in EU matters.

Chapter five (5) provides a summary of main research findings highlights the recommendation and gives the conclusion to the study.



## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1 Introduction**

This chapter presents analyzed literature on the participation of local/sub-national governments in regional integration in countries that have implemented devolved systems of governance and federalism. This is so because federalism is an advanced form of decentralization and has similar features with devolution. Further, it analyses specific literature on devolution and county governments in EAC integration. The second section examines the conceptual framework that defined and operationalized the concept of participation, variables, and indicators of measurement while the third section provides theories of Neo-functionalism, and liberal Intergovernmentalism that support our study.

### **2.2 Literature review**

There is vast literature on the general role of sub-national governments in regional integration with a few literatures that specifically looked into specific countries such as the UK and USA involvement of its devolved administration and sub-national governments (state governments) within the regional blocs. The UK as a country has some devolved administrations and (Bulmer, et al 2006) argued this devolution brought with it significant challenge to UK government's approach to the handling of UK-EU policy as it transferred primary legislative competence in policy areas, which the EU level was also competent to legislate. This raised a possibility that future legislations aims of the devolved units might be in conflict with prospective EU legislation. By involving the devolved government executives in the UK-EU policy process, the government ensured that UK position took into account their policy priorities and/or legislative ambitions. The aim was to ensure that the UK government's negotiation position at the EU level reflected a consensus UK position. Otherwise, the UK government risked having its negotiation position undermined by one or more of the devolved units thus hindering implementation.

In addition,( Bulmer,2006) argued that, a commitment was made in the devolution proposals to include devolved administrations in the process of formulating the UK position on EU proposals that touched on a devolved competence; but not to compromise the government's sole authority to represent a single UK position on all EU issues. This commitment was laid out in form of a framework that consisted of an MOU and an attached concordant which provided means of coordinating EU policy across the UK, provision of information, involvement in the formulation of UK-EU policy, attendance at EU council of ministers and implementation of EU obligations. It set out key principles such as observation of the principle of 'no surprises' which

implied that in the EU policy context, UK government would keep the devolved administration closely informed of relevant discussions, and debates on EU legislative and policy proposals. This gave them an opportunity to shape UK national policy through formal involvement in the process of forming UK position and align with UK position in negotiations in the EU. As a result, the devolved administration produced coherent and territorial focused EU strategies and policies, evaluation and programs. Thus, the devolution project enhanced the legitimacy of devolved administrations involvement in EU policy making which did not exist before.

In the federal systems such as USA, where sub-national governments (states) have greater autonomy, the NAFTA federal-state consultation framework became a key strategy for their involvement in NAFTA integration. Tangeman (1997) looks into NAFTA federal-state consultation framework. He argued that traditionally, the USA federal government which is the primary actor in international trade policy had authority to negotiate binding trade agreements that limited states' sovereignty ability to make and institute regulatory policy choices. It had no constitutional obligation to consult with its individual states when negotiating agreements thus it rarely considered state regulations when negotiating international trade agreements. The integration of domestic and foreign markets through international trade agreements led to the difficulty in defining the proper role and function of individual American state governments' in international trade policy as there was an increased emphasis on binding states governments' to obligations within international trade agreements yet the scope of trade agreements impacted on state governments as it encompassed areas under their jurisdiction.

Tangeman further argues that the federal government had the authority to impose on the state both domestic and international obligations yet did not use this authority to bind states to such agreements until the signing of NAFTA in 1994. Under NAFTA federal-state consultation framework, the federal government has the obligation to consult with the states for the purposes of achieving conformity of state laws and practices with the NAFTA agreement. Thus under NAFTA guidelines, states (sub-national entities) are allowed to play a role in international trade negotiations and NAFTA became the first treaty through which states( sub-national) were guaranteed the right to be informed and participate in trade matters affecting them; the right to be notified if a state law is challenged; the right to participate in the defense of state laws; and the right to be notified of any proceedings other than challenges that have the potential to affect states. Tangeman notes that although the NAFTA federal-state consultation process has its flaws, the process eliminates the guesswork from federal-state communications concerning trade policy; and provides each state with definite procedures such as the opportunity to submit information regarding trade related matters that have impact on their states.

The literature on UK and NAFTA provides initiatives to involve sub-national governments' in their regional integration. Domestically, two great studies have shown efforts made by the national government to involve county governments in EAC integration. Waithera, (2015), research thesis on *Devolution and its impact on regional trade in East Africa: A case study of Kenya* provides insight on how county governments have impacted on EAC integration. She argued how devolved units (county governments) introduced multiple taxes, charges, levies on goods transiting their counties thus impacting on the free movement of goods within the EAC region contrary to the provisions of the EAC Common market and Customs union that seek to liberalize trade. In addressing this situation, Waithera provides several measures that were taken to promote involvement of county governments in EAC integration and resolve the challenges. They included forums organized in 2014 by the state department for East Africa integration in collaboration with border counties of Narok, Migori, Homa Bay, Kisumu, Bungoma, Busia, and Trans Nzoia that created awareness and sensitized these counties on EAC integration process, commitment and obligations; and efforts by the IBEC (forum for intergovernmental consultation) and Commission of revenue Allocation(CRA) to resolve NTBs that were ongoing at the time of her research and policies that acknowledged the importance of county governments in integration processes.

Mutahi, (2015), in his thesis, *The effects of the East African Monetary integration on county financing in Kenya: policy advice for Kenya*, focused on monetary issues. He shows how county governments' of Kenya were keen in developing independently and have the constitutional right to borrow money for county initiatives and raise revenue through taxes, municipal fees such as parking fees and transfers from the central government. His argument was based on the limits on deficit set by EAC that will impact on borrowing capacity of county governments. He argued that counties were already criticizing the national government for not supplying adequate financing thus setting debt and deficit limits for the region is likely to receive an opposition from the county governments who will find it difficult to identify with the EAC making it harder to abide by its rules. Kenya with upcoming larger budget deficits and larger spending counties could see this as a threat to their development and raise strong opposition to the EAC.

Further, Mutahi argued that forming a regional fiscal policy that is sensitive to sub-sovereign financing in all EAC countries is a difficult task which may face objection and argues that the influence of EAC on internal affairs of Kenya, a concept that counties have not begun to consider owing to the remoteness of EAC will cause a great challenge in the monetary integration. He recommended debt and deficit limits be applicable to the national government

budget only while the national government gets the responsibility of ensuring debt limits of county budgets are in accordance to EAC debt and deficit regulations.

### **2.3 Literature Gaps**

The literature has accounted for the efforts by individual countries to provide formal structures for participation of their sub-national governments. However, there is scanty literature on how county governments have been involved in EAC integration. Both Waithera and Mutahi provide sufficient knowledge on the impact that EAC and county governments have on each other, and Waithera's thesis provides details that have been used as supporting evidence in the problem statement of this study.

However, both authors do not account for the involvement of county governments in EAC integration and whether there has been structural changes put in place to formalize their participation as compared to devolved administrations of UK and federal states of USA. Waithera points out measures taken to involve county governments such as the forums organized by state department of EAC integration and some border counties but she did not further indicate if this is a continuous strategy by both governments or they were ad hoc forums. Mutahi on the other hand, also did not show if there were any intergovernmental efforts, consultations and cooperation established to address the possible impacts of EAC debt and deficit regulations on the county governments that forms his argument.

To fill this gap and add to the literature on county governments and the EAC integration, the study examined ways in which county governments have participated in EAC integration and evaluated any efforts through policies, measures and frameworks put in place to facilitate their participation as well as draw lessons from the UK. By doing this, our study presented the place and role of county governments in EAC integration and whether their participation has been effective enough to resolve challenges pointed out by Waithera and Mutahi. The study seek to show if there has been any intergovernmental structures put in place to resolve issues associated with the negative impacts on EAC on county governments functions and any other structural changes such as agreements between the two levels on EAC integration, and finally, depending on the research findings, lessons from the UK frameworks were drawn to fill up missing features in the involvement of county governments in EAC integration.

## **2.4 Conceptual Framework**

### **2.4.1 *Defining the concept of participation***

The concept of participation has evolved over time and there is a general lack of agreement in its definitions. Kenny (1997) provides various definitions by authors in understanding of what participation entails. Participation is defined as ‘being able to have an input into structures in which decisions are made’, (quoted from combat Poverty Agency, 1995); and further defined as ‘taking part in activities in a way designed to influence events whether in policy formulation, implementation or evaluation’ (as defined by ‘Faughnan and Kellagher and quoted in Reynolds and Healy, 1993). According to Kenny, any definition of participation must take into account the social factors, quoting Nyerere (1968) that ‘people cannot be developed; they can only develop themselves by participation in decisions and co-operative activities which affect their well-being’.

The above definitions provide a key feature in participation where in any participation there must be people taking part in activities that affect their well-being to the extent that they influence the outcome of the particular activities to their favor. Therefore, participation in our study means the ability of county governments to take part in national and regional integration activities that affect their functions to the extent that their interests are accommodated. To ‘take part in’ greatly depends on the availability of legislation/policy/frameworks that give the people the right to participate, and defines how people participate and specifies what activities/functions they are to participate since people cannot participate in every activity except those that directly affect them. This forms a variable in our study of whether there is a are laid down participatory frameworks both at the EAC and domestic level that facilitate county governments involvement in the integration process

Secondly, to influence the outcome in any participatory activities is dependent on the nature or level of participation whether it’s at consultation level or decision-making levels. This forms our second variable which examines the level or nature of county governments participation in EAC integration for the study as presented in Table 1.

## 2.4.2 Variables

Table 1: Variables

Independent Variable	dependent variable 1	dependent variable 2
effectiveness of participation	Existence of participatory framework (policies, procedures and structures for participation)	Nature/level of participation

The variables indicate that for participation to be effective and achieve the desired outcomes, it is dependent on the nature and level of participation and the existence of participatory framework that facilitate participation to happen.

## 2.4.3 Indicators of measurement

The dependent variables were measured using four major indicators as shown in Table 2 below

Table 2: Indicators of Measurement

Variables	Indicators
Existence of participatory frameworks	(i) Existence of established EAC participatory policy, process, and structures. (ii) Existence of domestic intergovernmental frameworks and cooperation on EAC matters structures
Nature and Level of participation	(i) Nature of participation in EAC matters (consultations, decision-making, policy making, advisory etc.) (ii) Evidence of intergovernmental cooperation on EAC activities/matters

This therefore means that the effectiveness of county governments participation is highly dependent on the existence of established participatory policies, processes and structures at both the EAC level and within the domestic national context that facilitate their participation and the nature/ level of their participation that gives them the ability to have a desired outcome.

## 2.5 Theoretical Framework

Neo-functionalism and Liberal Intergovernmentalism theories of regional integration propounded by Ernst Hass and Moravcsik Andrew form the two main theoretical frameworks that support the involvement of local governments in integration process. Both theories support the role of sub-state actors in regional integration. Neo-functionalism authors such as Schmitter (2005), argued that states remain important actors in the process of regional integration as they set the terms for initial agreement but they do not exclusively determine the direction and extent

of subsequent change, as non-state actors get involved and demand for further integration. Rosamond, (2005) argued that the original spill over concept which is the central aspect of neo-functionalism theory, 'in the 'uniting of Europe' showed how key social groups within national contexts came to support deeper and more expansive integration. This argument is supported by Lee, who alludes that the political spill-over affected the loyalties of key political actors at member level as it was possible to see a reaction to integration from interest groups, bureaucrat's and other domestic actors' (Lee, 2007).

This therefore categorizes actors in regional integration as those above the state (supranational officials/ institutions), those at state level (national/central governments) and those below the state (sub-national governments, domestic interest groups, bureaucrats, citizens). All these actors have increasingly become involved in regional integration processes playing a significant role in furthering and deepening regional integration.

Liberal Intergovernmentalism theory on the other hand, argues that national governments are key decision makers in the integration process and their interests/preferences are central in furthering integration. However, these national interests/preferences can be influenced by domestic actors to an extent that states could adopt domestic group interests, which reflect sectoral and issue-specific concerns of domestic constituents as national interests (Moravcsik & Schimmelfennig, n.d). This means that the interests of the county governments can form part of national governments interests during negotiations at the EAC level, as sub-national governments are not yet institutionalized.

## **2.6 Chapter summary**

This chapter highlighted the various literatures that support the importance of involving local governments in regional integration process. The key issue noted from the literature being the ability of the local governments to accept or reject integration decisions and resolutions that affect their functions thus hindering regional integration. Additionally, an important highlights from the literature review is the initiative and deliberate efforts by countries such as UK and regional integration organization such as NAFTA in ensuring that their local/sub-national governments were involved in the integration processes in order to ensure that their interests are accommodated thus reducing the possibility of their opposition to regional agreements thus achieving a higher degree of compliance and implementation.

This participation of local governments is highly supported by the theory of neo-functionalism and liberal Intergovernmentalism as explained in this chapter. Both theories provide avenues

and justification of their participation and their ability to influence regional integration processes to ensure their interests are accommodated.

Further, the chapter provided the conceptual framework that defined the concept of participation, variables and measures of indicators for the study. The independent variable which looks at the effectiveness of the participation of county governments is dependent on the two identified dependent variable namely, existence of regional and domestic participatory frameworks and the nature/level of participation. The chapter also provided the four indicators of measurement used to measure the two variables and they include: existence of established EAC participatory policy, process, and structures; existence of domestic intergovernmental frameworks and cooperation on EAC matters structures; existence of domestic intergovernmental frameworks and cooperation on EAC matters structures; and nature of participation in EAC matters (consultations, decision-making, policy making, advisory etc.;; Evidence of intergovernmental cooperation on EAC activities/matters.

These indicators of measurement can only be actualised from the collection and analysis of both secondary and primary data, which is discussed in details in the next chapter.



## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1 Introduction**

This chapter presents and discusses research design and methodology that was adopted in this study. This chapter is divided into three sections. The first section examined the research design, research approach or strategy used for our study. The second section deals with the issue of sampling and it provides sampling techniques and procedures, while the third section provides research methods by including data collection instruments, method of data collection, and methods of data analysis.

### **3.2 Research Design**

A research design provides a framework for the collection and analysis of data (Bryman, 2008). The EAC is made of six countries and in each country there are local governments and their association that affected by the EAC integration. Our study chose to examine the county governments of Kenya as a case study. Qualitative approach or strategy was chosen to provide an in-depth analysis of the participation of county government in EAC integration.

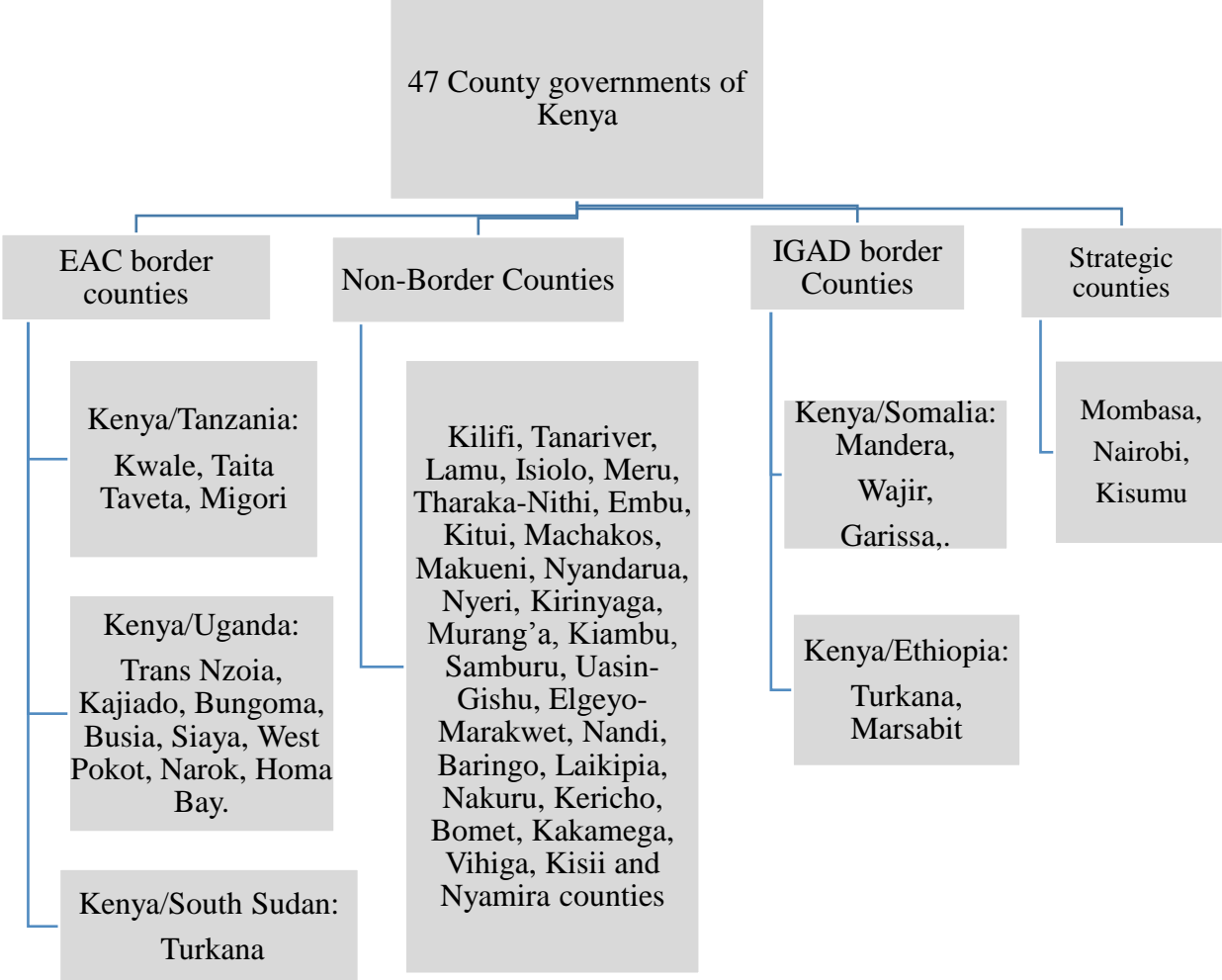
### **3.3 Target population, sampling technique, procedure and sample size**

Our study targeted the national and county governments as well as intergovernmental institutions. The sampling frame comprised of the twenty one (21) national government ministries involved in EAC integration in one way or another, the forty seven (47) county governments (county executive and county assembly) and the three (3) intergovernmental structures provided for under the intergovernmental relations Act, 2012. This brings 71 institutions forming our target population.

To reduce the 71 institutions into a manageable size, non-probability sampling techniques in particular purposive sampling method was used to draw a sample size. From the national government side, only three (3) institutions were selected namely; three (3) ministries from the 21 national government ministries were selected based on the significant role they have in EAC integration. Three (3) respondents from ministry of Foreign affairs and International trade were selected as it has its representation in the EAC council of ministers which is the policy organ of the EAC); three (3) respondents from the state department of EAC integration under the Ministry of East African Community and regional development as its charged with the coordination of EAC integration within the country; two (2) respondents ministry of Trade bringing a total of eight (8) respondents.

Random Stratified sampling was used to cluster the 47 county governments with similar characteristics into three strata and purposive sampling used to select a representative county from each stratum as shown below:

Figure A: County governments of Kenya (Border & Non-border Counties)



*Mombasa County government* was selected as one of the strategic counties for its great importance to the EAC integration as it provides port services for importation of goods to EAC countries. *Kwale county government* was chosen as it borders Kenya and Tanzania, *Busia county government* was chosen as it has the busiest borders compared to others, while *Bomet county government* was chosen as a non-border county that shares Trans-boundary resources with Tanzania. The study targeted four respondents from each county bringing sixteen (16) respondents from the county governments.

On the other hand, there are three established intergovernmental structures under the intergovernmental relations Act of 2012 and they include the national and county coordinating summit, council of governors and the Intergovernmental Relations Technical Committee

(IGRTC). Purposive sampling was used to select a representative of the IGRTC and the council of governors making two (2) respondents.

### Number of Respondents Interviewed

The study targeted people and institutions that were involved in the EAC integration. Table 3 gives a summary of respondents that participated in this study totaling thirty three (33) respondents.

Table 3: Number of respondents interviewed

Target category	Number of respondents
Ministry of East African community and regional development	5
Ministry of trade	3
Department of intergovernmental relations, Ministry of devolution and ASAL	2
Council of governors	3
Intergovernmental Relations and Technical Committee	1
County government of Bomet, Busia, Kwale, and Mombasa	18
Regional integration centre (Busia)	1
<b>Total</b>	<b>33</b>

### 3.4 Methods of Data collection and procedures

The study made use of qualitative research data collection methods of in-depth interview that was applied to key informants and review of official documents such as parliamentary debates Hansard. The interviews took a form of face-to-face for respondents easily accessible while telephone interviews were administered to respondents from far places and those not available for face-to-face interviews. The interviews were guided by the interview schedule (see Annex 1) as the main research tool used to collect data that outlined structured questions that addressed each of the research objectives. Recording of interview data took place by means of note taking and to ensure reliability and validity of data, all individual collected data was summarized. The procedure was as follows:

- 
- (1). Step I: obtained a research permit from NACOSTI (see annex2) authorizing my research
  - (2). Step II: Reported to the county commissioners office and county director of education as directed by the research permit for authorization letters
  - (3). Step III: Submission of a request letter and copies of letters of approval from the county commissioner and County director of education together with copies of research permit

and authorization letters to county secretary and county assemblies' offices requesting research authorization to conduct interviews for county government officials

(4). Step IV: Receipt of authorization letters from county executive and county assemblies

(5). Step V: conducted face-to-face interviews with respondents and taking notes

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The procedure is summarized as shown below:

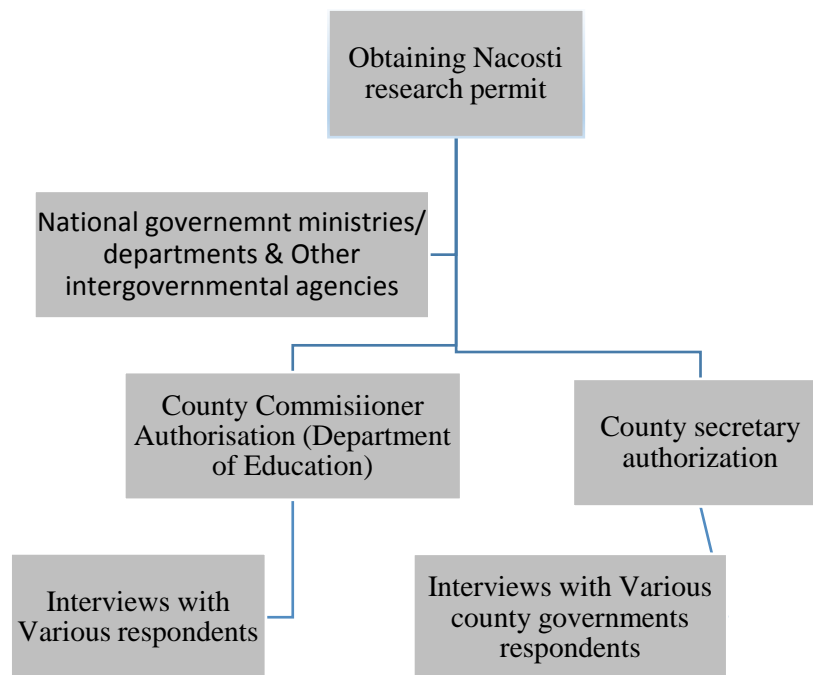


Figure B: Data collection process

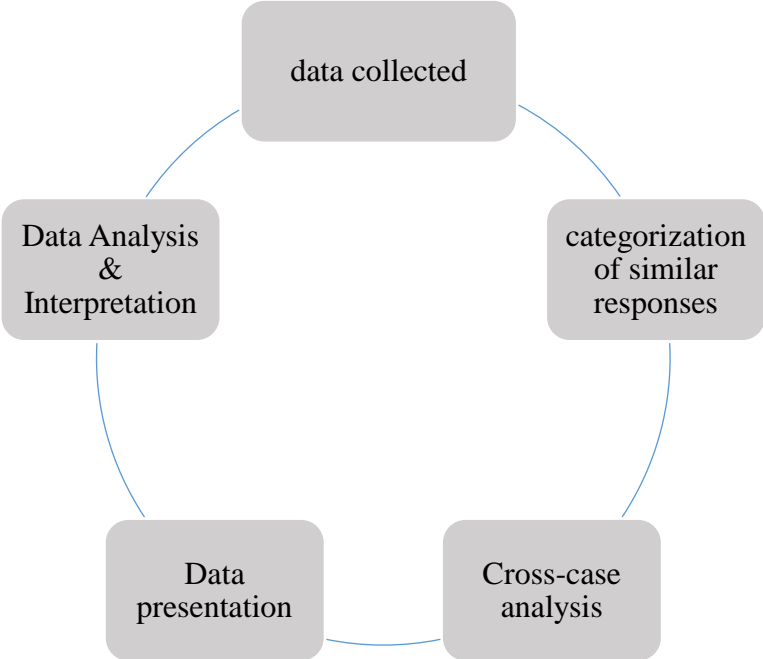
It important to note that all interviews were voluntary and no respondent was forced to participate in this process and I adhered to all government regulations that govern research work in the collection of data.

### 3.5 Data Analysis methods and procedures

Qualitative data analysis was used to generate findings on data collected. Content Data analysis was analyzed based on the questions asked and identical answers to the same question were grouped together and formed sub-themes for presentation of data in chapter four. The study made use of strategies for analyzing interviews provided by Patton, and involved three steps. The first step involves writing a case analysis for each person/unit interviewed using all the data for each interview session. Cross-case analysis follows as the second step where all answers to a common question from those interviewed are grouped together or are analyzed

different perspectives on central issues (Patton,1996:376-377), and the third step involved data analysis and interpretation.

The data analysis procedure is summarized as shown below:



### 3.6 Chapter summary

This chapter has shown the use of case study as the research design for our study and the used qualitative approach to generate data. Purposive and random stratified sampling methods were used to draw thirty-two (32) respondents from six institutions that represented both the national and county government. Further, respondents from intergovernmental structures such as the Council of Governors, and Intergovernmental relations Technical committee that provided for the cooperation between the two levels of government in relation to EAC matters within the domestic context were also interviewed. It further provides the compliance to government regulations for research through application of research permit obtained from NACOSTI by the author. The permit was used to facilitate data collection through face-to-face and phone interviews. The information collected from the respondents was categorized, analyzed and present in the next chapter.

## **CHAPTER FOUR: FINDINGS AND INTERPRETATIONS**

### **4.1 Introduction**

This chapter presents findings, interpretations of findings and discussions on data collected from respondents and other secondary sources. The findings have been categorized in four sections namely:

- a) The EAC participatory framework and the participation of county governments
- b) Domestic intergovernmental cooperation and frameworks on EAC Matters
- c) Key challenges facing county governments participation in EAC
- d) Lessons Kenya can learn from UK government cooperation with its devolved administration on EU matters

### **4.2 The EAC participatory framework and the participation of county governments**

This section looks into county government's participation in EAC integration by examining the treaty provisions and institutional framework that support local government's inclusion and if there are any established participatory frameworks and process for their participation.

#### **4.2.1 The EAC Treaty and Institutional Framework**

The work, operations, and decisions of EAC are guided by its Treaty, which is a legal framework that is binding on all the organs, institutions, partner states and citizens of the EAC. The Treaty was signed on 30<sup>th</sup> November 1999, and entered into force on 7<sup>th</sup> July 2000. The Treaty was amended twice on 14<sup>th</sup> December 2006 and on 20<sup>th</sup> August 2007. The matter of participation in the affairs of the EAC was anchored on two principles namely; the principle of subsidiarity defined by the treaty as "the principle which emphasises multi-level participation of a wide range of participants in the process of economic integration" (EAC Treaty, pg.9) and the principle of people-centeredness (EAC Treaty, pg.14). Further Article 127, 128, and 129 made provisions for participation of various stakeholders such as the private sector, civil society, business organizations and associations, employees and employers' organization, professional bodies, and other interest groups.

On the other hand, the EAC Organs and institutions membership is drawn from representative of national state governments or their representatives; political parties' members who are elected as legislators to EALA; and individual citizens that are drawn from the EAC countries to serve in the various EAC Organs and institutions as shown below:

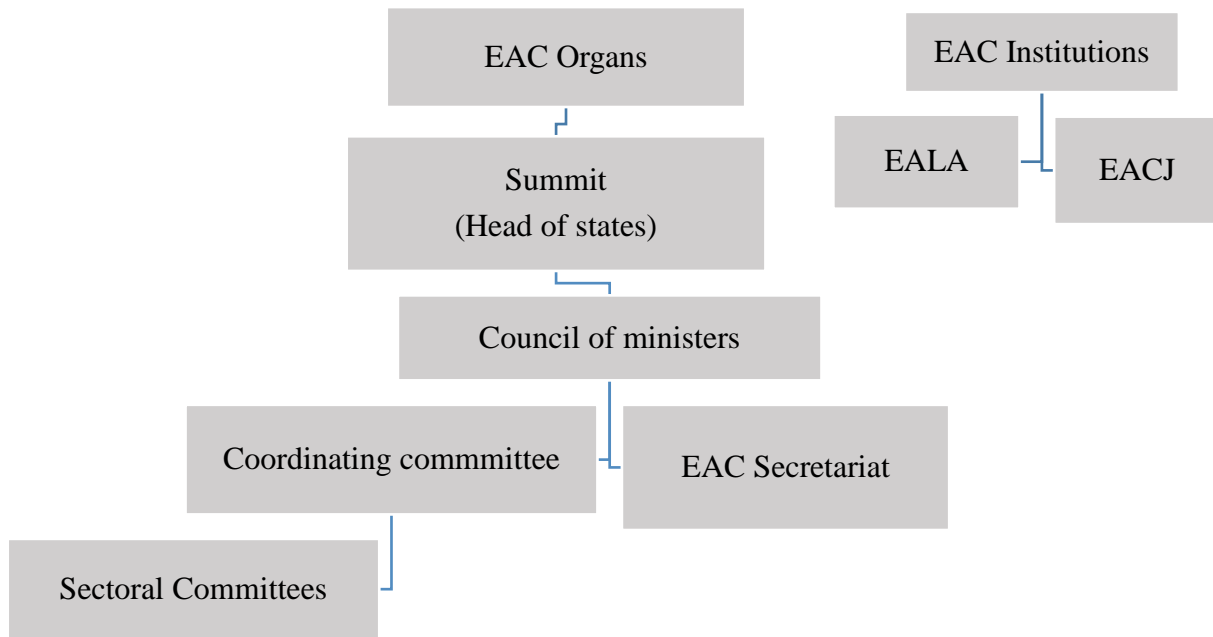


Figure C: EAC Organs and Key institutions

The summit comprises of head of states (Article 10, p.18) which represents the national or central governments of the partner states. The *council of ministers* comprises of the “Minister responsible for East African Community affairs of each Partner State or such other Minister of the Partner States as each Partner State may determine; and the Attorney General of each Partner State” (Article 13, p.20). These officials serve under their respective national governments. The *Co-ordination Committee* comprises “of Permanent Secretaries responsible for East African Community affairs and such other Permanent Secretaries of the Partner States”, (Article 17) and serve as public officials under their respective national government too. The membership of the *sectoral committees* is not clearly provided in the treaty as indicated in Article 20, 21, and 22). On the other hand, the two key institutions of the community have representation of members of political parties in the partner states through election as legislators to (EALA Article 50, p.39), while individual citizens have an opportunity to serve in the EACJ.

Additionally, East African community citizens can serve in any of the EAC institutions, which were established to implement the EAC vision and aspirations as laid in the treaty. These institutions include “the Civil Aviation Safety and Security Oversight Agency (CASSOA); The East African Competition Authority (EACA); The East African Development Bank (EADB); The East African Health Research Commission (EAHRC); The East African Kiswahili Commission (EAKC); The East African Science and Technology Commission (EASTECO);

The Inter-University Council for East Africa (IUCEA); The Lake Victoria Basin Commission (LVBC); The Lake Victoria Fisheries Organization (LVFO), (<https://www.eac.int/eac-institutions>) The above research findings clearly shows that role and position of local governments within the EAC is not recognised by the treaty as well as not integrated as part of the institutional framework. This means that local governments cannot directly influence and are not part of the decisions of the community collectively and have no legal basis to fight for their inclusion as they lack representation to the organs or institutions of the community. This is contrary to the spirit of decentralisation, which has widely been embraced by the partner states since their independence. Ever since independence, the EAC partner states inherited central governments systems of governance from the colonial times. With time, the states have embraced reforms that has seen the establishment of decentralised systems of governance within their national context guidelines and provisions in their respective constitutions.

However, up to date, EAC has not taken into considerations these reforms which have established powerful local governments such as county governments in Kenya that have posed challenges in the implementation of the Common Market protocol for the national government of Kenya as well as the EAC region at large. While the Treaty is open to amendments as was witnessed in the amendments done in 2006 and 2007, it is not yet clear why the local governments, which indeed are a sphere of government within the respective constitutions, have not been institutionalised. EAC therefore remains to be state-centric intergovernmental organization with no provision for inclusion of its local governments in decision-making and institutional structures.

Ultimately, the EAC will face great challenges in achieving the confederation as a step towards fulfilment of the political federation. Recently, the EAC agreed to implementation of a confederation as shown below:

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“During 33rd Council of Ministers meeting held in Arusha, Tanzania in February, 2016, all Partner States converged on a Confederation Model for the East African federation. The confederation was understood to mean the gradual, incremental collaboration in specified areas in accordance with Article 5 (2) of the Treaty. The Partner States would therefore, pool their sovereignty in the specific and agreed areas of cooperation. Partner States will retain their sovereignty and only transfer some capacity in the identified areas. The 18th Ordinary Summit of Heads of State held in May, 2017 adopted the Political Confederation as a Transition Model for the East African Political Federation and further directed the Council of Ministers to constitute a team of Constitutional Experts to draft the Constitution for the EAC Political Confederation and report to the 19th Summit” (Ministry of EAC and Regional development, Kenya, Strategic Plan 2018-2022)

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The biggest concern for EAC would come when confederating areas that fall under devolution in Kenya or within the jurisdiction of local governments in the region or when transferring capacity to the EAC that is within the mandate of the local governments. Article 5 (2) of the treaty states that;

“In pursuance of the provisions of paragraph 1 of this Article, the Partner States undertake to establish among themselves and in accordance with the provisions of this Treaty, a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the Partner States to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities, the benefit of which shall be equitably shared”.

Its not yet clear if the EAC will consider introducing multi-level governance once areas to be confederated falls within the jurisdiction of the local governments. The challenges and impacts of confederation are yet to be felt by both the national governments and local governments of partner states and so is the role of local governments in the confederation phase.

However, there is hope for inclusion of local governments in the EAC integration as the treaty provides room for amendments. Article 150 of the EAC treaty allows for its amendments at any time and proposals for such amendments can only be submitted by partner state or the council; these amendments must be adopted by the summit and enter into force once ratified by all partner states (Article 150(1)(2)(6)). However, the treaty vests too much authority of amendments on the national governments through its representatives on the summit and council of ministers. Its important to note that the re-establishment of EAC was by national governments and thus a regional referendum whether to re-establish the EAC was never carried out nor were national referendums carried out for citizens to make decision on whether to join or not to join the EAC. A major concern stemming from this fact is in the event a summit disapproved an amendment proposal, what would be a remedy given the summit is the final decision-maker?

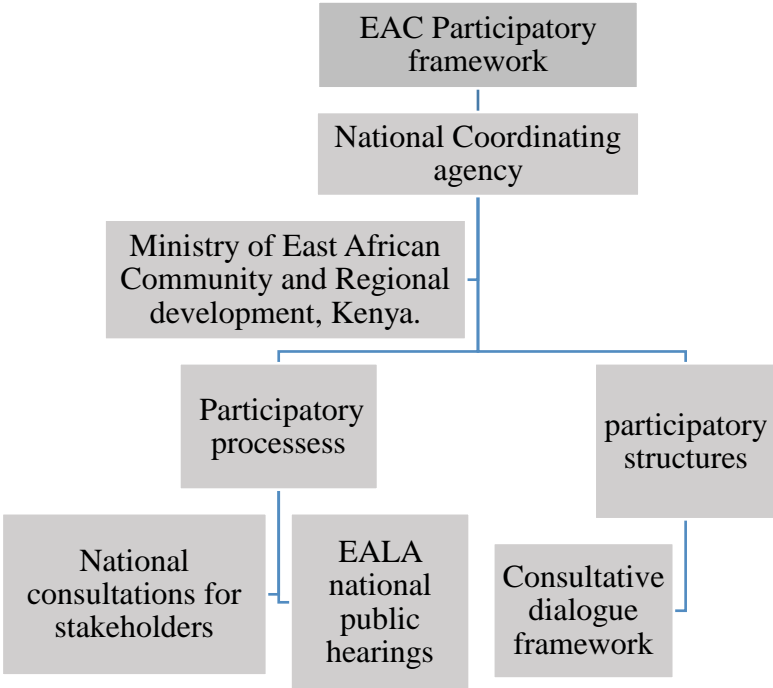
Concisely, the inclusion of the local governments in the integration process will therefore depend on the willingness of the partner states (in particular the council and the summit) to make a conscious decision for their inclusion and through reformation of both the EAC treaty and its institutions to accommodate the interests of the local governments which in fact are closer to the Citizens of East Africa compared to the national governments. Further, it will

depend on the concerted efforts by county governments together with the local governments in the region to collectively place a demand for inclusion through treaty amendment.

**4.2.2 EAC Participatory framework**

Having established the lack of direct participation of local governments within the EAC treaty and institutional framework, it was important to find out how these local governments participated in this process. Respondents were asked to provide information on how county governments have participated in EAC integration, and from the respondents answers I designed my own analytical EAC participatory framework for our study as shown in figure C below and used it to analyse how county governments have participated in them. The analytical framework categorised responses from the respondents into two categories. The first, it was clear that there is a laid down process in which participation occurs at the EAC and the second is the structures established that facilitate participation.

*Figure D: EAC participatory framework*



**4.2.2.1 Participation in EAC National consultative process in Kenya**

Respondents from the national government noted that there are established national consultations processes in all EAC partner states that are coordinated by respective ministries or state departments in charge of EAC matters. These consultations may take form of a policy

formulation or general discussions, and give stakeholders the opportunity to input their recommendations and views in the formulation of national positions towards the development of EAC policies and other matters as cited by the respondents. For Kenya, the ministry of EAC and regional development at the time of this research coordinated participation of stakeholders in EAC matters at the national level. From the interviews, I categorized the stages of this process as follow:

- 
- (a). **Stage I:** The EAC secretariat upon directive or request by other organs of the community communicates a particular matter (either policy, or issue) for consultations. EAC secretariat writes to partner states' ministries in charge of EAC integration in this case the Ministry of East African Community and regional development, Kenya.
  - (b). **Stage II:** The state department for EAC, under the ministry, forms a committee to spearhead the consultations processes of getting views and opinions from stakeholders. If the matter/issue falls outside the jurisdiction of the Ministry, the state department of EAC then writes to the relevant ministry, which forms a committee to spearhead the process.
  - (c). **Stage III:** Identification of stakeholders to participate in the consultations is done by the committee, which then invites the stakeholders to a national meeting.
  - (d). **Stage IV:** The First National stakeholders meeting is convened which brings all identified stakeholders to participate in the development of a national position concerning the matter under deliberations. This forum provides stakeholders to voice out their interests. It is expected that before an individual stakeholder comes to the national meeting they would have convened their own individual meetings and consolidated their positions to the main committee. The outcome of this meeting is a draft paper/document that reflects Kenyan position paper on the matter under consideration; and a selection of a national delegation team to participate and present Kenyan position in the regional meeting convened by EAC secretariat.
  - (e). **Stage V:** A regional meeting is convened by the EAC secretariat in which national delegations from all the EAC partner states meet and negotiate to come up with a regional position on the matter. Where negotiations seem not to favour the interests of a particular stakeholder, the national delegations are allowed an hour or two to consult with their respective stakeholders back at home to get the stakeholders fall-back position if other stakeholders from the region do not agree. The outcome of this meeting is harmonised positions from all EAC partner states to form a regional zero draft

policy/position, which is developed by the EAC secretariat. The zero draft is sent back to partner states ministry in charge of EAC integration for final inputs.

- (f). **Stage VI:** The relevant state department convenes the second national consultative meeting/ ministry after the zero draft is sent to stakeholders. This meeting validates the contents of the policy/matter under consideration. Once the stakeholders are satisfied that the draft policy reflects their interests, this is communicated to the EAC secretariat.
  - (g). **Stage VII:** The EAC secretariat upon receiving reports from all partner states, then presents the regional zero draft policy to the responsible EAC sectoral committees who discuss it in their meetings and presents their recommendations to respective EAC sectoral council. This then moves to the council of ministers that either adopts or rejects the policy or gives directions and once the ministers are OK with it, the document is finally submitted to the Summit for adoption.
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Respondents when asked about participation of county governments in the above-mentioned process gave two critical points. First, county governments are only invited to participate in the consultation processes when the issue under consultation directly touches on their functions and, an example was given where county governments were involved in the formulation of EAC Axle load limits. Further, respondents noted the obligation they have to consult with county governments citing Article 6(2) and 189 of the CoK, 2010 and Intergovernmental Relations Act, 2012 that obligates both levels of government to cooperate and consult in discharging their mandates in a “manner that respects the functional and institutional integrity of government at the other level” (Article 189(1) a Constitution of Kenya,2010). Secondly, the respondents noted that the 47 county governments’ participation is through the Council of Governors (CoG) as no individual county government directly participates in this process. The CoG therefore serves as a direct linkage between the EAC national government ministries and the 47 county governments.

This means that the introduction of devolution changed the decision-making processes and while the national government is the ultimate decision maker in matters of regional integration, it cannot make decisions without consulting the county government in matters that touch their functions. On the other hand, the identification of stakeholders to participate in the national consultations process by national government ministries does not deter or hinder involvement of county governments. This is because County governments are much advantaged compared to other stakeholders as their participation and inclusion in EAC matters that touch on their function is secured and guaranteed under the constitution and respective Acts. While this

guarantees their inclusion and participation, it limits their participation to EAC matters that intersect with county governments function only. Additionally, it gives county governments the power to take national government to court in the event they get excluded on matters that touch on their mandates whether its domestic, regional or international matters.

However, the same cannot be said of other stakeholders who face the challenge of being excluded from the consultations. For example, in its considerations of participation and consultations of stakeholders in the drafting and process of the EAC Monetary Institute (EAMI) Bill 2017 tabled before EALA on 8th February, 2018 prior to introduction to the Assembly, the committee noted that not all stakeholders were involved in particular the East African Business Council, civil society and the general public were not consulted. This rose a concern amongst the committee of how comprehensive and representative the consultations had been, and this affirms the fact that stakeholders may be excluded from this process, which is controlled by respective national governments (EAC, 2018, P.10).

The EAC national consultation processes therefore have provided county governments with an opportunity to have their interests incorporated into the document that stipulates Kenya's position and serves as the point of reference during negotiations at the regional level. Additionally, negotiations at the regional level are open to stakeholders to attend and participate, as they are not reserved for national government representatives only. County governments' representatives can be part of the national delegation attending the negotiations processes at the regional level and thus achieve influencing the negotiations when negotiations touch on their functions.

It is therefore evident that these consultations make the contents on the zero draft that when adopted it will reflect the views and opinions of stakeholders thus influencing its outcome. The EAC consultations are very much adhered by various organs who are keen to ensure that stakeholders are incorporated. For example,

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...the 9<sup>th</sup> ordinary meeting of the EAC sectoral council of Health held in 2014 in its review and incorporation of country stakeholders meetings comments and recommendations on the final draft of the EAC regional Health sector strategic plan (2015-2019) noted that the inputs given to EAC secretariat by partner states were not incorporated and circulated to all the stakeholders as expected. The sectoral council directed the EAC secretariat to incorporate all comments on the

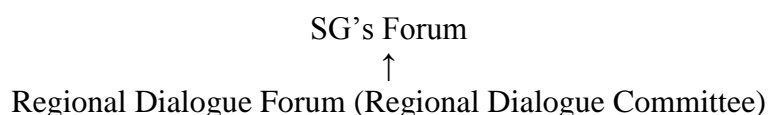
EAC health sector strategic plan from EAC partner states, circulate the revised version of the strategic plan and convene a regional multi-sectoral stakeholders validation meeting by 15<sup>th</sup> August 2014(EAC/SCM/Health/Directive 002; further the council noted that the EAC secretariat had carried out national stakeholders consultative meetings on the final draft of the protocol on EAC regional cooperation on Health but inputs given by stakeholders were not incorporated and directed the secretariat to incorporate comments from partner states on the protocol and circulate to partner states the revised version of the protocol for further inputs (EAC sectoral council of ministers of Health,2014)

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Therefore, the established national consultation processes under the EAC provides a strong platform for the county governments to participate in the integration process. However, the weakness associated with this process is the nature of participation, which is by consultation and is not sufficient to ensure effective participation that will lead to efficient implementation of EAC obligations at the grassroots level by the county governments. Not only is this weakness experienced in the EAC but also its something experienced across all regional integration organizations even the most advanced such as the EU where participation is mainly through consultations. Another weakness is the top-down approach employed in the national consultations. The agenda is set by different agencies and trickles down for consultations. The county governments have no power to influence the set agenda for discussions and consultations, as they are not involved in the preparatory phases of prioritizing what needs to be consulted. This means that the process is not flexible for the county governments or their counterparts to ask for consultations to be carried out in the region on issues that touch on their interests.

#### ***4.2.2.2 Participation in EAC Consultative dialogue framework (CDF)***

The CDF was developed by the EAC secretariat and adopted by the EAC council of ministers during its 26<sup>th</sup> meeting in 2012 as a dialogue framework for private sector, civil society Organizations, professional organizations, and other interests groups' participation in EAC integration process. According to the respondents, the CDF is therefore an official framework that provides a structured dialogue and mechanism of engagement for groups such as the private sector, civil society, among other interests groups that do have a representation mechanism at the EAC. The CDF has three phases or levels of consultations that feed into each other as shown below:



↑  
National Dialogue Forum (National Dialogue Committee)

Unlike the national consultation process that employs a top-down approach, respondents noted that this framework involves obtaining views and opinions from grassroots organizations and agencies to discuss issues that affect them at the national level and submit the same at the regional dialogue framework where issues from all the partner states are discussed and prioritized to be discussed at the Secretary General (SG) forum that is held annually. Recommendations from the SG forum are presented to relevant EAC organs and institutions and may form an agenda for them. This therefore gives stakeholders opportunity to have their views and opinions be taken up for consideration by the EAC. The Kenya NDC has so far held three (3) NDF forums; the first was held in August 18<sup>th</sup>-19<sup>th</sup> 2015, the second was held on 15<sup>th</sup>-16<sup>th</sup> September, 2016 and the third was held on 12<sup>th</sup> -13<sup>th</sup> June 2018.

According to the respondents, county governments of Kenya have participated in all the three NDF upon invitation from the state department of EAC. Further, where issues to be deliberated touched on county governments, the individual county governments were invited to speak in these forums as in the case of the third NDF where the county executive committee member in charge of Trade from the county governments of Busia, Mombasa and Kajiado spoke on refugee issues and cross border trade issues. The NDF therefore provides a channel for county governments to participate in shaping the direction of the EAC integration concerning issues that matter the most and need attention.

However, the major weakness associated with this platform is the fact that it is not directly linked to the EAC decision-making structures and that recommendations may or may not form agenda of the relevant organs. Secondly, there is no guarantee that the EAC decision-making structures will adopt the recommendations made in this forum. Finally, the recommendations made in this forum are not binding in nature on the EAC though it is an institution of EAC. This makes the whole process a mere participation of airing out views with no substantive guarantee of their implementation by the EAC.

When compared to the national consultative process, this forum seems not to be represented during the national consultative meetings and therefore raising concerns of the lack of interconnectedness of the EAC participation process and structures at the national level. One notable question would be, if the state department of EAC were organizing a national consultative meeting, should the CDF, Kenyan chapter be represented as a stakeholder given

the diversity of its members. If not, this risks reducing the platform to the only annual scheduled meetings. Another notable conflict is the fact that communication is not directly sent to the NDF, which is under the Secretary General and raised concerns of the importance of this platform whose leadership is not under state. Therefore, my opinion is that this forum is not the best platform for participation county governments in EAC integration given its responsibility towards adherence of the EAC obligations, the impact EAC has on its functions, and the shortcomings associated with the platform.

#### **4.2.2.3 Participation in EALA legislative procedures and Public hearings**

The parliaments of EAC partner states have a fundamental role to play in the EAC legislative processes. The establishment of devolution brought to existence the second chamber (the senate) for Kenyan parliament, and established 47 small independent county legislatures. As a result, debates and changes were incorporated to formalize the participation and inclusion of senate in regional integration in particular EAC as shown below;

‘Hon. Members, it is my view that the current elections rules which were adopted by the National Assembly in April, 2012 and published in the *Kenya Gazette* through legal notice No. 31 of 11<sup>th</sup> May, 2012, requires a review to conform to the bicameral nature of our parliament. In this regard, a team of officers of the both Houses of parliament has been constituted to propose amendments....’( The Hansard, Parliamentary Debates, 24<sup>th</sup>January, 2017).

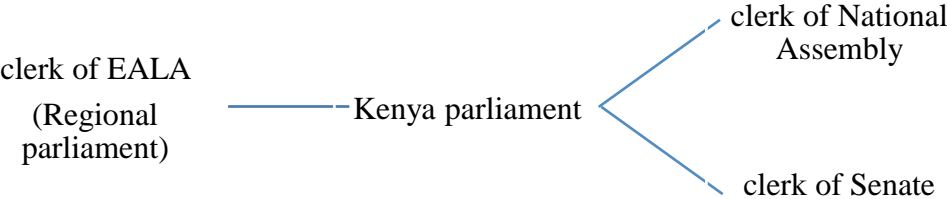
Subsequently, as a result, a Joint Parliamentary Select Committee consisting of five (5) members from each House of parliament (National Assembly and Senate) was thus established to lead the election processes. More so, a review of the parliamentary debates established that there were changes that realigned the role of the Kenyan parliament in Election of Kenyan members to EALA to reflect its bicameral nature and compliance to Article 50 of EAC treaty, 2000, that vests the responsibility of electing the nine representatives from each partner state on their respective national legislatures. Ultimately, Kenya revised its rules, the East African Legislative Assembly Elections (Election of Members to the Assembly) Rules, 2017 under the EALA Act, 2011, to formalise the role and participation of the senate in election of Kenyan members to EALA.

Additionally, the relationship between the regional assembly with those of partner states national legislatures is provided for under Article 65 of the EAC treaty. Article 65(a &b) of the Treaty mandates the clerk of EALA to submit copies of the records of all relevant debates, Bills



and Acts introduced to the Assembly to the clerks of national assemblies of partner states for considerations. Similarly, clerks of partner states national parliaments are required under Article 65(c) to submit their considerations and resolutions to the clerk of EALA together with copies of records of debates, and this was domesticated as envisaged in the Kenya national Assembly standing order No. 212A and Senate standing order No. 234 provides guidance on how both houses were to be involved in EALA process. The clerks therefore serve as a direct link between partner states parliaments and the EALA as shown below:

*Figure E: relationship between EALA clerks and those of partner states*

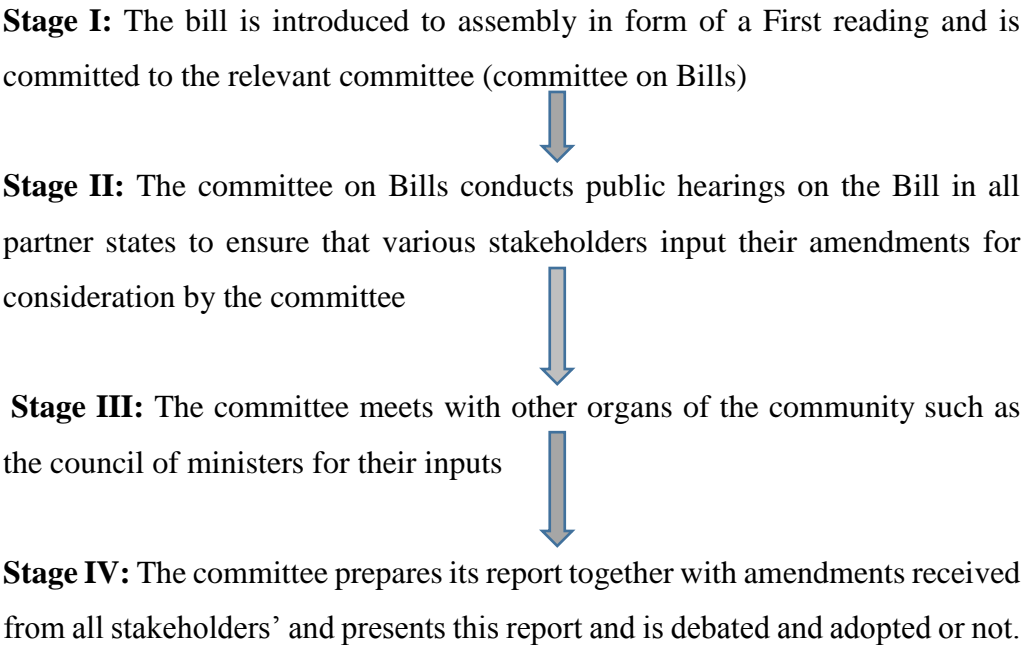


However, respondents’ from the county assemblies noted that they have no formal roles in EALA process and have never participated in consideration of EALA Bills. Further, they noted that the senate, which represents the counties and serves to protect the interests of the counties and their governments has not yet included the county assemblies in its role in considerations of EALA bills; does not seek views and recommendations of the county assemblies and does not communicate its resolutions to the assemblies.

On the other hand, respondents were of the opinion that the middle player (senate) should have provided a stronger and indirect linkage between the county assemblies and EALA, however, the lack of initiative from both the county assemblies, and the Kenyan parliament to promote a three tier legislative process that is inclusive of EALA, Kenyan parliament (senate and National assembly) and 47 county assemblies has continually locked out their involvement in EAC integration. Further, respondents noted that there is no link between the regional committees of both houses with the county assemblies. More so the agenda of EALA is not directly linked to the county assemblies’ agenda and vice versa and this resulted to the lack of domestication of regional laws at the county level.

Additionally, a review of the East African Legislative Assembly procedures showed that it also has a participatory process to involve stakeholders through public hearings on its bills. From

the rules and procedures of the assembly as stipulated in article 66(4) (EALA, 2015) I categorized the process as follows:



These public hearings are conducted by EALA in all partner states and give stakeholders the opportunity to scrutinize the bills and have their input. However, all respondents acknowledged that they have not participated in the legislative process and they have been sidelined and are not major stakeholders in EALA.

The research findings clearly show that the county legislatures have not been involved in EAC integration process and have totally been excluded from EALA matters in particular in consideration of the bills. This therefore means that the county assemblies who should be the major stakeholders in this process have been excluded and have no role and participation in this process. Their voice is not heard in the legislative process and acts of the community are not communicated to county assemblies. This raises a major question on the place and role of county assemblies in the Kenyan parliaments' roles in EAC integration, which involve consideration of EALA bills, Election of EALA Kenyan representatives, and domestication of regional laws, which is yet to be defined.

The implication of their lack of involvement is the making of county legislations that are contrary to the spirit of integration as witnessed in the early phases of devolution where county

financial legislations in terms of revenue collection resulted to establishment of NTBs that hindered the free movements of goods as envisioned in the EAC common Market Protocol. Moreover, since the EAC is not mainstreamed at the county assemblies, it means that the cycle of legislations that are contrary to EAC integration will always resurface in each election with election of new leaders who might not be conversant with the integration process. Both EALA, and the ministry of EAC and regional development will continuously spend resources in creating awareness each cycle of elections something that could be avoided if the county assemblies and local government legislators in other EAC partner states becomes a lower arm of the regional assembly.

#### ***4.2.2.4 Current discussions/efforts on engaging county governments in EAC integration***

Apart from the established EAC national consultations EALA public hearings that allow for stakeholders' participation, Respondents from Bomet county assembly visited EALA in 2014 and informal discussions were held on the intention to involve the county assemblies on creating awareness to the people on EAC. However, respondents noted that there was no follow-up on this intention and as at the time of research, this aspiration had not been formalized or implemented. Secondly, other respondents also noted that in June 2018, the EAC organized a meeting for the Kenyan county governments that border EAC member states to discuss on how they can have cross-border policies/legislations that can assist in building the EAC community.

Further, comments from some EALA members stating that;

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*'the East African Legislative Assembly will adopt a different approach in resolving trade conflicts among members states-it will engage counties directly instead of going through national governments...'* (Oudia, 2018)

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is a clear indication of the future possibilities of direct engagement between EAC and the county governments of Kenya as well as other local governments in the community. The above two examples clearly indicate the rising importance of involving county governments of Kenya in EAC matters at the county levels and the benefits this would bring in not only raising awareness but also in domestication of EALA legislations.

### **4.3 Domestic intergovernmental cooperation and frameworks on EAC Matters**

This section presents findings on domestic efforts that have facilitated participation of county governments in EAC integration by examining the Intergovernmental cooperation EAC Matters; and the Intergovernmental structures role in EAC integration.

### **4.3.1 Intergovernmental cooperation on EAC Matters**

The intersection between EAC matters and functions of county governments lays a fundamental need for intergovernmental cooperation on EAC matters between the national and county governments of Kenya in such areas. Interviews with respondents from the county governments of Busia, Bomet, Kwale and Mombasa, as well as national government representatives in these counties brought to light some level of cooperation between the two levels. From the responses, I categorized the cooperation in three elements namely:

- a. Implementation of EAC activities
- b. Bilateral/ Multilateral talks and negotiations
- c. County government and EAC partner state cooperation

#### **4.3.1.1 Implementation of EAC activities**

Respondents were able to provide examples of how they have participated in EAC matters and the role they played. Respondents from Bomet County cited their participation and role in organizing and hosting the EAC Mara Day celebrations that happens annually in the month of September on the 15th Day. Further, they indicated that this celebration is hosted on a rotational basis between Kenya and Tanzania and in Kenya, the county governments of Bomet and Narok are major stakeholders as Bomet hosted this celebration in 2016 and Narok county government was expected to host it in 2018, which was the time of this research. The county government CEC in charge of environment in collaboration with the national government and the Lake Victoria Basin Commission secretariat (an institution of EAC) were involved in planning of the celebrations that have a purpose of creating awareness on the trans-boundary issues of conservation on the Mara River Basin. More so, respondents also cited the role of county governments in pre-Mara Day activities in which the county governments engage together with other stakeholders in planting of trees.

Respondents from Kwale County pointed to their involvement in the cross border management of trans-boundary animal diseases. Agriculture as a devolved function gave powers to county governments to exercise plant and animal disease control. The free movement of goods (livestock) under the EAC common Market protocol resulted to cross-border movement of livestock as well as cross border livestock trade necessitating the need for trans-boundary animal disease control measures such as cross-border animal disease control. The Kwale county government department of Agriculture, Livestock and Fisheries acknowledged it is involved in the implementation of preventive measures against animal diseases in collaboration with the

national government. Further, the county government, through the department, participated in conferences where decisions were made on how to deal with trans-boundary issues affecting animals and agriculture as a whole.

The respondents from Busia County indicated that their overarching role is to support and complement national government policies, plans and projects that advance EAC integration by collaborating with the respective national government ministries and departments to create a conducive environment for trade and enhance cross border relations with EAC countries by solving cross border issues. For example, the county government of Busia took the initiative to resolve a conflict between the fishermen of Kenya and Uganda. The fishermen of Kenya and Uganda had an agreement that prohibited buying fish directly from the individual fishermen but only through the established fisheries cooperatives, however, some traders violated this agreement and this prohibited selling, buying and transportation of fish between Kenya and Uganda at the Busia border. The county government of Busia together with other agencies worked together and resolved the problem thus restoring cross border fish trade.

Further, respondents of Busia County noted that they have collaborated with the regional integration center at Busia border to cooperate and work together towards creating awareness and disseminate information on benefits of EAC customs union, common market among others to the border communities and stakeholders. Further, they have conducted sensitization workshops for women and youths to interest them in doing business across border either Uganda or beyond. This resulted to formation and registration of 3 groups which do business across the border. The government also disseminated the EAC simplified guide on cross border trade, which provides detailed information of EAC trade to communities that assisting in reaching a wider citizenry.

On the other hand, intergovernmental cooperation was evidenced in the joint organization of border inter-county forum workshops on regional integration which is a platform that brought together county governments bordering EAC partner states to deliberate on EAC integration issues with the objective of harmonization of laws, rules and regulations on cross border trade. All border counties participated in these workshops. One was held in Mombasa in 2015 where county legislative assemblies, County executive committee members of Mombasa, Kwale, Taita-Taveta and Kajiado counties participated. The second was held in Kisumu in 2016 and it brought together county governments of Kisumu, Migori, Narok, and Homa Bay in Kisumu while the third was held the same year in Kakamega bringing together county leaders of

Bungoma, Busia, and Trans Nzoia in 2017. The Permanent Secretary of ministry of EAC and regional development at that time, Hon Konchellah, ‘urged counties to formulate a cooperative strategy that will develop a joint approach to harmonization of laws, rules and regulations and to propose a structure of engagement with its department (state department for East African Affairs, Kenya) in order to enable them approach EAC integration from a common platform’ ([www.meac.go.ke](http://www.meac.go.ke)). One key resolution that emanated from some of these forums was for each county to appoint focal point to coordinate and work with the state department.

The resolutions made in these forums have not yet been implemented. The counties have not yet designated an officer for EAC integration and there is no strategy or framework developed by counties to jointly engage with the department. Counties have verbally raised their concerns to be directly involved and want to be involved in EAC integration as they felt they are being left out. They proposed establishment of EAC focal persons/ EAC desk officers at county level, which would provide for direct link between county governments and EAC ministry as well as other ministries handling EAC matters. However, both sides have not implemented this and counties are yet to have a joint framework.

From the foregoing, it is evident that county government’s participation in EAC integration is minimal and differs from one county government depending on the strategic location of that county. Depending also on their involvement in EAC matters within their county, the levels of awareness on EAC also differs from one county to another. Further, there was a general willingness of county governments support towards the integration process.

#### ***4.3.1.2 Participation and inclusion in Bilateral/Multilateral talks***

Regional integration involves multilateral discussions, negotiations and agreements between members as well as bilateral agreements amongst members of a regional organization. When asked if county governments participate in bilateral and multilateral talks between Kenya and other EAC partner states, respondents affirmed that County governments have formed part of national delegations during state visits. For example, governors accompanied the Deputy President in his visit to the president of Uganda, Museveni, on 19th August 2018, where the two held talks on trade between the two countries and further discussed integration issues in East Africa. Among those who accompanied the deputy president were Hon. John Lonyangapuo, governor of county of West Pokot, Hon. Sospeter Ojaamong, governor of county of Busia, and Hon. Josephat Nanok, governor of county of Turkana amongst other leaders of the national government.

In discussing this issue, respondents noted that the ministry of devolution wrote letters to the CoG and individual governors inviting them to be part of the delegation to Uganda because the discussions on trade and EAC issues would affect the counties and thus need for the county executives presence and part of the discussion. The respondents noted that, if bilateral/multilateral talks touch on functions of county governments then governors would form part of the delegation and talks. However, the national government decides who among the governors attends such talks and this raises a major concern of whether these selected individual governors actually represented the 47 county governments or their individual counties.

The participation of county executives in bilateral talks is a great step towards enhancing intergovernmental cooperation and collaboration and it gives county governments the opportunity to influence negotiations or discussions that protect their interests and mandates. Further, it makes it easier for county governments to adopt decisions and resolutions made in these talks because they are part of the discussions and will be able to foresee their implications at their level.

#### ***4.3.1.3 County government and EAC partner state cooperation***

On the same aspect, intergovernmental cooperation between the county governments of Kenya and EAC partner have taken place and they are geared towards enhancing integration in the EAC. For example,

“Bungoma county government governor, H.E Wycliffe Wangamati and Uganda’s minister for East African Affairs, Kirunda Kivejinja together opened the ‘first cross-border (cultural/tourism) Expo between Bungoma and Eastern Uganda which was commended as the first and critical step towards integration of the EAC and the joint expo provided opportunity for Bungoma and Eastern Uganda to discuss cross-border relations and other issues of mutual interest’ (Kisika, 2018)

On the other hand individual county governments have programs that reach beyond their borders into the neighbouring countries. For example, the directorate of peace building and reconciliation of West Pokot county government has the mandate “to promote peace and coexistence among communities living along the borders of West Pokot, Turkana, Marakwet, Tugen, Sebei and Karamojang of Uganda.

This is a great evidence of enhancing cooperation between governments serving border communities in particular those that share cultural and language and it should be encouraged.

It further shows that the state is no longer the primary actor in regional integration and partner states can work with local governments directly to achieve some of the EAC goals.

### **4.3.2 Intergovernmental structures and the EAC integration:**

Intergovernmental cooperation is largely enhanced by the presence of established intergovernmental structures whether they are formal like those established by ACT of parliament or informal such as those established by county governments that are not national based or are yet to be recognized. These structures provide a platform to voice out interests of county governments in EAC matters hence the need to analyze their place in EAC matters. Some of these structures include:

- i) Inter-Governmental Relations Technical Committee (IGRTC)
- ii) Council of Governors(CoG)
- iii) County regional economic blocs
- iv) County Assemblies Forums
- v) NTNC

#### ***4.3.2.1 Intergovernmental Relations Act and the Intergovernmental Relations and Technical committee***

The intergovernmental Relations Act, 2012, provides a legal framework for consultation and cooperation between the two levels of governments and amongst them. The importance of the intergovernmental structures stem from the fact that the national government and county governments are independent from each other and each of the 47 county governments is independent hence the need for coordination and cooperation between and almost the two levels of government.

Section 13 (2) of the Act allows Cabinet secretaries to convene consultative sectoral forums on sectoral issues of common interests to both levels of government and section 23 permits the two levels of government to establish joint committees with specific mandates. Both these committees and forums are not structured in a way that they have operational secretariats.

On the other hand, there is an established IGRTC established under the Intergovernmental relations Act, 2012. The committee oversees the functioning of the national and county government-coordinating summit and the CoG. The committee serves as a framework for consultation and cooperation between the two levels of government and between county governments. According to the IGRTC strategic plan of 2016-2020, the interrelation between the two levels of government is provided as shown below



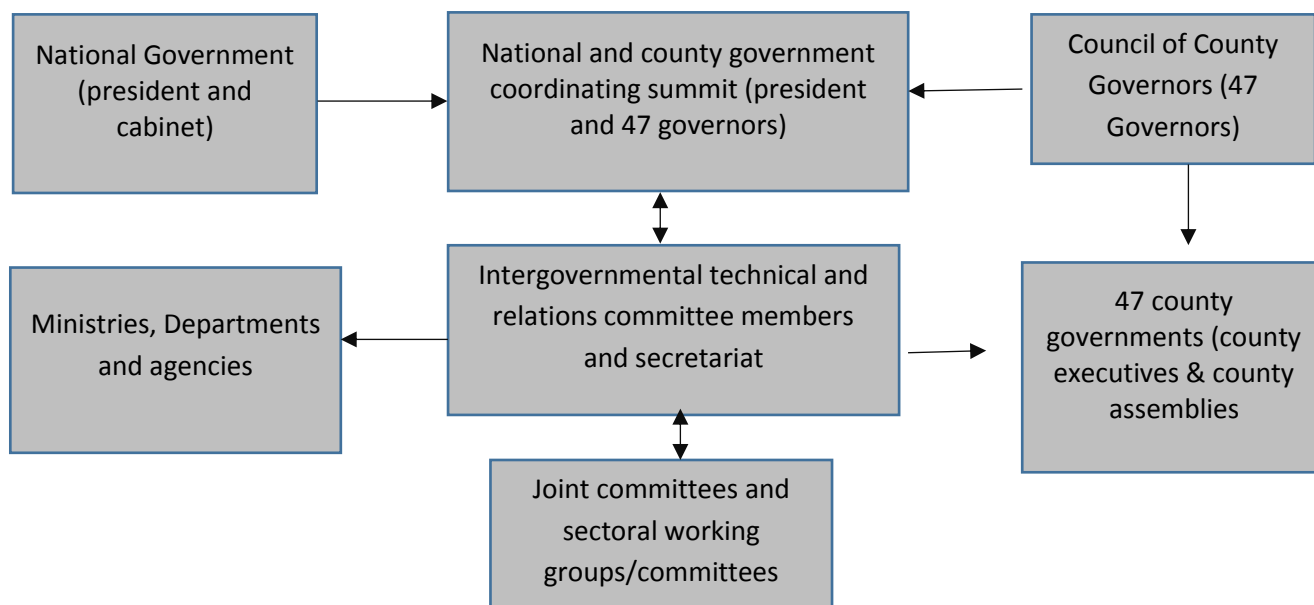


Figure F: Extracted from IGRTC Strategic plan 2016-2020, pg.3

Respondents from the IGRTC noted that the committee has joint committees and sectoral working sectoral groups but when asked if there is a specific intergovernmental committee or working group on EAC matters, respondent acknowledged that it is not in existence. However, respondents noted that if there is an EAC resolution that touches on the county government functions, the responsible cabinet secretary of ministry in charge would directly inform the county governments. This in a way ensures that county governments participate in EAC integration only when the issue is within their mandate.

While both levels of government worked together to resolve some of the challenges posed by county governments erection of NTBs at an individual level, and the fact that more than 10 counties border the EAC partner states, it would have been expected that the IGRTC would have established a working group of joint committee on EAC matters and clearly lay out its mandate and resolve challenges emanating from the EAC resolutions or those faced by the counties. The absence of a joint committee on EAC matters is the fundamental reason for the minimal participation of county governments in EAC integration and the continuous challenges posed by both level of governments in the integration process through unharmonised policies and tax regimes.

### 4.3.2.2 *The Council of Governors*

The Intergovernmental Relations Act No. 2 of 2012 established intergovernmental structures to serve as platforms for consultations and cooperation between the two levels of governments and it gives room for establishment of further structures. One structure is the establishment of Council of Governors (CoG) to provide a forum for consultation and cooperation amongst the 47 county governments under section 19 and 20 of the Act. One of its functions is to consider matters of common interests to county governments (20(c); offer a collective voice on policy issues; and collective consultations on matters interest to county governments. The CoG works through technical committees and has established 17 committees which are:

*Table 4: CoG technical committees*

CoG technical committees	
Health	Human resources, labour and social welfare
Agricultural	Legal and human rights
Infrastructure & energy	Intergovernmental relations
Urban development , planning & Lands	security and foreign affairs;
Tourism and wildlife	resource mobilization
Water, forestry and mining	information communication technology
cooperatives and enterprise development	Arid and Semi-Arid (ASAL)
Trade, industry and investment	Finance, planning and economic affairs
Education, youth, sports, Gender, culture	

When asked about the inclusion and participation of CoG in the EAC integration, respondents noted that the CoG has not been involved or participated in EAC matters, however individual county governments do. An example was given where wrangle at the EAC borders bordering Kenya where Kenyan traders faced many hurdles in doing business in the neighbouring countries was reported to the ministry of EAC and regional development by affected county governments. Subsequently, the collaboration and cooperation between the ministry and affected counties resolved the matter. Thus, the participation of county governments is on county-to-county need basis and this matter of EAC is left for individual counties and the ministry of EAC and regional development under the national government, which has the mandate to coordinate EAC issues in the country. Other respondents noted the participation of CoG in regional forums organized by the East African Local Governments Association. Additionally, respondents noted that CoG coordinates such matters common to all the 47 county governments, however, EAC matters do not fall within this category and EAC matters are dealt with on county-to-county need basis as noted by the respondents.

This means that there is no collective coordination of EAC matters affecting county governments at the CoG level despite the effects of EAC on county functions. The CoG therefore does not offer a voice for county governments on this matter and it lacks a technical committee on regional integration despite the fact that 12 county government’s border EAC partner states and six border IGAD countries. Consequently, this will make it difficult for policies/legislations made at the regional level to trickle down and be implemented/adhered to by county governments who have individual responsibility of ensuring that their legislations, and policies as well as activities do not contravene Kenya’s obligations under the EAC as well as international obligations. The absence of a committee on regional integration matters specifically on EAC and IGAD has robbed the county governments a collective platform to share their experiences and challenges they face within the EAC polices and resolutions and offered an opportunity for the missing joint voice on EAC integration processes.

**4.3.2.3 County regional economic blocs**

Since the establishment of devolution, integration amongst county governments was witnessed through the formation of county regional economic blocs. The “blocs are intended to spur economic growth within the respective regions through policy harmonization and resource mobilization” ( <http://www.devolutionasals.go.ke/regional-blocks/> ). There are currently six blocs as summarised below;

*Table 5: regional economic blocs for county governments source:*

Regional bloc	No. of members	Members
The Lake Region Economic Bloc (LREB)	14	Bomet, Bungoma, Busia, Homa Bay, Kakamega, Kericho, Kisii, Kisumu, Migori, Nandi, Nyamira, Siaya, Trans Nzoia, Vihiga
The Frontiers Counties Development Council Bloc(FCDC)	7	Garissa, wajir,Mandera,Isiolo,Marsabit, Tana River and Lamu
Mt. Kenya and Aberdare Counties Economic Bloc	10	Murang’a, Nyeri, Laikipia, Kiambu, Embu, Kirinyaga, Meru, Tharaka-Nithi, Nyandarua, Nakuru
North Rift Economic Bloc(NOREB)	8	Nandi, Uasin Gishu, West Pokot, Turkana, Baringo, Samburu, Elgeyo Marakwet, Trans Nzoia.
Jumuiya ya Kaunti za Pwani(JKP)	6	Mombasa, Kwale, Kilifi, Taita-Taveta, Lamu and Tana-River
South Eastern Kenya Economic Bloc(SEKEB)	3	Kitui, Machakos, Makueni

(Source: [www.devolutionasals.go.ke/regional-blocks/](http://www.devolutionasals.go.ke/regional-blocks/))

While the CoG is not directly engaged in EAC issues, respondents noted an opportunity with the establishment of county regional economic blocs that could play a critical role in EAC matters such as domestication of EAC policies, protocols and legislations. Currently there are six regional economic blocks for county governments and they include:

It's worth noting that regional economic blocs are an initiative by county governments to address matters common to their interests and if well directed they could serve as EAC focal points for their members. However, the blueprints of some of these blocs does not stipulates its role in addressing EAC matters affecting its members. This means that County governments have not yet fully embraced EAC as an agenda for the counties, if so; these measures would have been put in place in the blue prints of these regional economic blocs for county governments to address EAC matters.

#### **4.3.2.4 County Assemblies Forum (CAF)**

There is an established CAF which is the “coordinating body of the 47 county assemblies of Kenya” (<https://www.countyassembliesforum.org/about-us/>). Just like the CoG, CAF also operates under committees and sub-committees which include intergovernmental relations, communications, member services, legal and research, and finance and administration (CAF, 2018, p.4). The coordination is necessitated, as each of the 47 county legislature is independent and makes its own legislation.

The CAF as an intergovernmental structure that brings together the 47 county assemblies in Kenya, however, it's yet to be institutionalized and recognized as a formal intergovernmental structure for dealing with the 47 county assemblies within the national context. This means that both at the regional and national level, the county assemblies do not have access to participation in the legislative process of the community. Moreover, structures such as the EAC bureau of speakers are for national parliament speakers and do not encompass representation of speakers from county assemblies or local governments within EAC that have local legislatures. Further, respondents from the county assemblies clearly indicated that they have no role in the EAC integration in particular the legislative process as this was due to the absence of a formal and direct linkage between EALA and the 47 county assemblies and their umbrella body, County Assemblies Forum.

This lack of participation of county legislatures is the fundamental reason behind the county legislations that are contrary to EAC integration and the lack of domestication of EAC laws within the county governments.

#### **4.3.2.5 Establishment of National Trade Negotiations Council (NTNC)**

Trade integration is at the heart of any regional integration arrangements and respondents mentioned of the national governments efforts to include stakeholders in national trade negotiations through the established NTNC that encompass involvement of county governments amongst other stakeholders. The international trade policy of Kenya was formulated within the framework of multilateral, regional and preferential Tariff Agreements (PTAs) that Kenya is party to. To strengthen its negotiation capacity, the policy envisioned an establishment ‘of a standing trade negotiation team with expertise on trade negotiation matters to be in charge of all trade agreements; and establish a stakeholders trade negotiation committee and enhance stakeholder’s participation in trade negotiations’. To achieve this, the Ministry of Trade, Kenya, established the NTNC that draws its membership from both private and state departments. Some of the functions of the NTNC is to coordinate with government ministries, state departments, state cooperation on all bilateral, inter-regional and multilateral trade matters; analyze all received negotiating agendas/ from stakeholders and consequently generate national negotiating positions and strategies.

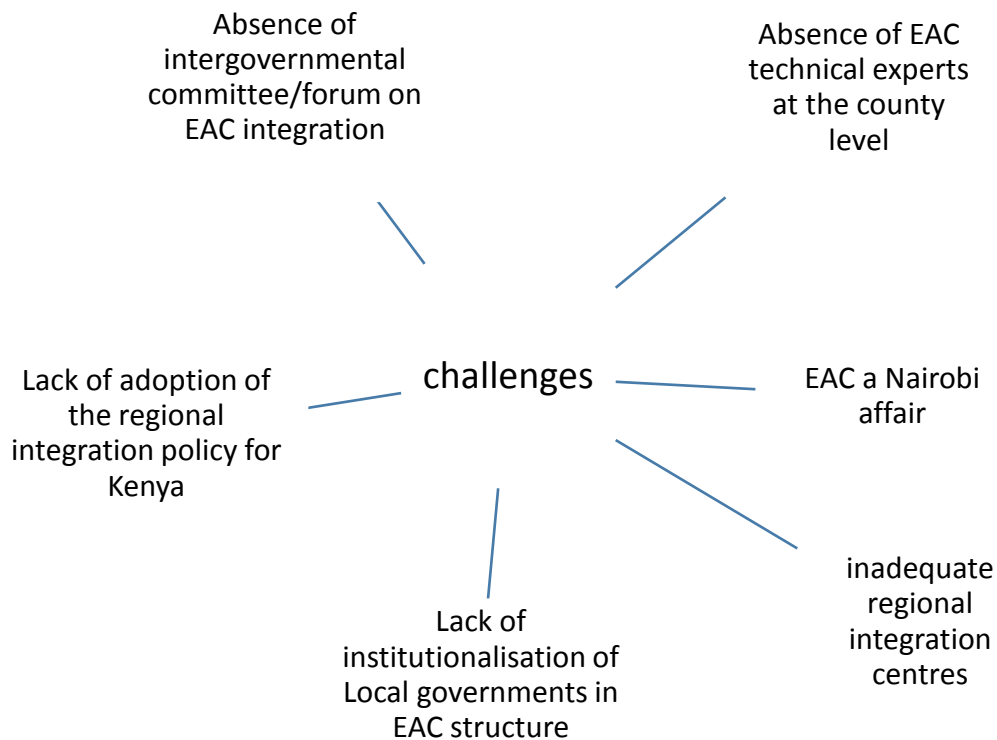
The Council of Governors (CoG) is a member of the NTNC which provides another formal avenue through which county governments’ role and participation in the development of national negotiations positions of issues of international trade is secured. This is a great effort from the national government in its efforts to involve other stakeholders in international trade. Though the research could not establish the contribution of county governments through the CoG in the negotiations because the NTNC is a new initiative that was formed and gazetted towards the end of 2017, it firmly established efforts by the national government through the ministry of trade to involve stakeholders including county governments in the negotiations of trade agreements.

In summarizing the intergovernmental cooperation aspect, it is clear that county governments particularly those at the border are more involved in EAC matters due to their strategic location. It further confirms the limitation of participation faced by county governments on their functions as environment, agriculture, trade is some of the devolved functions mentioned by respondents that county governments have participated in EAC matters. However, respondents noted that their involvement and participation does not mean that their roles are clearly articulated and what is expected of them in light of this issue. In addition, respondents noted that there is no formal engagement between the department and the national governments resulting to minimal involvement of county governments in cross cutting border issues on EAC matters.

#### 4.4 Key challenges facing county governments' participation in EAC

The participation of county governments in EAC integration is not without challenges. In discussing this issue, analysis of policies and answers from respondents brings to light the following key challenges as presented in the following diagram:

Figure G: Key challenges facing county governments' participation in EAC integration



##### 4.4.1. *Lack of institutionalization of local governments in EAC structure*

The importance of local governments in the EAC integration has widely been acknowledged and evidenced in the establishment of the East Africa Local Government Forum (EALGF) in 2012 that brings local governments from East Africa together to address issues affecting them. EALGA and EALGF have provided an opportunity for ‘transposing regional and international commitments into local/sub-national government development agenda, and their representation at the regional level’. However, its efforts to ‘facilitate the mainstreaming of the local/sub-national sector within the institutional framework of the EAC’ has been unfruitful due to the failure of EAC organs and institutions to leverage for its institutionalization and formalization of the place and roles of its local/sub-national governments in EAC integration.

This has therefore locked out the local governments from direct participation in the integration process. In addition, while the EAC partner states have embraced decentralisation as a form of governance, the EAC and the representatives to the EAC are yet to amend the treaty to have a direct representation of local governments in EAC integration.

At the time of this research, respondents noted that the EALGF is very weak, does not have a voice in EAC integration, and is yet to realize its objectives. The research however did not look into analysing the efforts of the forum towards realization of its objectives or whether there were any submissions made by the forum to the EAC council of ministers or EAC summit on the need for its institutionalization, as this did not fall under the research objectives.

This means that the EAC integration has placed more emphasis on national governments and totally excluded their respective local governments even in the presence of local governments associations formed at all partner states and the two regional organizations . On the other hand, this lack of a direct engagement with local governments leaves their participation in EAC integration at the hands of their respective national government or national frameworks. Subsequently, local/sub-national governments have continuously engaged in activities and legislations within their domestic constitutional rights that have conflicted with their respective national governments obligations under EAC.

#### ***4.4.2. Lack of adoption of the Regional integration policy for Kenya***

There is a regional integration policy for Kenya, which was developed in 2015, by the ministry of foreign affairs and the ministry of EAC and northern corridor development. The policy acknowledges amongst others the importance of involving county governments in EAC integration as well as the challenges these counties pose that contravene regional integration commitments made by Kenya. It states that...

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“...successful regional integration requires the participation and buy-in at all levels of government (national and county)...the current process also does not reflect the devolved system of governance as entrenched in Kenya’s 2010 constitution, leading to some counties imposing charges of tariffs equivalence effects on transit goods contrary to the spirit or commitments made in regional integration agreements. These county imposed charges also hurt the competitiveness of Kenya’s products and of Kenya itself as a regional transit hub and business base” (regional integration policy for Kenya, pg.11)

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To curb the above mentioned challenges, the policy provided for policy measures such as: ‘establishment of a regional integration service charter that would ensure coherence between regional, national and county governments’ policies and programmes; ensure adequate stakeholder consultation by including county governments, policy makers, implementers, Non-State Actors in regional integration matters; development of a clear framework for collaboration between national and county governments as well as establish targeted joint inter-governmental partnerships’ (Republic of Kenya. (April,2015). Regional integration policy for Kenya. A draft. Pg.12, 26. 33)

However, up to the time of this research, the policy had not yet been adopted thus remains as a draft. One of the fundamental reasons cited by respondents about the lack of adoption of this policy was the overlap of mandate between the ministry of EAC and Regional Development and that of Foreign Affairs and international trade. An example was given of where the coordination of the EAC-EU-EPA negotiations would have been handled by the ministry of EAC and regional development since it’s an EAC matter, however, this did not happen as the ministry of EAC on the other hand does not have the mandate to negotiate or engage with EU countries or non-EAC countries which falls under the mandate of ministry of foreign affairs thus need for joint coordination between the two ministries.

This policy would have greatly contributed to increased awareness and participation of EAC matters by county governments’ officials and saved resources used by the ministry of EAC and regional development in the continuous sensitization programs for county governments on EAC matters. This is because every election period, there will be new leaders elected who might not be conversant with EAC integration thus posing a continuous financial burden on the ministry to engage in sensitization programs since EAC is not a devolved function.

#### ***4.4.3. Absence of intergovernmental structures on EAC matters at national level***

Respondents were very aware that EAC is not a devolved function and the national government under the Forth schedule of Constitution of Kenya, 2010, has the solemn responsibility for dealing with foreign and international matters. Thus, their participation in EAC matters stem from invitation by the various national government ministries as cited by one respondent claiming that,

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‘..How can the county governments fully participate in EAC integration when it is not their function?’’

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However, even in light of the impact EAC and county governments have on each other, respondents noted there was no specific intergovernmental mechanisms or committees that have been put in place that specifically provide for consultations and cooperation. Moreover, while respondents mentioned that there exist intergovernmental forums for all devolved functions between the two levels of government, there is the general lack of mainstreaming EAC as a continuous agenda for these forums to put them on par with the developments in the EAC.

Further, county governments have not established their own intergovernmental structures for those affected by EAC in particular the 12 border counties to give them a collective voice on the matter and leverage their inclusions and participation. H.E Salim Mvurya who was the Vice chair of CoG in 2016 pledged to rally his counterparts in making EAC integration an agenda for all counties (Ministry of East African community, 2016). However, EAC is not yet an agenda for county governments and the discussion on this matter has not yet formed an agenda for CoG resulting to lack of engagement on EAC issues. Moreover, respondents were asked to provide any initiatives they have put in place to secure their participation in EAC integration. All respondents from county assemblies acknowledged that they have not taken any initiatives on their own that advance or facilitate their participation and address the gaps such lack of EALA bills trickling down to the counties for their inputs citing the fact that EAC is not a devolved function.

Having established that the senate and the parliament in general does not involve county assemblies in its business related to EALA bills, its important for the county assemblies to take advantage of the EALA public hearings as an avenue through which they participate in EALA business and make submissions on bills once public hearings have been scheduled in Kenya either individually or collectively. The lack of initiative from the county assemblies to take advantage of this great opportunity is among the fundamental reasons why they have not participated in EALA matters and if this is not corrected then they risk being totally left out of the integration process. It is important for the county assemblies to weigh which avenue will serve its best interests whether participation through the senate/parliament or through EALA public hearings in the event it considers participating in EAC integration.

#### ***4.4.4. Absence of EAC technical experts at the county level***

There is the general absence of EAC technical experts at the county level to advise both executive and assemblies on EAC integration. This leaves EAC matters in the hands of politicians who may not be conversant with the integration process thus leading to county resolutions and legislations that are contrary. Moreover, there is no general provision by both levels of government to ensure that there are technical experts for county governments on matters of regional integration. Additionally, every elected leader has their own Agenda and blue print they would want to pursue after elections, and if EAC is not formally integrated into county agenda, the county governments risks been passive in the integration matters unlike if EAC is made to be a formal agenda for county governments despite whether there are elections or not.

#### ***4.4.5. EAC integration a Nairobi Affair***

Majority of the respondents termed EAC integration as a ‘Nairobi thing’ at the exclusion of participation of county governments. This is because majority of EAC activities including the participatory process is done in Nairobi making many respondents feel that EAC is far reached and out of touch with county governments. Respondents also acknowledged the activities of the Ministry of EAC and regional development in creating awareness amongst county governments, which happen outside Nairobi, but when it comes to participation the activity is centralized in Nairobi. Additionally, respondents noted that stakeholders finance their own costs when participating in this consultative process as well as individual costs for negotiations at the regional level. The state department for integration or the relevant ministry finances expenses such as venue, and stationery among others costs. However, the EAC secretariat may occasionally support one or two delegates from partner states to attend the regional meeting.

From the foregoing, it is clear that the ministry of EAC and regional development is yet to decentralize the national consultations processes to accommodate stakeholders at the county and grass roots level. This stems from the fact that the ministry has not established the regional integration centers in all the counties in order to reach stakeholders such as the county governments and others with EAC integration.

#### **4.4.6. *Inadequate establishment of regional integration centers***

There are established Regional Integration centers according to the decision of EAC council of ministers “that requires every partner State to set up such a facility, the main function of which includes regularly updating stakeholders on developments in the regional integration, as well as receive feedback on the opportunities and challenges in the process (Tralac, 2015). The RICs were established as information centers where people can access information in EAC integration as well as centers for creating awareness on EAC to the surrounding communities and stakeholders as cited by respondents.

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“RICs is a facility we are creating for the dissemination and sharing of information on EAC as well to provide support to cross-border traders, majority of whom are women engaged in informal trade. The main function of which includes regularly updating stakeholders on developments in the regional integration, as well as receive feedback on the opportunities and challenges in the process. RICs are also expected to create harmony and foster close working relations among different players at the border. In reaching out to the grassroots. The centre will also offer capacity building to all border agencies and personnel facilitate joint border committee meetings as well as monitor performance of regional programmes. For regular travellers, the RIC officer will assist them when they face challenges. RICs have been instrumental to the Kenyan government as a conduit for information flow, and dispelling misinformation within and across communities. ’ (Mwanje, 2015).

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Additionally, respondents noted that regional integration centers (RICs) established at border counties such as in Busia, Namanga and Lunga Lunga among others only have the mandate to create awareness of the EAC to the communities. However, they do not have the responsibility of organizing and submitting stakeholders views in the EAC national consultations processes locking out individual county governments and stakeholders at the grassroots from participating at the national level. Additionally, while these centers are linked and report to the Ministry of EAC and regional development, Kenya, the ministry has not delegated them the responsibility to be part of the national consultations framework.

The absence of RICs in all counties has not only denied county governments and other stakeholder’s access to information on EAC developments but has also restricted heir participation because how can one participate if they do not have information or if they are not aware of the developments of their surrounding?

## **4.5 Lessons Kenya can learn from UK government cooperation with devolved administration on EU matters**

The UK is a unitary country with some areas such as Scotland, Wales and Northern Ireland implementing devolution systems. The establishment of devolution in UK established governments of Scotland, Wales and Northern Ireland resulting to the establishment of Memorandum of understanding and supplementary agreements that outline relations and cooperation between them. The establishment of concordat on co-ordination of EU policy issues highlighted the UK's government intention to

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“Involve the Welsh Ministers, Scottish ministers, Northern Ireland Executive Committee as directly and fully as possible in decision making on EU matters, which touch on devolved areas (including non-devolved matters which impact on devolved areas and non-devolved matters which will have a distinctive impact of importance to Scotland, Wales and Northern Ireland”(MoU pg.22-38)

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‘It is the Government's intention that Ministers and officials of the devolved administrations should be fully involved in discussions within the UK Government about the formulation of the UK's policy position on all issues which touch on matters which fall within the responsibility of the devolved administrations’(MoU pg.29).

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The UK concordat provided for involvement of the devolved administrations with the UK government. This is similar to the consultations for county governments wherever an issue touches on their functions as provided in the constitution. The concordat therefore set out general measures to facilitate participation and inclusion of UK has devolved governments in EU business, and some of measures that provide insightful lessons for Kenya even as the UK prepared to exit the EU at the time of this research. These measures include:

### **4.5.1. *Implementation of EU obligations***

The Concordat clearly provides for the role of the devolved administrations in the implementation of EU obligations. Its states that:

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“It will be the responsibility of the lead Whitehall Department formally to notify the devolved administrations at official level of any new EU obligation which concerns devolved matters and which it will be the responsibility of the devolved administrations to implement...

“For matters falling within the responsibility of the devolved administrations, it is for the devolved administrations to consider, in bilateral consultation with the lead Whitehall Department, and other Departments and devolved administrations if appropriate, how the obligation should be implemented and administratively enforced (if appropriate) within the required timescale, including whether the devolved administrations should implement separately, or opt for GB or UK legislation....”

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“Under the devolution legislation, UK Ministers may split a quantitative EU obligation on the UK, such as a quota, to facilitate the transfer of part of it to the Scottish Ministers, Northern Ireland Ministers or departments and the Welsh Ministers. The devolved shares can be enforced as a devolution issue on the same basis as any other function of observing and implementing an EU obligation.....”

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This raises major points that the two levels governments of Kenya should consider. First is the responsibility of the county governments in implementation of EAC obligations given the fact that Kenya has twice been reported to EAC that its county governments violated some of the provisions in the EAC Common market protocol that sought to liberalise trade. Since devolution was established in 2013 after the establishment of EAC, it becomes prudent to set out the roles and responsibility of county governments in upholding EAC resolutions. Additionally, The Concordat allowed the devolved administrations to come up with ways they best suit to implement the EU obligations something, which county governments could adopt and propose ways on how they will implement EAC resolutions that touch on their functions in the future. This is important in light of the recent decision to have a confederation, which will impact the functions of county government.

#### **4.5.2. Representation and participation in EU**

The UK representation at the EU and its institutions comprises of some representation from devolved administrations. For example, the Welsh government has representatives at various EU institutions and consultative bodies at the EU level including four Welsh members of the European Parliament (MEPs); four Welsh representatives on the Committee of the Regions; three Welsh representatives on the European Economic and Social Committee; and officials in the EU institutions (including seconded experts from Welsh government-and other UK bodies (National Assembly for Wales, 2016, p.42).

Further, the Welsh government influence and engagement on EU decision-making is based on their indirect role in the council, where it participates as part of UK delegation on issues relevant to Wales as

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..within the council, the UK is represented by UK Government ministers supported by the UK civil service: namely, the UK permanent representation to the EU (UKREP) in Brussels and the various Whitehall departments. Although Welsh ministers and official participate as part of the UK delegation to Council meetings, the Voice at the table is a UK voice. Therefore, at the government level, Welsh interests are represented through the UK line, and Wales ability to influence (formally in Council) is contingent on the ability of Welsh ministers

The 47 county governments of Kenya as well other local governments within EAC partner states do not have representation at the EAC or its institutions. Instead, political parties have a representation in EAC through election to EALA as legislators of the community. However, I am of the opinion that this should not be the case as political parties do not have an obligation to implement EAC policies and legislations but county governments do. In addition, while, elected county governments officials are part of the political parties, it's important to have representation of the forty seven county legislatures and 47 county executive committee at EALA and within EAC institutional framework.

It will be to the best interest of Kenya to have amongst the eight (8) elected nominees to EALA that four (4) slots be set aside to represent the 47 county governments i.e. 2 slots for county executive committee and 2 slots for county assemblies. This will be one way to achieve direct engagement and participation of county governments in EAC matters that would result to effective transposition of EAC policies and legislations at the county level. Secondly, the 47 county governments are too many to have individual representation compared to the UK's 3 devolved administrations, thus it's important to have COG to represent county governments in such matters.

#### **4.5.3.      *Establishment of Joint Ministerial Committee (JMC)***

The JMC is an intergovernmental structure that was established with the introduction of devolution in the UK and it brought together the four administration of UK (UK government, Scottish government, Welsh government and Northern Ireland Executive and provides for formal relations and engagement between these administrations (JMC 2018). Further, it serves the purpose of providing official and structured engagement in examining matters of common interests and reviews the workings of devolutions and meets under three (3) formats. The JMC (plenary) is an annual meeting between the leaders of each administration chaired by the prime minister; JMC (Domestic) provides a forum for ministers from the four administrations for consultations and discussions on domestic issues in particular policies that cross-devolved and non-devolved areas; and the JMC (Europe) provides a forum for engagement on EU issues

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The JMC (Europe) meets before each European Council meeting takes place and offers the opportunity for discussions of matters bearing on devolved responsibilities that are under discussions within the EU; allows for discussions on EU policy matters that affect devolved policy areas and provide an opportunity for devolved ministers to provide input into the UK negotiating position (<https://beta.gov.wales/joint-ministerial-committee/what-we-do>).

Further, it provides for discussions on EU Business in which the devolved administrations have an interest; and facilitate their input to the UK government-negotiating stance prior to European Councils (JMC 2011) The establishment of the JMC (European Negotiations) in 2016 to facilitate discussions over the UK's Brexit strategy is another effort by the UK government to involve devolved administrations in EU business that affect the country. In addition, the concordat under B4.5 and B4.6 provides for interdepartmental consultations and correspondence in resolving issues between lead Whitehall departments and the devolved administrations and only matters not resolved at the departmental level are picked up by JMC (Europe).

The equivalent of JMC is the National and county government coordinating summit established under the Intergovernmental Relations Act, No. 2 of 2012, of Kenya that provided for consultations and cooperation between the two levels of government and provides for establishment of other intergovernmental structures on need basis. The summit is the apex bringing together top leadership of national and 47 county governments. However, Kenya has not yet established a subcommittee or other structures to deal specifically with county governments on EAC issues compared to the JMC (Europe) of UK.

In addition, the ministry of EAC and regional development, which coordinates issues of EAC at the national level has not yet established a forum to bring the minister and the County governments together to discuss such issues on a continuous basis. On the other hand, while there are intergovernmental forums for all devolved functions, it's not yet clear whether the absence of a structure specific to EAC means that this is dealt with at the intergovernmental forums on all devolved functions compared to the interdepartmental aspect of UK. Kenya can learn from UK and mainstream EAC as an agenda for all the intergovernmental forums or sectoral committees that have EAC elements and have a specific committee for EAC matters at the executive level.

#### **4.5.4. *Scrutiny of EU legislation:***

The concordat paragraph B4.32 provides the devolved legislatures with the opportunity to set up a procedure to allow them to scrutinize the EU issues in relation to devolved matters to ensure they reflect their interests. On the other hand, B4.34 obligates the devolved administration to submit views of their devolved legislatures to the Whitehall departments and the UK government will take into account these views in formulation of its negotiation positions where time allows. This provision has ensured that both the executive and legislatures of devolved administrations are involved in consultations and discussions on EU matters.

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For example, ‘the Welsh assembly has a role in indirectly influencing the position of the UK government and in Scrutinizing the Welsh government’s strategic priorities in relation to the EU. The assembly has previously carried out these roles by undertaking committee inquiries at early stages of the EU policy-making process before the EU commission publishes its final legislative proposals’ (National Assembly for Wales, 2016, p.10).

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This is a great lesson for Kenya in particular, as the situation does not favour the 47 county assemblies. Parliament of Kenya (national assembly and senate) could come up with legislation or framework to involve the county assemblies in the legislative process of the community that currently as the research findings have established is missing. This will ensure that the interests of the county governments are taken into consideration and EAC legislations become county legislations. This can be done through the county assembly forum, which is the co-ordinating agency for the 47 county assemblies.

#### **4.5.5. *Financial repercussions for failure to implement EU obligations by devolved administrations***

The concordat paragraph B4.22 puts responsibility of implementation and enforcement of EU obligations on both governments and consultations between the devolved administration and Whitehall department on any enforcement difficulties before they are discussed with EU commission. It furthers, puts the responsibility of meeting financial costs and penalties imposed on the UK government in the event that a devolved administration contravened the provisions of EU law on matters under its competence or from the failure to meet its obligations such as outlined in paragraph B4.26 that states:

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“...To the extent that financial costs and penalties imposed on the UK arise from the failure of implementation or enforcement by devolved administration on a matter falling within its responsibility or from the failure of a devolved



administration to meet...or obligations, responsibility for meeting these will be borne by the devolved administration”

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This is a great lesson that Kenya could implement to resolve the continuous challenges posed by county governments in the erection of NTBs that contravene the provisions under the EAC customs Union and Common Market given the fact that in 2015, Tanzania reported to the EAC that the Kenyan county governments of Kajiado and Kwale reintroduced country transit fee and in 2016, Burundi reported Kenya to EAC for charges imposed on transit trucks waiting to load cargo in the parking yard of Kshs. 500 per day and transit fee charged of Kshs. 6,000 for transit cargo truck by county government of Mombasa. . As a result during a meeting organized by EAC to address these matters, Kenyan promised to liaise with the said county governments to resolve such matters which indeed meetings and correspondences were made that ultimately resolved this issue.

Having such a provision will obligate the county governments to meet all the financial costs in resolving the matter as it failed to uphold Kenya’s obligations under EAC. However, on the other hand it would raise the following issues that would also need to be discussed concurrently:

- what type of sanctions should be imposed on county governments in the event that its legislation or financial Bills contravene Kenya’s obligations under EAC
- which compensatory mechanisms should be accorded to county governments in particular those at the border that are impacted by its adherence to EAC obligations,
- which kind of support should be given to county governments in the event that they are required to uphold EAC obligations that casts a financial constraint on their county budgets

#### ***4.5.6. Limitations associated with UK-devolved administration cooperation on EU matters***

Having considered the various measures put in place by the UK government to involve its devolved administration in EU business, there are three critical critics that have been associated with this that would be important for Kenya to avoid. First, the JMC, which is the intergovernmental framework, has been criticized for lack of binding powers to enforce its decisions in that it does not take decision that bind the participating administrations, thus its basically consultative rather than executive. Further, the MoU and its supplementary agreements provisions are not binding and do not give any legal voice on any provisions

Part 1 of the MoU states that, “this memorandum is a statement of political intent, and it should not be interpreted as a binding agreement. It does not create legal obligations between the parties; while the concordat on coordination of EU policy issues similarly states under paragraph B1.2 that “...This concordat is not intended to constitute a legally enforceable contract or to create any rights or obligations, which are legally enforceable. It is intended to be binding in honor only.

This situation is similar for Kenya where the decisions taken in intergovernmental forums are also not binding. It becomes important for Kenya to ensure that when it forms a subcommittee on EAC matters or intergovernmental structure for this, that the decisions made in this forum become binding on both levels government.

#### **4.6 Chapter Summary**

This chapter has established the existence of EAC participatory processes and structures that facilitate the participation of stakeholders in its integration process such as the national consultation processes, the EALA public hearing, and the Consultative dialogue framework. These structures have provided a platform for county governments to be involved in the integration process through the national setup structures and processes. While respondents acknowledged the participation of county governments, it is evident their participation is still minimal. On the other hand, the research findings have established that the county government executive is more involved in EAC integration compared to the county assemblies who have not. Research findings have also established that the nature and level of participation under the EAC integration is consultative and stakeholders do not have the opportunity to participate in the decision-making level,

Further, it has shown evidence that the introduction of devolution changed the decision making landscape for the national government which under the constitution and respective Acts is obligated to consult with the county governments on matter that fall within their jurisdiction. Moreover, the restructuring done at the Kenyan parliament to ensure that the senate, which represents the interests of the counties and their governments, has a formal part in EAC integration in particular the EALA matters is a notable advantage for the county governments.

However, the EAC has no specific structure for the direct involvement of its local governments in the process. This means that local governments’ participation is confined within their national context and therefore they lack direct and independent involvement in the EAC matters. This

research finding leads us to our next chapter which examines the participation and inclusion of the county governments in EAC matters within the domestic context given the fact they already have no direct representation at the EAC level.

The chapter has provided evidence of involvement of county governments in EAC integration from organising and hosting of EAC Mara Day celebrations, joint management of cross border trans-boundary animal diseases to their participation and inclusion in bilateral and multilateral talks that touch on their function. However, their involvement is still minimal. It further showed the existence of intergovernmental structures that facilitate cooperation amongst the 47 county governments such as the CoG, CAF, and the County regional Economic Blocs. These structures however, have not actively offered a collective voice on EAC matters as findings have shown their minimal and lack of participation in EAC processes. Further, there is no established intergovernmental platform or forum between the two levels of governments on EAC matters.

This chapter has also explained the key challenges faced by the county governments in their participation and inclusion in EAC integration. The challenges are: lack of institutionalization of local governments in EAC structure thus denying local governments direct engagement with EAC; lack of adoption of the regional integration policy for Kenya that would have provided coherence between regional, national and county governments policies and programs; absence of intergovernmental structure on EAC between the two levels of government to facilitate engagement on EAC matters; and EAC integration seen as a “Nairobi affair” where county governments feel they are out of touch with EAC happenings.

Amidst the minimal participation and challenges faced by county governments in EAC integration, Kenya can learn great lessons from the UK concordat that set procedures on involvement of its devolved administrations in EU integration. These lessons include: establishment of an MoU or document that spells out the roles of county government and how they are to be involved in EAC matters; representation and participation in EAC; establishment of a joint committee on EAC liken to the UK’s joint ministerial committee on Europe; scrutiny of EALA legislations by the county legislatures; and establishment of financial repercussions for county governments that fail to uphold Kenya’s obligation to the EAC.

## **CHAPTER FIVE: SUMMARY OF MAIN FINDINGS, RECOMMENDATIONS AND CONCLUSIONS**

### **5.1 Summary of Main Findings**

The EAC Treaty indeed has made provisions for participation of various stakeholders in its integration process. This participation is consultative in nature and does not involve inclusion in decision-making structures. The place and role of Local governments in the EAC integration process has not yet been stipulated in the treaty amidst the introduction of decentralized forms of governance amongst its partner states. The treaty has not been amended to take into considerations the challenges posed by local governments in its integration process to ensure that their interests are accommodated. Further, the process for amendments vests much authority on the partner states making it hard to guarantee reforms which may not be agreed by the national governments or which the Summit may deem to undermine their respective national governments. Therefore, the Treaty did not and has not been amended to create room for the inclusion and direct participation of local governments such as the county governments in the integration process.

The Lack of specific provisions in the Treaty for involvement of local governments did not deter their participation in the integration process as other avenues were provided for in the Treaty. The EAC established participatory channels that comprises of the *national consultation processes* where issues from the EAC secretariat are passed to partner states for consultations and through the *consultative dialogue framework* where issues from stakeholders are implemented or adopted to form the agenda of EAC organs and institutions. This means that the EAC employs both the top-down and bottom-up approaches in its participation processes and this has provided county governments with the opportunity to participate in EAC and regional matters. The EAC participatory channels are based on national representation and not individual representation thus restricting participation of stakeholders within the domestic national context and through national government representation or ministry of EAC and regional development. These processes are coordinated by the ministry/state departments in the respective partner states.

The Ministry of EAC and Regional development, Kenya, coordinates the participation processes under the EAC. It relays the information and identifies stakeholders to be involved. While this might limit and lock out other stakeholders, the participation of county governments in EAC integration is firmly secured and guaranteed by the Constitution and the various Intergovernmental Act, which mandates their inclusion in matters that touch on their functions. This gives county governments' legal power to sue the national government in the event of their exclusion unlike other stakeholders who face the risk of being excluded or forgotten during such consultations as evidenced in the exclusion of EABC during the development of the EAC monetary Bill. The CoK, 2010 therefore serves as a protector of county governments interests in regional and international matters by providing a legal basis for their engagement. However, it also limits their participation to areas only under their jurisdiction.

There is minimal participation of county governments in the Integration process. Their participation is through collaboration with the national government as evident in the joint organization and hosting of the EAC Mara Day celebrations and activities in which the county governments of Bomet, Narok have the responsibility of this in collaboration with the national government as well as Lake Victoria Basin Commission. Further, we see intergovernmental cooperation in the management and control of cross-border animal diseases among other sectoral cooperation as well as the support by county governments to advance EAC objectives within their localities. More so, we see intergovernmental activities between border counties and the ministry of EAC to address issues of harmonization of county laws and raise awareness. This shows that even where a devolved function intersects with EAC, the county governments still do not have an upper hand in implementation or negotiations, as they cannot directly engage with EAC institutions without the involvement of national government.

There have been greater efforts that have advanced participation of county governments in EAC matters at the national level. The inclusion of county executives as part of national delegation for state visits and their participation in such bilateral talks gave county governments the opportunity to influence such negotiations and talks and have their interests reflected in the outcomes. Consequently, the national government cannot enter into agreements with other EAC partners without consulting with the county governments if the issue under deliberation touches on their functions. Furthermore, the formation and gazettelement of NTNC gave the county governments the opportunity to formally be involved in consultations and review of bilateral and multilateral trade matters through membership to this council. County governments can take advantage of this platform and ensure their interests are reflected in the outcomes of bilateral and multilateral agreements.

There is no intergovernmental committee on EAC to coordinate cooperation between the two levels of government at the national level and provide a continuous dialogue between the two levels of government though there are established intergovernmental structures under the intergovernmental Relations Act, 2012. Further, the ministry of EAC and regional development, Kenya, does not have a platform to bring the county governments and the CS together to discuss matters of EAC. On the other hand, the EAC does not have a regional intergovernmental forum or committee to bring together the six national governments and their respective local governments to work together towards the integration process. This is necessitated by the reluctance of EAC organs and institutions to institutionalize the EALGF, which is the regional umbrella body of local governments' in EAC countries to be part of the institutional framework. This therefore means that both at the national and regional level, the county governments do not have a shared platform to collectively make joint decisions with the national government on EAC matters. On the other hand, there are no institutionalized intergovernmental structures for cooperation and consultation between the parliament of Kenya (national assembly and senate) and the county assemblies on EAC matters and between the county assemblies, the parliament of Kenya and the Regional assembly (EALA).

The 47 county governments of Kenya do not have a specific joint strategy, framework and committee to spearhead their collective participation in EAC matters at the national level. The CoG, which is an intergovernmental structure that brings together the 47 county executives, and has the mandate of coordination of matters common to all county governments does not coordinate EAC matters amongst the counties and does not have a committee on EAC matters to advice county governments even when twelve (12) border the EAC partner states and are greatly affected. This has robbed counties the opportunity to have a common voice in EAC matters. Additionally, the newly formed regional economic blocs for county governments, which bring together county governments in a specific geographical locality or with specific interest to address matters common to their interests or collaborative, are yet to have EAC mainstreamed as an agenda for their members. This leaves participation that is based on individual or county-to-county government basis.

There is unequal participation of the two arms of county government in EAC matters. The county executive is more involved in EAC matters due to the nature of its responsibility of implementation of county projects and plans as witnessed in joint collaboration with national government in hosting Mara Day celebrations and management of cross-border animal disease control among others. However, the county assemblies are more disadvantaged as they have never participated in EAC matters except for the normal hosting of courtesy calls from EALA

and other EAC organs. The senate, which represents interests of counties and their governments and is involved in EAC integration through election of EALA members and consideration of EALA bills, has failed to involve both the county executive and county assemblies in EAC matters under its consideration.

The regional integration policy for Kenya was developed in 2015 but has not yet been adopted hence the country lacks a formal policy to guide the regional integration processes. This policy would have outlined the involvement of stakeholders such as the county governments and resolved some of the challenges posed by county governments. This means that the roles and responsibilities of county governments have not yet been defined and counties do not understand what they need to do when it comes to EAC integration. It has been six years after devolution was established and the role and place of county governments in regional integration in particular EAC Integration is yet to be formalized.

The national government through the state department for EAC integration under the ministry of EAC and regional development has strived to reach out to county governments and have dialogue on EAC matters. The ministry has implemented intensive county sensitization forums and had sessions with county government officials, and further organized border inter-counties on regional integration. On the other hand, EALA conducted sensitization workshops and even visited some county assemblies. This has increased the level of awareness amongst county governments on EAC matters. With EAC not mainstreamed, as an agenda for county governments, the ministry and EALA will continuously bear the burden to sensitize county governments in each election as new leaders may be elected who have no knowledge on EAC.

The participation of CGs has not been without challenges. Some of the key challenges facing county governments participation in EAC matters include: lack of institutionalization of local governments in EAC structure thus denying local governments direct engagement with EAC; lack of adoption of the regional integration policy for Kenya that would have provided coherence between regional, national and county governments policies and programs; absence of intergovernmental structure on EAC between the two levels of government to facilitate engagement on EAC matters; and EAC integration seen as a “Nairobi affair” where county governments feel they are out of touch with EAC happenings.

There are countries such as the UK that made great strides to involve its devolved administrations of Scotland, Wales and Northern Ireland in UK/EU matters through establishment of Memorandum of understanding and supplementary agreements that outline relations and cooperation between them. The MoU and Concordant gave devolved administrations the opportunity to have a representation and participation in EU matters, continuous engagement in EU matters through the established Joint committee on EU; and the opportunity to scrutinize EU legislations. This ensured that their interests are accommodated and form part of the UK negotiation and position in EU. On the other hand, the financial repercussions bestowed upon the devolved administrations for failure to uphold EU obligations. These key features of the Concordat provide lessons for Kenya, which are captured in the recommendation section.

## **5.2 Recommendation**

From the foregoing research findings, I recommend the following five measures to ensure effective participation and inclusion of county governments in EAC integration.

First, I recommend the CoG to urgently form a border county government's caucus on EAC/IGAD to collectively work towards advancement of EAC/IGAD goals at the county level as well as facilitate a common voice on county interests on EAC/IGAD matters that touch on their functions. Further, the CoG should help such counties implement the advice given at the regional workshops by Hon. Konchellah who urged counties to formulate a cooperative strategy that will develop a joint approach to harmonization of laws, rules and regulations and to propose a structure of engagement with its department in order to enable them approach EAC integration from a common platform. Alongside this, there is need for the CoG to mainstream EAC/IGAD as an agenda for its annual devolution conferences and establish EAC officers in all the county regional economic blocks.

Secondly, I recommend to the parliament of Kenya to revise its rules to make room for the inclusion and participation of county assemblies in its business on EAC matters. Just as it made changes to accommodate the Senate in the election of EALA Members', same reforms should trickle down to county assemblies by making them the third level in EAC legislation processes. This means that when an EAC Bill is table for discussions at the Kenyan parliament, county assemblies opinions expressed in terms of a memorandum to the contents of the bill should be registered with both the senate and national clerks and tabled in the respective chambers.



Thirdly, I recommend to the Local government association such as the COG and its counterparts in EAC partner states to initiate the process of seeking for amendment of treaty to allow for inclusion and direct participation of the local governments in EAC integration through institutionalization of EALGF to be part of the institutional framework. The EALGF should establish debates in EAC partner states to get views not only from local governments but other stakeholders on how best to formally include local governments in the integration process. This will result to establishment of multi-level governance within the EAC that will ultimately result to increased awareness and implementation of its objectives in oneness.

Fourthly, I recommend that the two levels of government ensure that the county assembly is represented in EALA by dividing the 8 slots equally in counties. Four slots to be accorded to political parties and the other four slots be accorded to the county assemblies.

Fifthly, I recommend to the Ministry of EAC and regional development reform how the national consultations for EAC matters are done at the national level by involving its regional integration centers as a participating stakeholder representing the views of its constituents who may not be part of the bigger organizations. Research findings have shown that regional integration centers are limited to only creating awareness, however, the partnership witnessed between the regional integration centers and the county governments could be enhanced by giving them a responsibility of representing stakeholders view at the national consultations thus involving both county governments and the general citizenry at the county levels.

These recommendations should be preceded by an intensive study on areas of EAC that intersect with county governments functions and financial implications for the county governments on one hand, and financial costs incurred by the national governments as a result of violation of Kenya's obligations under EAC by county governments on the other hand. Further, contribution of county governments should also be documented. This study should inform areas of collaboration and roles to be accorded. Finally, there is need for the national government to adopt the regional integration policy to resolve some of the challenges highlighted in this study.

### **5.3 Conclusion**

This study has shown that there is minimal participation and inclusion of county governments in EAC matters through the EAC established channels at the national level as well as intergovernmental cooperation and frameworks that have facilitated their participation. While it is evident from the examples provided of how county governments have participated and the efforts put in place to involve county executives in bilateral talks that touch on their functions, much is yet to be done to firmly secure their inclusion and formalize their roles in those EAC matters that touch on county governments' functions. There is no multilevel governance in EAC as the EAC lacks an institutionalized framework or platform for direct engagement with local/sub-national governments of the community. The established frameworks and processes for participation are not sufficient to ensure effective participation of county governments in EAC integration. Participation and involvement of county governments in EAC integration enables them to be ware and part of the developments of EAC, and enables them to work through advancing EAC and not impeding. It is important therefore to implement the recommendation made in this study to ensure an inclusive participation of county government in EAC integration for the advancement of EAC objectives as well as opening opportunities for constituents represented by county government.



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## **ANNEXES:**

### **Annex 1: Interview Schedule**

#### **INTERVIEW QUESTIONS I:INTERGOVERNMENTAL STRUCTURES**

1. What is the role of county governments in EAC integration processes?
2. How do county governments participate in EAC integration processes?
3. Is there an intergovernmental mechanism/committee for coordinating and consultations in EAC matters and regional integration between the two levels of government?
4. Is the Intergovernmental Consultative sectoral forum for East African community, social protection and Labour functional?
5. How is the intergovernmental coordination of EAC integration processes realised?
6. Have the intergovernmental structures discussed the role of County governments in EAC integration?
  - (a). National and county government coordinating summit
  - (b). IGRTC
7. What challenges or factors have hindered the full participation of county governments in EAC integration and what would be your recommendations?
8. Anything you would like to add or comment?



**Thank You for your Cooperation**

## **INTERVIEW QUESTIONS II: COUNTY GOVERNMENTS; COUNCIL OF GOVERNORS AND COUNTY ASSEMBLIES**

1. What is the role of CoG /CG/CA in EAC integration processes? Are these roles/participation formalised?
2. How has the CoG/CG/CA participated in EAC integration processes since their establishment? If yes, what are the issues they raised and advocated for? What is the nature of their participation?
3. How has your CoG/CG/CA contributed to EAC integration?
4. Is there an intergovernmental mechanism/committee for coordinating and consultations in EAC matters between the two levels of government?
5. What is the relationship and Linkage between the CoG/CG/CA and the EAC and National representation to the EAC?
6. In light of establishment of devolution in Kenya, what measures, efforts or reforms has the CoG/CG/CA put in place or done to secure its participation in EAC integration (give examples)
7. Which other national forums, frameworks or platforms that provide for structured engagement on EAC integration has the CoG/CG/CA participated?
8. What challenges or factors have hindered the full participation of county governments in EAC integration and what would be your recommendations?
9. Anything you would like to add or comment with regards to county governments and EAC integration?

**Thank You for your Cooperation**

## Annex 2: Research Permit and Authorization letter

CONDITIONS	
<ol style="list-style-type: none"><li>1. The License is valid for the proposed research, research site specified period.</li><li>2. Both the Licence and any rights thereunder are non-transferable.</li><li>3. Upon request of the Commission, the Licensee shall submit a progress report.</li><li>4. The Licensee shall report to the County Director of Education and County Governor in the area of research before commencement of the research.</li><li>5. Excavation, filming and collection of specimens are subject to further permissions from relevant Government agencies.</li><li>6. This Licence does not give authority to transfer research materials.</li><li>7. The Licensee shall submit two (2) hard copies and upload a soft copy of their final report.</li><li>8. The Commission reserves the right to modify the conditions of this Licence including its cancellation without prior notice.</li></ol>	 <p>REPUBLIC OF KENYA</p>  <p>National Commission for Science, Technology and Innovation</p> <p><b>RESEARCH CLEARANCE PERMIT</b></p> <p>Serial No.A 18976</p> <p>CONDITIONS: see back page</p>



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Date: **13<sup>th</sup> June, 2018**

Pauline Mbodze Chengo  
Catholic University of Eastern Africa  
P.O. Box 62157-00200  
**NAIROBI.**

**RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on *“The role of Sub National Governments in EAC Integration: A case study of the County Government of Kenya”* I am pleased to inform you that you have been authorized to undertake research in **all Counties** for the period ending **11<sup>th</sup> June, 2019.**

You are advised to report to **the County Commissioners and the County Directors of Education, all Counties** before embarking on the research project.

Kindly note that, as an applicant who has been licensed under the Science, Technology and Innovation Act, 2013 to conduct research in Kenya, you shall deposit a **copy** of the final research report to the Commission within **one year** of completion. The soft copy of the same should be submitted through the Online Research Information System.

  
**BONIFACE WANYAMA  
FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The County Commissioners  
All Counties.

The County Directors of Education  
All Counties.