

NON-STATE ACTORS' ENGAGEMENT FRAMEWORK

FOSTERING INCLUSION IN THE
TRIPARTITE FREE TRADE AREA



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Acronyms

ACP:	Africa, Caribbean and Pacific
CARICOM:	Caribbean Community and Common Market
CDF:	Consultative Dialogue Framework
COMESA:	Common Market for Eastern and Southern Africa
CSO:	Civil Society Organisations
EABC:	East African Business Council
EAC:	East African Community
EACSO:	East African Society Organisation Forum
EDF:	European Development Fund
EESC:	European Economic and Social Committee
EF:	Engagement Framework
EPA:	Economic Partnership Agreement
ESA:	Eastern and Southern Africa
EU:	European Union
KEPSA:	Kenya Private Sector Alliance
MCTI:	Ministry of Commerce Trade and Industry
MoU:	Memorandum of Understanding
NDF:	National Dialogue Forums
NGO:	Non-governmental Organisation
NSA:	Non-state Actors
PBO:	Public Benefit Organisations
REC:	Regional Economic Community
SADC:	Southern African Development Community
SADC-CNGO:	SADC Council of NGOs
SAWTEE:	South Asia Watch on Trade, Economics and Environment
TFTA:	Tripartite Free Trade Agreement
WTO:	World Trade Organisation

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Introduction

The Eastern and Southern African (ESA) region comprises three regional economic communities (RECs), namely the East African Community (EAC), Southern Africa Development Community (SADC), and Common Market for Eastern and Southern Africa (COMESA). Economic integration is a cornerstone of the agenda of these Regional Economic Communities (RECs).

Reducing intra-African trade barriers and unifying trade policy is a means towards creating a predictable and more competitive environment that would benefit producers and consumers alike. Nonetheless, there are also chronic and well-documented challenges to deeper integration that often harm marginalised groups working in trade.

These include undiversified markets with low value addition; over-dependence on raw material exports; numerous trade and non-trade barriers that increase transaction costs; inadequate infrastructure, regional food insecurity; and conflicts and political instability. Addressing these challenges within the continent requires coordination and harmony in the integration process.

In 1999, the Abuja Treaty for the establishment of an African Economic Community was adopted. Its principal call was to have RECs serve as building blocks for one economic market for Africa. In pursuit of the objectives of the Abuja Treaty and in the context of the various trade challenges facing the ESA region, especially the overlapping membership in the three RECs¹, the respective Heads of Member States and Governments of COMESA, EAC and SADC came together and agreed on forming the Tripartite Free Trade Area (TFTA) to bring the three blocs under a single 26-member economic community.

The agreement signed in Egypt on June 10, 2015 has, however, spurred debate and concern on the process of its development with particular questions raised about the involvement and inclusion of the views of the some of the most marginalised populations that would be affected by greater trade liberalisation.

¹ On one hand, of the five EAC Member States, four countries belong in COMESA and one in SADC. Five Member States of SADC, on the other hand, are part of a customs union agreement, namely the Southern African Customs Union. Of the 26 countries of the three blocs, almost two-thirds are either in a customs union or participating in negotiations for an alternative customs union to the one they belong to or are in the process of negotiating two separate customs unions which would be contrary to WTO rules.

Greater integration into the regional, continental and multilateral trading systems through freer trade could increase the speed at which shocks are transmitted to the domestic economy where poor and marginalised sections often lack the means to withstand such impacts. Trade policy making and implementation at national, regional and continental levels, within the context of the larger development policy, requires a consultative process involving all stakeholders, particularly those marginalised groups most affected by liberalised trade.

Consultation is an important part of policy making as it can ensure that policies are responsive to people's challenges and that they capture local contents. It also plays an important role in gaining support for policies as well as testing ideas and proposals with those to be impacted by it. In order to foster an inclusive and well-functioning TFTA there therefore exists a need to establish comprehensive, well crafted, and effectively implemented consultative engagement framework for private actors and civil society organisations (CSOs).

In an effort to integrate the voices of non-state actors (NSA) in the on-going negotiations and implementation of the TFTA, this framework looks at how it can include marginalised private actors and CSO into the TFTA process. This report therefore uses the term non-state actors to refer to the collective group of these marginalised actors.

In developing a vision for an inclusive consultative engagement framework, interviews and group discussions were conducted with CSOs, ministries responsible for trade and regional integration, business association representatives, prominent development practitioners and development partners to understand the regional trade integration situation and constraints faced by private actors and CSOs in the ESA region. Based on stakeholder input and analysing the existing engagement frameworks of the three RECs as well as outside examples from around the world, a structure and process have been proposed for marginalised private actors and CSOs to effectively engage with the TFTA and its Member States.

The report presents the proposed engagement framework for TFTA in the following way: Chapter 2 details the structures and processes of private actor and CSO engagement at the regional-levels in, EAC, SADC and COMESA, using Kenya, Zambia, and Ethiopia as case studies in each REC respectively. Through the case studies the challenges and limitations of engagement for various actors in trade-related areas are highlighted.

Chapter 3 provides examples and best practices of CSO engagement from regional organisations from Asia, Africa, Europe, and the Caribbean. Chapter 4 presents the proposed structure of the TFTA engagement framework (EF), including what objectives and outcomes are expected from the engagement process.

Subsequently, the proposed EF process is detailed in Chapter 5 with options on how the proposed structure could become operational. Finally, Chapter 6 summarises the action agenda for the proposed engagement framework.

Overview of State Actor Engagement in the Regional Economic Communities

East African Community

At the East African regional-level, by defining the civil society as a realm of organised social life that is voluntary, self-generating, self-supporting, autonomous from the state, and bound by a legal set of shared rules, the 1999 Treaty Establishing the East African Community obliges Partner States to provide an enabling environment for the private sector and civil society to take full advantage of the Community.²

The region, therefore, has developed a working Consultative Dialogue Framework (CDF) for the EAC, Partner States, CSOs, private sector and other interest groups at the national and regional-level. The national dialogue is coordinated by the Ministry of East African Affairs. The involvement of civil society is coordinated by the East African Society Organisation Forum (EACSOF).

EACSOF, as the apex body for CSOs in East Africa, aims to build a critical mass of knowledgeable and empowered CSOs in the region to take part in the integration process. For instance, the Kenyan Chapter works closely with the Ministry of EAC Affairs, which is in charge of institutionalising and giving life to the National Dialogue Forums (NDFs) as provided for in the CDF.

With regard to regional integration, the private sector also has its own apex body of the East Africa Business Council (EABC), to ensure that its benefits are preserved and opportunities expanded, which explains the keen interest and proactive involvement of the private sector in regional integration dialogues. EABC has focal points in every country, with organisations, such as Kenya Private Sector Alliance (KEPSA) in Kenya being a focal point at the national-level.

Within the CDF, the EAC Secretariat provides opportunity to a comprehensive group of NSAs to engage in discussions on issues of interest and prospects resulting from the regional integration process. At the national-level, positions are developed after

² Article 127 (3) specifically states that Partner States agreed to promote enabling environment for the participation of civil society in the development activities within the Community; and that 127 (4) the Secretary General to provide the forum for consultations between the private sector, civil society organisations, other interest groups and appropriate institutions of the Community. The EAC Secretariat was directed to formalise the forum mentioned under Article 127(4) at the 19th Meeting of the Council of Ministers of the EAC.

consultations in each of the five Partner States and consolidated under cross-cutting issues and priorities whereby they are presented at the presence of the chief guest, the EAC Secretary-General. EAC Secretary-General Forum is the culmination of a year-long sector-wide consultation and carried out based on the EAC calendar of activities.

Country Study: Kenya

Regional economic integration is vital to Kenya, given 45-48 percent of its exports remain within Africa, out of which more than 53 percent are destined to the EAC region. Concurrently, Kenyan CSOs and other NSAs have been gaining recognition for their important role in international trade, regional integration and in the general development discourse, which is evident by the inclusion of 'public participation' in major international, regional and national laws and/or structures that provide for consultation and negotiated processes involving the state, CSOs and other NSAs including the private sector.

Prior to the 2010 Constitution, there was no constitutional requirement for public participation in policy processes. The lack of an explicit framework for public participation under the previous constitutional dispensation resulted in occasional marginalisation of NSAs. For example, during Kenya's negotiations with the European Union (EU), through the Cotonou Partnership Agreement, for an Economic Partnership Agreement (EPA), NSAs were not consulted adequately. This led to a group of NSAs³ to sue the Government of Kenya, which resulted in the High Court of Kenya favouring the petitioners recognising the failure of effective stakeholder participation.

Another example is the NGO Coordination Board's deregistration of 540 NGOs in December 2014 for what the Board termed as 'non-compliance with the law' and some 15 of the 540 for 'using their charitable status as a front for raising funds for terrorism'. However, the current Constitution is unambiguous on public participation in public services as well as the right to information.

Recent developments have attempted to further empower NSA engagement in Kenyan policy, however progress has been slow. The Public Benefit Organisations Act No. 18 of 2013 and its operationalisation are currently being negotiated. The PBO Act would become the new legal instrument to register CSOs, regulate operations, board and tribunal formation, and CSO finances and dissolution. It also calls for a PBO Authority as the regulatory body as well as closer coordination between the government and CSOs. The PBO Act is meant to reinforce complementary efforts of the government and CSOs and their contribution in enhancing the country's development among others.

³ The Kenya Small Scale Farmers Forum (KESSFF) joined by six other Petitioners and Kenya Human Rights Commission (KHRC) as the interested party sued the Government of Kenya under Section 84(1) of the Repealed Constitution related to the State's obligation in facilitating public involvement in public governance, formulation of public policy, legislative processes.

However, delays and miscellaneous amendments have prevented the implementation of the PBO Act.

Meanwhile, large private sector actors have multiple engagement avenues at their disposal, ranging from formal roundtables and forum with government officials at various levels. This includes the Presidential Round Table, whereby private sector players meet the President of the Republic of Kenya together with his Cabinet and various arms of government bi-annually to discuss matters of concern to the private sector and government.

Another substantial dialogue platform is the Council of Governor's Forum whereby the private sector engages with county governors. Other fora that the sector takes advantage of is the Ministerial Stakeholders Forum, which is a bi-monthly sectoral dialogue platform for line ministries and sector boards of the KEPSA and Speaker's Roundtable Meetings at which the private sector engages Parliament on matters of interest to the business sector.

Challenges for NSA Engagement in Kenya

Despite broad approval of the EAC Consultative Dialogue Framework by many of those involved, there are nevertheless gaps and limitations. Understanding and addressing these will provide valuable input into an engagement framework for the TFTA.

The National Dialogue Committee meetings have been organised as purely preparatory for the Secretary-General's Forum and have lacked in-depth engagement on other issues of interest to CSOs. Additionally, there is an unequal focus of responsibility at the Secretary-General's office and less with other EAC organs, such as the East African Legislative Assembly.

There is a serious lack of sufficient and sustainable funding, which puts in question ownership and sustainability of the engagement process. The national dialogue process, for instance, is 100 percent financed by Trade Mark East Africa, while regional dialogues are funded 70 percent by Partner States and 30 percent by development partners.

Due to the challenge of funding as well as a significant lack of awareness, many Kenyan CSOs engaged in the CDF are based in the capital of Nairobi whereas rural CSOs and non-state actors are not able to participate in dialogues. Thus, groups like micro, small and medium enterprises, small farmers and manufacturers, and informal cross-border traders, the majority of whom are women, are marginalised or left out of the EAC consultative dialogue process.

Also, there is a lack of theme-based CSO networks. Individual CSOs, rather than networks or associations, are members of the national CSO umbrella EACSO. This creates gaps in the unified voice for engagement where each individual interest, often

driven by donor funding and competition, are presented. Specific issues or themes are missing in the dialogue process due to the current fragmented configuration of CSO engagement.

The predominant focus of CSOs on preparing for the broader-based Secretary-General's Forum also hinders discussion on specific, often marginalised, issues. Furthermore, those unified voices need to be carried up to the regional economic community-level, i.e. EAC, as well as the eventual TFTA level dialogue and not remain at the national-level.

More broadly, there is lack of linkages between the discussions by CSOs under the CDF mechanism with continental and international trade and development processes. For example, while CSOs engage in WTO processes, the link between this and the regional integration process is neither discussed nor strategically pursued.

Southern Africa Development Community

The Southern Africa Development Community has made efforts to establish national mechanisms to foster NSA involvement. Under Article 16A of the SADC Treaty:

Each Member State shall create a SADC National Committee, which has to consist of key stakeholders which should (a) provide input at the national-level in the formulation of SADC policies, strategies and programmes of action; (b) coordinate and oversee, at the national-level, implementation of SADC programmes of action; (c) initiate projects and issue papers as an input to the preparation of the Regional Indicative Strategic Development Plan; and (d) create a national steering committee, sub-committees and technical committees.

Key stakeholders here refer to government actors; private sector; and civil society (including non-governmental organisations or NGOs). Thus, at the SADC level, a framework has already been established for NSA participation in regional integration issues.

Efforts have also been made to ensure that specifically NGOs in different SADC countries operate in a coordinated manner through the establishment of a coalition at the SADC level. Most national umbrella organisations and big NGOs are members of this coalition. The SADC Council of NGOs (SADC-CNGO) was formed in 1998 to facilitate meaningful engagement between NGOs and the SADC Secretariat at the regional-level, and with the Member States at national-level with national NGO umbrella bodies.

This made it easier for NGOs to address issues of poverty alleviation, democracy, good governance and ending internal political conflicts. The SADC-CNGO encourages collaboration and partnerships with other stakeholders at both national and regional-level and has continually monitored the performance and accountability of SADC Secretariat and Member States on their national, regional and international

commitments. A MoU between the Secretariat and the SADC-CNGO provides the legal framework for engagement with NGOs operating under the SADC-CNGO umbrella.⁴

Notwithstanding the formulation of national NSA engagement, regional dialogue sessions are held with NSAs at the discretion of the Secretariat. The engagement is often *ad hoc*. Thus, there are no formally structured engagement processes for complete NSA engagement at the SADC level apart from a few MoUs with certain NGOs with the SADC-CNGO.⁵

There does, however, exist a SADC Civil Society Forum⁶ which provides space for NSAs to come together at a regional-level to stimulate discussion and act collaboratively on a wide range of issues. The Forum is held during the same time as the Heads of States Summit in an effort to enable civil society input into Summit resolutions.

Country Study: Zambia

At the national-level in Zambia, NSAs have opportunities to participate in trade and regional integration processes on formulation, implementation and negotiations on trade issues through the different working groups in the Ministry of Commerce, Trade and Industry (MCTI). They also make use of roundtable meetings with relevant ministries to lobby the Zambian government and run media campaigns on an *ad hoc* basis.

Zambian NSA participation in trade issues was made possible through the formation of the National Working Group on Trade Facilitation, established in 2007. This was intended to discuss issues related to the Doha Development Round of WTO negotiations; development corridors; one stop border posts; trade facilitation initiatives of the Regional Economic Communities; and non-tariff barriers.

Conversely, NSAs in Zambia have generally not shown much interest in the regional integration agenda, either in SADC or COMESA. This is an area of concern, which has also been noted at regional and multilateral-levels. The EU indicated under its 11th European Development Fund (EDF) with COMESA that it envisaged to reach out more to civil society in Zambia through various avenues including consultation, awareness-raising, capacity building, and direct participation in the implementation of programmes.

⁴ Kasambala T and Zakeyo M (2014), Draft Proposal on SADC Mechanisms for Engagement with Non-State Actors, Southern Africa Trust, Johannesburg, South Africa

⁵ *Ibid.*

⁶ A flagship annual event of the Fellowship of Christian Councils in Southern Africa (FOCCISA); Southern Africa Trade Unions Coordinating Council (SATUCC) and SADC Council of Non-governmental Organisations (SADC-CNGO). Non-state actors invited include: NGOs, donors, churches, trade unions, social movements and other civil society actors.

There is a need therefore to create mechanisms in relation to SADC institutions to ensure that economic integration is anchored at the national-level. The Government of Zambia has created avenues through, which NSA views and concerns on regional integration issues are captured. One way was by ensuring that NSA voices are incorporated by the Trade and Industry Sector Advisory Group (SAG). The SAG is responsible for outlining all trade expansion activities. The SAG membership includes two CSOs, namely, the Centre for Trade Policy and Development (CTPD) and CUTS International Lusaka, as well as the Finnish Embassy as the donor coordinator⁷. However, two out of 13 members reflect a low-level of NSA representation in the national trade expansion discourse.

Within the Trade and Industry SAG, a National Inter-Ministerial Coordination Committee (NIMCC) was established. The NIMCC has developed and adopted the COMESA Regional Integration Support Mechanism (RISM) and conducted orientation for committee members, including NSAs. Currently, the 26 members of the NIMCC include five NSAs reflecting the low level of representation within the committee. The 6th NSA (the JCTR), which was a member dropped off.

National Inter-Ministerial Coordination Committee (NIMCC) Membership

Government Line Ministries	Government Parastatals, Departments and Agencies	Private Sector	Civil Society
1. Ministry of Commerce, Trade and Industry	10. Zambia Development Agency	21. Zambia Association of Chambers of Commerce and Industry	24. Centre for Trade Policy and Development
2. Ministry of Foreign Affairs	11. Zambia Revenue Authority	22. Zambia Association of Manufacturers	25. CUTS International Lusaka
3. Ministry of Finance	12. Road Transport and Safety Agency	23. Zambia National Farmers Union	26. Jesuit Centre for Theological Reflection(JCTR)*
4. Ministry of Agriculture	13. Zambia State Insurance Cooperation		
5. Ministry of Gender and Child Development	14. Central Statistics Office		
6. Ministry of Mines, Energy and Water Development	15. Road Development Agency		
7. Ministry of Transport Works, Supply and Communication	16. Zambia Bureau of Standards		
8. Ministry of Education, Science, Vocational Training, Early Learning	17. Competition and Consumer Protection Commission		
9. Ministry of Justice	18. Zambia Weights and Measures Agency		
	19. Immigration Department		
	20. Bank of Zambia		

Source: Ministry of Commerce, Industry and Trade

⁷ Other members of the TEWG include Ministry of Commerce, Trade and Industry; Ministry of Agriculture and Cooperatives; Zambia Development Agency; Zambia National Farmers Union; Zambia Export Growers Association; Zambia Association of Manufacturers; Ministry of Finance and National Planning; Zambia Association of Chambers of Commerce and Industry; Zambia Business Forum; and Zambia Revenue Authority.

Challenges for NSA Engagement in Zambia

Evidence from the Zambia case demonstrated that most NSAs working on regional integration and trade policy only do so in response to issues affecting their core areas of operation. NSAs participation in trade policy related issues have declined since 2011, especially as far as targeting the area of trade and regional integration as an independent focus area without being driven by donor preferences. This came to the fore when the Ministry of Trade attempted to mobilise NSAs in some of the working groups to come up with a common position.

However, the lack of capacity of NSAs, especially their inability to mobilise resources for participating in regional integration issues, constrains their vibrancy. This is mostly reflected by their absence and lack of active participation during consultative meetings called by various sub-committees and working groups established by the MCTI.⁸

Specifically for the Zambia case, there is a lack of institutionalised mechanisms for citizens' participation in decision-making, with government administrative structures being highly centralised in Zambia. Trade issues might also be affected by the general lack of dialogue between the government and NSAs dealing with governance issues.

Another issue that constrains NSAs vibrancy is their overreliance on foreign donors for funding, including situations where they compete with each other for donors. This has made it common for NSAs to change their strategies and missions to align with those of their foreign funders, which becomes a problem if the funders move away from trade issues.⁹

The vibrancy of NSAs on regional integration issues can thus be enhanced if governments strengthen their relationship with NSAs by incorporating them to participate in major committees that discuss and endorse trade policies and other related issues. Efforts should focus on monitoring and compliance aspects at the national-level, as well as to enhanced and better articulated linkages between support activities at the national and regional-levels, while continuing to provide effective institutional support to the RECs Secretariat.

Common Market for Eastern and Southern Africa

In COMESA, there is no framework for NSA engagement and especially civil society participation has been almost non-existent, rather emphasis is placed on the private sector. Article 18 of the Treaty signed in 1981, however, provides a link and facilitates

⁸ Ng'ona S and Dube C (2012), *Aid for Trade and Economic Development: A case study of Zambia*, CUTS International, Jaipur, 2012.

⁹ Kasambala T and Zakeyo M (2014), *Draft Proposal on SADC Mechanisms for Engagement with Non-State Actors*, Southern Africa Trust, Johannesburg, South Africa.

dialogue between the business community committee, other interest groups and organs of COMESA.

At one point CUTS International Lusaka, on its own initiative, made some efforts to develop a MoU with COMESA however this proved unsuccessful. No organised body exists for civil society and non-state actors, which it gives COMESA a general perception of being an integration of markets alone and not the people.

Although, active participation of private sector NSAs in the COMESA Business Council has seen developments of a position on the rules of origin and the movement of business persons.

Through various programmes however, COMESA has found ways of issue-specific engagements with NSAs in the region. An example is the COMESA Civil Society and Private sector engagement for the Peace and Security Programme. A set of rules and procedures for accrediting NSAs to the Programme, were drafted by representatives of all stakeholders including national governments. The rules and procedures enable NSAs that are accredited to the Programme to have an opportunity to dialogue with governments and play a role in COMESA's decision-making process. So far COMESA has accredited 14 organisations from six countries where national consultations have been¹⁰.

Country Study: Ethiopia

In 2009, the first comprehensive law, Proclamation No.621/2009, came into effect for registering 'Ethiopian Charities', 'Ethiopian Resident Charities', and 'Foreign Charities'. By implication of the types of activities each organisation can take part in, foreign and Ethiopian resident charities and societies are not allowed to engage in advocacy. Though Ethiopian charities and societies have the right to undertake advocacy activities, they are not allowed to generate more than 10 percent of their funds from foreign sources thereby constraining their activities.

There are, however, NSAs engaged in promoting activities for enhancing benefits of Ethiopia from global cooperation and marketing processes – The Fair Trade Campaigns, the export of Organic Produces by social-economy organisations, etc. These engagements contribute to improved income for the beneficiary households and also for improved financing of pro-poor programmes and services.

For NSAs working specifically on trade and trade-related issues, organisations typically commission their trade related studies rather than develop in-house capacity. Current laws in Ethiopia also hinder NSAs from acquiring the adequate resources to finance the necessary studies and advocacy activities. The Ethiopian Economic Association has

¹⁰ COMESA Activities: Peace and Security – Decision Making Organ, available at: *k*

proven to be the only local NSAs capable of research on trade and trade-related issues, although even they are constrained in engaging in advocacy.

Non-state actors most engaged on trade issues in Ethiopia represent the private sector, such as Chambers of Commerce, which are established to promote their own individual interest. Private sector representatives promote the issue from their own vantage rather than the policy measure's adverse impacts on the poor and marginalised segments of the population.

At regional-level, Ethiopia is a member of the COMESA bloc, although it has not yet acceded to the COMESA free trade area and customs union.

Challenges for NSA Engagement in Ethiopia

One of the main challenges for Ethiopia is the 2009 civil society law restricting NSAs to engage and advocate to the government. The restriction on NSAs, particularly for civil society, has also hampered their capacity and skills development on trade and trade-related areas; thus weakening the ability to advance their positions representing various sections of the society.

Additionally, awareness about the TFTA negotiation process by the government is limited among the wider stakeholders including CSOs. This includes clear policy direction coming from the government on regional integration. Moreover, Ethiopia's status in the process of the TFTA is not made clear for the public. Hardly any consultation has been made on the part of the government to solicit ideas on the TFTA negotiations from CSOs partly because government may not expect any contribution from CSOs.

Good Practices in Engagement and Dialogue with NSAs – at a Glance

When developing a framework and procedures for non-state actor engagement it could be advantageous to review other comparable arrangements for inspiration and best practices. The institutional structures and legal frameworks taken by established regional organisations and agreements can provide sufficient examples for constructing an effective engagement framework for NSAs in the TFTA.

European Economic and Social Committee

The European Economic and Social Committee (EESC) is an institutionalised membership-based organisation in the EU that acts as an advisory body for the European Commission, Council, and Parliament. The Committee of 350 members is divided into employers, employees, and other interest groups. These CSOs are appointed by the EU through recommendation of Member States. The EESC has specialised groups to focus on specific issues, including agriculture, industrial policy, and infrastructure. The advisory process requires the EESC to receive draft policy and legislative proposals from key EU institutions.

The Committee membership discusses proposals and publishes its joint opinion in the EU's Official Journal to be considered by the EU. Meetings to discuss legislation are held nine times a year. While members are not paid, they do receive allowances to fund transportation and accommodation for EESC meetings. It can also take up issues on its own depending on the demand of the membership. Additionally, there is a well-placed follow-up mechanism and documentation to track responses and actions by EU bodies to the EESC's recommendations.

Good Practices

- A broadly represented and inclusive CSO apex body that brings together diverse voices and recommendations on numerous issues to governing institutions
- A requirement that civil society is consulted on policy and legislative proposals
- CSO opinion and recommendations are made public
- Formal thematic groups of CSOs to discuss specific issues
- A CSO apex body that provides resources to its members that supports engagement and capacity building and
- A 'rules of procedure' and dedicated monitoring of the engagement process

South Asia Watch on Trade, Economics and Environment

The South Asia Watch on Trade, Economics and Environment (SAWTEE) is a network of social activists and media persons launched in December 1994 by a consortium of seven organisations in the South Asia region. Through its collective research and advocacy capacity, the network can pull together various resources to work toward common goals on regional integration, including capacity building for negotiators at the South Asian Association for Regional Cooperation, cooperative research on trans-boundary trade issues, and sensitisation of South Asian government officials on trade issues. SAWTEE also engages with the media to spread awareness of their initiatives.

Good Practices

- A network of CSOs working toward a common goal both independently and as a group
- Pulling respective resources to achieve goals and
- Engagement with the media and spreading awareness

Caribbean Community and Common Market

The Caribbean Community and Common Market (CARICOM), a regional integration organisation of 15 Caribbean countries established in 1973, conducted the CARICOM-Civil Society project in 2010 that provided a platform for CSOs to engage with various government officials, CARICOM representatives, and other stakeholders at the national and regional-level on enhancing participation of CSOs in the regional integration process¹¹.

Although CARICOM members continue to formalise an engagement framework for CSOs, these national and regional dialogues presented an opportunity for CSOs to present their concerns, opportunities for partnership, and propose new institutional avenues for engagement with governments and the CARICOM regional body.

Good Practices

- Consultation meetings between CSOs, governments and regional institutions to discuss strengths and challenges within a regional organisation and propose improvements
- Opportunity to bring CSOs together to form a unified voice for engagement

¹¹ '2nd Draft Report: CARICOM Regional Civil Society Consultation', *Caribbean Policy Development Centre*, 10-11 February, 2011; 'Draft Report: National Consultations CARICOM Civil Society Participation and Engagement in Regional Integration Project', *Caribbean Policy Development Centre*, 24 January, 2011.

The Cotonou Partnership Agreement between the EU and Africa, Caribbean, and Pacific (ACP) countries does not have a formalised engagement framework, however it provides detail legislation for capacity building and support programmes to CSOs. Such an explicit mandate could be beneficial for NSA involvement in regional integration through a trade agreement.

In Article 4 of the agreements it explicitly states that non-state actors, including CSOs and private sector actors, should be involved in Cotonou implementation. Cotonou clearly states that CSOs should participate and be consulted in areas that concern and affect them as well as be provided the financial resources and capacity support to enable such partnership. This would include engagement and consultation on the trade component of Cotonou through Economic Partnership Agreements between the EU and 79 ACP countries.

Good Practices

- A clear mandate written into an agreement that details CSO participation and capacity building support

Proposed Engagement Framework

Vision and Long-term Objectives

Trade is conducted among people, not governments, therefore both multilateral and regional trade agreements negotiated by governments have a direct impact on people's livelihoods, either as traders, consumers or producers; through for instance, the harmonisation of rules of origin, health and safety standards; implementing regional infrastructure projects; and reducing uncompetitive trade practices.

This proposed Engagement Framework (EF) seeks to facilitate inclusiveness in the implementation of the TFTA by establishing a mechanism that aims to ensure the participation of non-state actors that tend to be marginalised in the implementation process of trade agreements.

The vision of this EF is to seek to achieve improved economic and social welfare of the citizens who fall within the TFTA region. The long-term objective is to achieve better trade and regional integration processes, which take into consideration the needs of the people on the ground through a process led by NSAs from as many countries of the 26 members of the Tripartite Free Trade Agreement as possible.

The key pre-conditions necessary for the engagement framework are as follows:

- Buy-in from governments, regional economic communities and the business community to contribute in the process of development and implementation of the framework
- A strong CSO network with a presence in each of the 26 countries that are able to identify the marginalised actors and ascertain their needs and how they interact with regional trade integration (specifically the TFTA) and
- Willingness of NSAs to engage meaningfully in this initiative

Rationale

Previous studies have noted the need for the private sector to become more inclusive and incorporate the voices of smaller and more informal businesses. Such studies have included the GIZ study by Palm and Renhard (2011), 'Private Sector Involvement in African Regional Economic Integration'. In it they argue that, in the specific context of the EABC, officials of the Secretariat and Members States judged the EABC as a representation of big businesses and asked for some other broader umbrella organisation. It also noted that the EABC should embark on a re-organisation to incorporate to a wider extent the capabilities of its constituencies.

In the recommendations and conclusion of the EAC's (2012) Consultative Dialogue Framework for the Private Sector, Civil Society and Other Interest Groups in the EAC Integration Process (Adopted by Council), the document states:

- CSOs and PSOs together should be incorporated in the existing EAC fora for PSO and CSOs depending on mutual interest.
- [...] While EABC and EACSOE exist currently, owing to inclusivity concerns, it is imperative that in the initial stages of the dialogue, the attendance be widened to include representation of private sector and civil society networks and umbrellas outside EACSOE and EABC, SMEs, for example should consider forming sector-based federations and together join the existing PSO national focal points through which their concerns and inputs can be channelled to EABC. [...] and
- Both EACSOE and EABC should undertake reform of their structures and widen their membership. Support for these processes is necessary (emphasis added).

The Preamble of the TFTA makes two references to small, medium enterprises. It states that that Member States are:

Mindful of the important role of micro, small and medium enterprises in job creation and income generation for the majority of the people in the Tripartite Member/Partner States and

Determined to progressively liberalise trade in goods and services, promote industrial development, facilitate movement of business persons, support the strengthening of infrastructure, promote competitiveness, build the capacity of micro, small and medium scale enterprises, and contribute to the deepening of integration in the Tripartite Member/Partner States.

Within the TFTA, the only provision that speaks to non-state actors is Annex 13 Article 3 that discusses the 'Involvement of the Business Community.' It states that "Member States shall formulate and implement trade development policies in close cooperation with the private sector" and shall "facilitate the formation of private sector industry and trade associations".

It further encourages Member States to "facilitate the creation of small and medium scale enterprises and promote their participation in trade" and to promote public-private partnerships, additionally "there shall be annual consultative meetings to consider trade promotion".

Thus, the TFTA has provisions to both involve private actors in trade development and well as support their capacity to engage in the regional integration process through

forming associations, enterprises, and participation in trade, specifically through annual consultative meetings.

The EF builds upon this framework in order to include small-scale producers such as farmers and artisans as well as informal cross-border traders, the majority of whom tend to be women in the regional integration process. The EF also seeks to allow for the inclusion of CSOs that may not necessarily be working on trade issues but whose focus areas interact with trade, such as consumer rights organisations, health-related NGOs, etc.

Anticipated outcomes

The EF will seek to facilitate the incorporation of the voices of marginalised non-state actors primarily at the local and national-levels.

The specific anticipated outcomes will include:

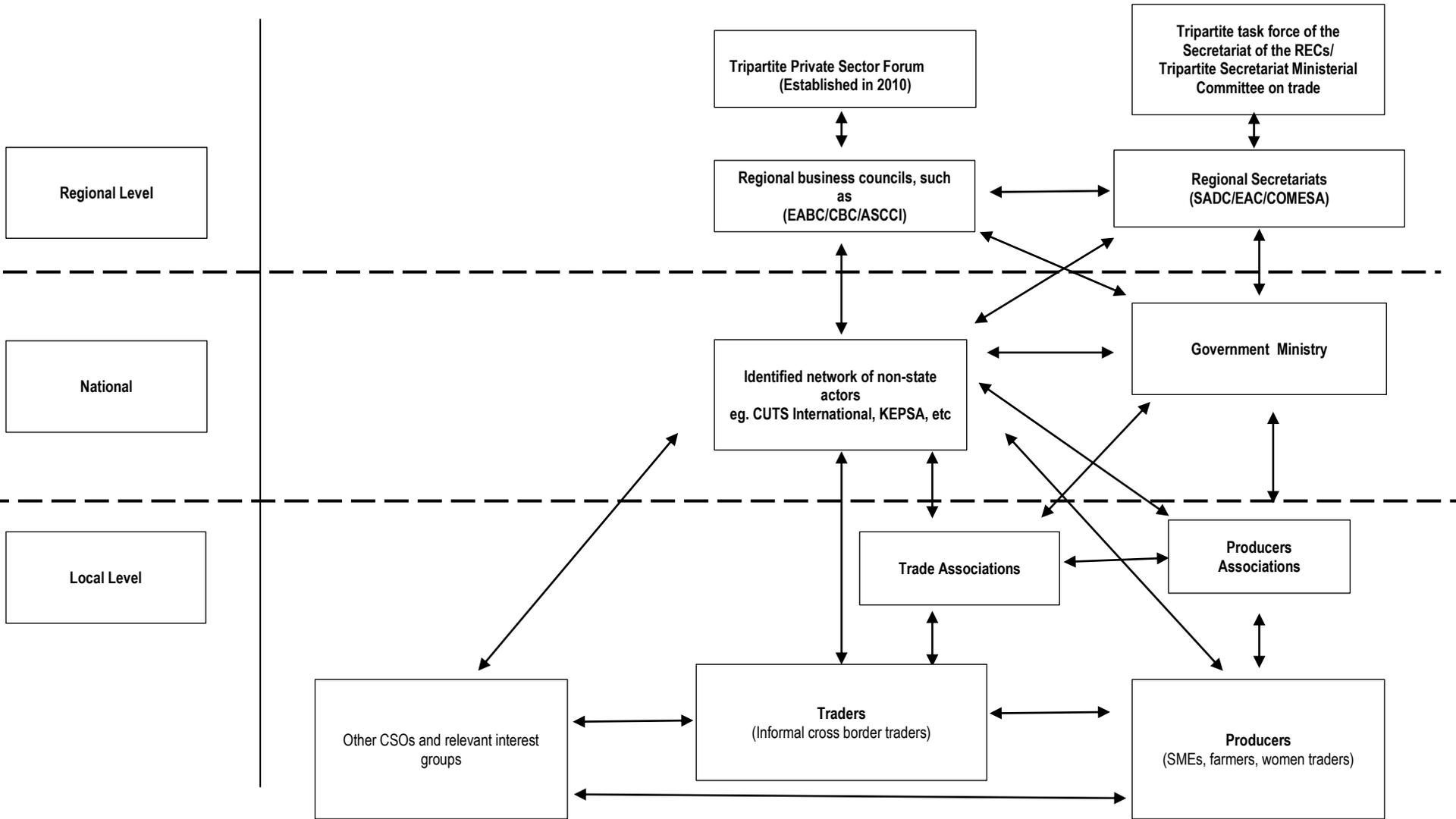
- Increased awareness by marginalised NSA of the regional and continental integration processes.
- Better organisation of NSA in putting forward inputs into the TFTA implementation process and
- Active interest among key influencing agents including RECs, African Union, large businesses (and business associations) to consider CSO views in the implementation of the TFTA implementation.

Proposed Engagement Framework

Methodology

The proposed TFTA engagement framework uses existing framework structures from the current RECs of the EAC, SADC, and COMESA as its basis. It draws primarily from the East African Community Consultative Dialogue Framework for the Private Sector as the EAC has the most formalised framework for engagement with non-state actors. Best practices from other engagement examples have also been included to strengthen the framework. The framework has also been drafted in consultation with members of CSOs and private industry.

Proposed Engagement Framework



The engagement framework proposes that there should be bi-directional linkages rather than unilateral interactions to show existence of forward and background feedback mechanism. Moreover, the framework also caters for interactions and networking among agents within each category.

Process of Engagement Framework

Strengthening Local and National Level Mechanisms

Discussions that take place at the TFTA level require RECs to listen to inputs from NSAs and take these into consideration. This EF seeks to reinforce the voices of marginalised NSAs at this level through the strengthening of the mechanisms at the local and national levels to ensure that their needs and concerns are effectively communicated up the to the TFTA level.

The three main groups of NSAs who are being targeted by this EF are traders, namely, informal cross-border traders; producers, including SMEs, farmers and women traders; as well as others CSO and relevant interest groups. The EF also seeks to allow for the inclusion of CSOs that may not necessarily be working on trade issues but whose focus areas interact with trade, such as consumer rights organisations, health-related NGOs, etc.

Many of these NSAs tend to be marginalised due to their small size and informal nature which results in a two-prong challenge: it makes it difficult for them to come together to discuss the issues that they face as a collective and secondly, their lack of organisation subsequently makes it difficult for them to raise the concerns they have in the appropriate forums at the regional level. The EF seeks to tackle these two particular issues.

In some of the TFTA countries, there already exist trade associations and producer associations. These existing structures serve well as direct linkages between producers and traders on the ground, and government bodies. In the countries where these associations are effective and already functioning, the EF indicates that these structures would remain the primary avenue to communicate with the government.

In countries where these structures do not exist or are not effective. The framework proposes another route to communicate their concerns to the relevant ministry bodies. At the national-level, the EF proposes the establishment of a network of an identified set of non-state actors across all the TFTA countries whose primary purpose is to serve as 'enablers'.

The purpose of this group of 'enablers' would be to bring together these disparate groups of traders and producers; establish dialogue platforms for them to express their views; and facilitate a process of collating their views and opinions in a coherent

manner in order to relay the final outcomes of these meetings and/or survey initiatives (depending on the methodology used to gather these views) to the national dialogue platform for the private sector and relevant government ministries. These ‘enablers’ will work to bring together small grain farmers, textile companies, cross-border traders, and women’s groups, to build a unified voice that originates from those most impacted by regional integration and can carry engagement up the framework path.

Given the disparate nature and views of marginalised CSOs these meetings would be theme-based in order to allow for meetings to not devolve into discussions on a myriad of different topics. These ‘enablers’ in each country will work to help marginalised NSAs that are the direct beneficiaries of the TFTA form a unified voice under specific themes rather than many individual NSAs occupying the dialogue process with disparate views.

As is currently is practiced in the EAC framework, each Member State government is required to hold national consultation meetings with concerned private actors and CSOs. The occasion to meet at the national-level is to both provide views and input to Member State Governments as well as an opportunity to engage with other private actors and CSOs to share ideas on regional integration needs that could be brought to the regional level dialogue. In countries like Kenya for example, KEPISA, would play this role.

In the SADC and COMESA regions, where these structures may not exist in certain Member States, members of the network of ‘enablers’ would fulfil this role and engage with REC Ministries and articulate the importance of having a more inclusive agenda that could be facilitated by ESACSONID members in each respective country.

In order to ensure effectiveness of the network of enablers, there would need to be a set of criteria they would need to fulfil. These would include:

1. An organisation or institution working on trade, economic policy and livelihood issues.
2. An organisation or institution with a proven track record in influencing policy.
3. An organisation or institution with strong linkages and access to regional mechanisms.
4. An organisation or institution with strong grass roots linkages that producers and traders find trustworthy and
5. An organisation or institution with the capacity to reach out to a wide range or stakeholders.

Filtering up to the Regional-level

It is envisaged that by strengthening the voices of NSAs at the national-level, their concerns would be reflected in the issues raised to the regional level. The discussions that take place at the national-level would then be included into the regional process

through two channels. The first would be through the Ministry responsible for the REC in each respective Member State. Having shared the views of marginalised NSAs it is expected that these ministries would consider the inputs received from associations, and respective members of the network of ‘enablers’.

Secondly, given that the identified ‘enabler’ organisations and institutions would also have linkages with regional organisations, it is expected that the views of marginalised NSAs will also be communicated through the participation of these enablers in various fora, such as regional business councils.

Given that discussions that take place at the TFTA level require RECs to listen to inputs from NSAs and take these into consideration, it is envisaged that by strengthening local-level mechanisms, the voice of the marginalised NSAs will be carried through to the to the TFTA mandated annual consultative meetings (Annex 13, Article 3) with relevant TFTA bodies. This channel could most likely make use of the Tripartite Task Force of the Secretariats of the three RECs and the Tripartite Sectoral Ministerial Committee on trade¹².

¹² TFTA Agreement – Part VIII Implementation of the Tripartite Free Trade Area, Article 29: Organs for the Implementation of the Tripartite Free Trade Area:

c) the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home/Internal Affairs; and the Tripartite Sectoral Ministerial Committee on Legal Affairs each of which shall be responsible for policy direction and implementation in their respective sectors;

d) the Tripartite Task Force of the Secretariats of the three RECs which shall coordinate the implementation of the Tripartite work programme and shall provide secretariat services to the Tripartite arrangement.

Action Agenda

The planning, participation, and evaluation of the engagement framework makes use of the Theory of Change (ToC) methodology. The ToC approach presented here follows the methodology used by the Centre for Theory of Change¹³. It defines long-term goals and then maps backward to identify necessary preconditions.

The ToC is based on the following considerations:

- Trade-related integration including TFTA will impact lives and livelihoods of East and Southern Africa (ESA) citizens.
- In the absence of a unified voice from the ground, benefits from trade-related integration are not likely to be uniformly felt, especially by the weak and vulnerable communities.
- It will be difficult and costly for policy makers to have a system to reach out to the grassroots, especially on issues that have implications on trade-related integration and related issues, such as climate change adaptation, women empowerment and agro-based livelihoods.
- Marginalised non-state actors do not have a unified voice and as a result there is a need for a systematic platform to enable them to communicate their views and concerns.
- CUTS has experience working with CSOs across countries in Eastern and Southern Africa to gather evidence and use it to push policy positions and
- The planned intervention builds on this strength of CUTS and relies on the abilities of these CSOs to work with other non-state actors like farmers associations, SME associations and women groups to make the TFTA integration process more inclusive.

Assumptions

The ToC has been designed keeping in mind the following 'assumptions:

- Trade-led regional economic integration (the underlying principle of the TFTA) has the potential to facilitate social and economic welfare in developing and least developed countries.
- Regional economic integration is already happening, but has not been somehow well-linked with the developmental needs and priorities at the grassroots.

¹³ CUTS has been trained by 'The Centre for Theory of Change' to design and apply ToC in its work on trade and economic policy issues in DCs.

- RECs and AU Commission are willing to hear the CSO/NSA voice and their views on how the TFTA can be made more effective for the citizens of ESA Region and
- Various stakeholder groups (trader associations, producer associations, government ministries, regional apex bodies, REC Secretariats etc.) are willing to engage with each other on the agenda of TFTA.

Interventions

The following interventions would be undertaken to achieve the pre-conditions as presented in the ToC diagram.

Intervention Strategies

Sl. No.	Description
1	CUTS alongside development partner initiates development of network enablers across the 26 TFTA Member States. To this effect, CUTS Nairobi has already started an e-network of CSOs from the Southern and Eastern Africa. It is also in the process of forming a loose coalition of CSOs operating in the EAC, which is expected to extend to the greater Eastern and Southern Africa region.
2	NSAs that work on economic policy, trade-related and livelihood issues and have strong linkages to both regional mechanisms and marginalised trading communities are identified as ‘enablers’ across the region.
3	‘Enablers’ undergo capacity building on how to engage NSAs and facilitate awareness campaigns for marginalised private sector actors at the local and national-levels. This could also be indirectly where it is becoming clear that regional integration initiatives compromise one of the sources of domestic resource mobilisation and hence by extension public services to citizens, particularly the vulnerable. To champion for more finance for development through better domestic resource mobilisation and/or compensation, enablers need to have the right skills and knowledge.
4	Enablers develop a methodology to engage NSAs primarily on three broad issues using the ‘targets’ enumerated under the respective Sustainable Development Goals (SGD) to develop a framework for this engagement, and monitor progress against these ‘targets’: <ul style="list-style-type: none"> (i) Trade and Climate Change (Goal 7 and 13, SDGs). (ii) Agro-based Industries and Trade (Goal 2, SDGs). (iii) Trade and Women’s (social and economic) empowerment (Goal 5, SDGs).
5	National ‘enablers’ approach each country’s National Dialogue Platform at the ministry responsible for REC to share their methodology and results of engaging with marginalised players in the private sector and CSOs and explain the benefits of a more inclusive private sector agenda.

SI. No.	Description
6	'Enablers' from each country meet within their REC groupings to collate issues and identify main regional concerns in order to formulate regional positions on areas of interest for marginalised private players. 'Enablers' from each country within their REC groupings as well as with development partners; and to take to the REC by the NSAs with strong linkages in regional mechanisms.

Monitoring

In order to track progress and ensure effectiveness of the action agenda, mechanisms will be needed to properly monitor and assess the development and implementation of the NSA engagement framework. A clear mandate of NSAs' role within the TFTA regional integration process in general will be important to provide a basis for monitoring and assessing NSAs' engagement with TFTA, sub-regional institutions, and governments. Thus, transparency at all levels will be key in this effort. One useful tool could be an agreed upon set of 'rules of procedure' to make clear how engagement should be carried out in a formal framework.

Regularly published activity or progress reports by the NSA network will provide an open documentation for monitoring purposes. Such reporting mechanisms will track the progress of NSA engagement actions regarding regional integration, for example, consultations, presentations, workshops, awareness activities, and how well the engagement framework is operating based on stated goals and if any adjustment is needed.

A yearly or bi-annual meeting with all relevant stakeholders to specifically review the functionality and effectiveness of the EF should be a formal process in the TFTA as a way to regularly take stock of what is working well and what is not. A public report of the meeting should be also produced. Additionally, a 'Follow-Up' Committee should be established within NSA associations to ensure implementation of the framework and any recommendations agreed by network members.

Financial Resources

The issue of funding for various groups involved in regional integration has been brought up at many points, both nationally and regionally, in developing the EF. While the factors are numerous, both the lack of resources and the overdependence on foreign donors are the main challenges to NSA engagement in regional integration.

The NSA EF itself, as well as the groups involved must create a multi-faceted funding structure at the local, national, REC, and TFTA level that will sustainably endure foreign donor absence and local economic shocks as well as provide equitable resources to

marginalised groups. Preferably, the funding structure should instil ownership in NSAs and regional institutions that would strengthen their resolve for regional integration.

Consultations with non-state actors have produced possible ways of funding an EF within the TFTA. Member state governments, through public funding and public-private partnerships, can support activities within the engagement framework. Additionally, part of the funding for the TFTA can be allocated for NSA engagement. For instance, a fund may be set up by the TFTA or RECs for the specific purpose of supporting NSAs and marginalised groups to engage in regional integration discussions, including capacity building opportunities to improve the communication skills of NSAs.

Planning for funding by NSAs and associations will have to start at the beginning of the financial year where focus should be on self-sustaining activities, including self-help groups, toward regional integration engagement. Collaboration with the private sector and making partnerships with businesses and governments can also assist resource gaps for NSAs. Furthermore, NSA associations and other collaborative organisations can implement membership contribution initiatives or fundraising to assist representatives to participate in engagement activities at various levels.

