

DISCUSSION PAPER No. 354

# The EAC democracy agenda: Channels, lessons and digital technologies for civil society engagement

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September 2023

The East African Community (EAC) holds a significant mandate to work on democratic governance, but there is limited appetite from its members for it to become a forum where democracy is discussed and promoted. Over the years, the bloc's key focus has been on harnessing the benefits of a customs union, common market, monetary union and political federation. Meanwhile, norm alignment and enforcement on democratic governance have comparatively fallen behind.

In this paper, we look at the role the EAC plays in democratic governance, zooming in on how civil society engages with the bloc and how such engagement can be strengthened, including through digital technologies. It complements case studies focusing on ECOWAS and SADC.

We find that civil society participation and engagement in the EAC is a high regional priority on paper, and is structured around an ambitious framework, the Consultative Dialogue Framework (CDF). In practice, there are structural obstacles such as restrictive conditions for obtaining observer status, and substantive engagement of civil society organisations tends to be limited to a few discretionary areas. This is consistent with the regional trend of repressed civic spaces.

Both within and outside this formal framework, in particular via apex bodies and regional networks such as the East African Civil Society Organisations' Forum (EACSOFF), civil society manages to come together and leverage what leeway is available to advance the governance agenda. We identify civic technology as a key avenue to bolster this engagement.

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## Acknowledgements

This study was prepared by ECDPM and the European Partnership for Democracy (EPD) as part of the Charter Project Africa, a pan-African effort focused on the commitments in the African Charter on Democracy, Elections and Governance (ACDEG). The project promotes the use of technology to amplify citizen voices and open spaces of collaboration between citizens, civic initiatives and African Union policymakers with an emphasis on digital technologies.

The authors are grateful to the EACSOF secretariat and membership for inviting a workshop dedicated to the subject matter at the 2023 EACSOF summit, and for discussing the study's preliminary findings there. Thanks are also owed to Nneka Okechukwu and Lidet Tadesse at ECDPM who reviewed the study; Joyce Olders who did the layout of the paper and the wider support teams at ECDPM and EPD. All errors remain those of the authors. Comments and feedback can be sent to Andrew Songa ([andrewsonga@epd.eu](mailto:andrewsonga@epd.eu)) and Martin Ronceray ([mro@ecdpm.org](mailto:mro@ecdpm.org)).

This publication is co-funded by the European Union. Its contents are the sole responsibility of the authors and do not necessarily reflect the views of their affiliated organisations or those of the European Union.

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## Acronyms

ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Commission on Human and Peoples' Rights
African Charter	African Charter on Human and Peoples' Rights
AGA	African Governance Architecture
AGP	African Governance Platform
AMISOM	African Union Mission in Somalia
AU	African Union
CDF	Consultative Dialogue Framework
COMESA	Common Market for Eastern and Southern Africa
CSO	Civil Society Organisation
DRC	Democratic Republic of the Congo
EABC	East African Business Council
EAC	East African Community
EAC-YAP	East African Community Youth Ambassadors Platform
EACJ	East African Court of Justice
EACSOF	East African Civil Society Organisations' Forum
EALA	East African Legislative Assembly
EALS	East African Law Society
ECCAS	Economic Community of Central African States
ECDPM	European Centre for Development Policy Management
ECOWAS	Economic Community of West African States
EPD	European Partnership for Democracy
IGAD	Intergovernmental Authority on Development
KHRC	Kenya Human Rights Commission
MOOC	Massive Open Online Course
MoU	Memorandum of Understanding
MSTCDC	MS Training Centre for Development Cooperation
OSF	Open Society Foundations
REC	Regional economic communities
SADC	Southern African Development Community
USD	United States Dollar

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## Introduction - Why a study on CSO-EAC engagement?

**The East African Community (EAC)** is a regional economic community and political union of seven states located around the Great Lakes region of East Africa.<sup>1</sup> It was originally founded in 1967 by Kenya, Tanzania and Uganda; dissolved in 1977; and re-established in 1999. It reached its current membership with the addition of DRC in 2022. The headquarters of the EAC are located in Arusha, Tanzania.

The EAC is underpinned by an ambitious project of turning the region into a customs union, a common market, a monetary union, and eventually a political federation. **In order to realise this political vision, member states need to agree on common rules of the game – including governance norms.** They have also committed from the onset to involve civil society in order to make this a ‘people-centred’ integration process.<sup>2</sup> In practice, transnational governance norms are receiving significantly less attention than trade and economic cooperation in the region. But the community has set up some **structures to facilitate civil society engagement**, and a number of organisations are seeking to make use of this framework.<sup>3</sup>

This case study is part of a wider assessment by the Charter Project Africa of **how civil society organisations can engage with their respective regional organisations** (ECOWAS, EAC, and SADC) when it comes to promoting democratic governance and the implementation of the African Charter on Democracy, Elections and Governance (ACDEG).

The overall objective of this work is to identify opportunities for civil society organisations (CSOs) working with regional economic communities (RECs) to strengthen their political governance agendas and advocacy, especially through the use of digital technologies. To do so, this study on the case of East Africa seeks to:

1. **Assess and compare the theory and practice** of EAC-civil society engagement; and
2. **Produce guidance for CSOs** for engaging with EAC, using both formal and informal channels.

This research is based on desk review, practitioner interviews and a multi-stakeholder workshop held in the context of the East African Civil Society Forum’s (EACSOF) annual gathering in May 2023.<sup>4</sup> The methodology borrows from political economy analysis to unpack existing structures and frameworks, and the sets of drivers and incentives that explain whether and how stakeholders make use of them, to map practical ways forward.

The study examines the roles the EAC plays in democratic governance in a first section. It then turns to the practices of civil society engagement with the community. A third section presents lessons going forward, including the roles for digital technologies to foster such engagement; and a fourth section closes the paper with conclusions.

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<sup>1</sup> Its members, also known as partner states, are the Democratic Republic of the Congo (DRC), the United Republic of Tanzania, Kenya, Burundi, Rwanda, South Sudan, and Uganda.

<sup>2</sup> Article 7 (1) (a) of the EAC Treaty (EALA 1999).

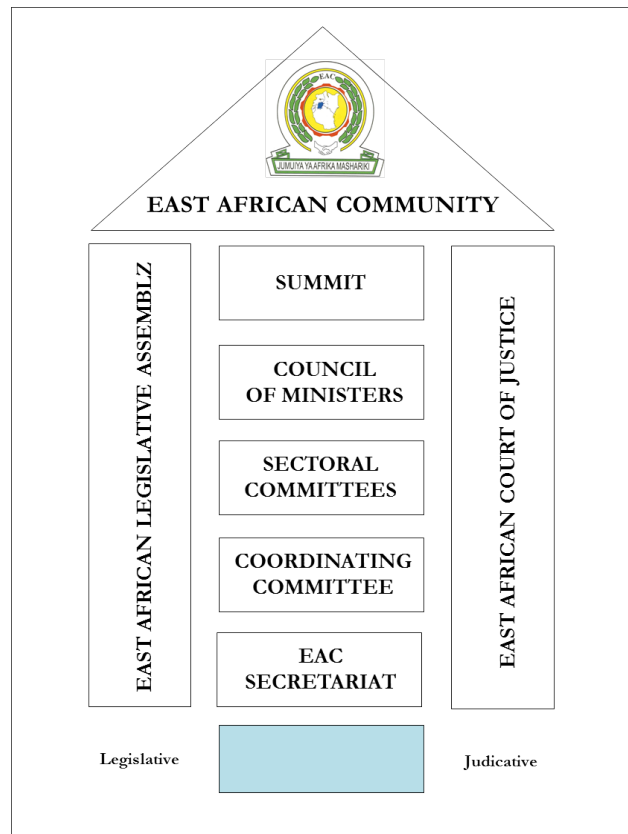
<sup>3</sup> Civil society participation in RECs is understood by Reinold (2019) as meaning more than just being informed and invited to attend deliberations, although that tends to be a necessary condition. It entails actively shaping some elements of the policies along their whole life cycle, from design to implementation and monitoring, including advocacy and campaigning targeted at the community, or responding to its actions.

<sup>4</sup> Wherever no documentary source is indicated, the information originates from these key informants.

# 1. The EAC as a political governance actor

Like other regional organisations, the EAC is **primarily an intergovernmental forum** – meaning that states set a course of action on the agendas they choose –, with a permanent executive body assuming some degree of autonomy in implementing their decisions, and side judiciary and legislative structures. Accordingly, the EAC’s main organs are the Summit of Heads of States, the Council of Ministers, Coordinating and Sectoral Committees, the East African Court of Justice, the East African Legislative Assembly and the Secretariat.

Figure 1: The EAC’s institutional setup



Source: Pngkey database N.d.

The region has had a long history of regional cooperation, reaching back to the colonial era of the East African Federation, with institutional and physical infrastructure created, in areas such as railway, communications and customs. **The EAC Treaty (as adopted in 1999) is detailed and ambitious on good governance, rule of law, accountability and social justice – more so than other RECs’ treaties.** For instance, it refers to the African Charter on Human and Peoples’ Rights (African Charter), provides grounds for cooperation on political issues, and establishes the East African Court of Justice (EACJ) with provisions to enable human rights jurisdiction (EALA 1999).

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## 1.1. A significant mandate to work on governance

Article 5(1) of the EAC Treaty – the REC’s foundational instrument –, states that the core objectives of the EAC are developing “policies and programmes aimed at widening and deepening cooperation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit”. **This vision is to be realised through operationalising a customs union, a common market, a monetary union, and eventually a political federation** (EALA 1999 article 5(2)). Instructively, the EAC is also required to ensure strengthened partnerships with the private sector and civil society as part of the quest to achieve sustainable socio-economic and political development (EALA 1999 article 5(3)(g)).

Further guidance on the political governance aspects of these objectives is provided in Article 123 (3) (c) which requires EAC partner states to establish **common foreign and security policies that (among other concerns) consolidate democracy, the rule of law and the respect for human rights and fundamental freedoms**. Article 127 of the EAC treaty then proceeds to require the EAC to provide an enabling environment for the private sector and (with less emphasis) for civil society by creating spaces for continuous dialogue at the national and regional levels and creating avenues for input into policy making processes.

Policy documents adopted subsequently echo these provisions. For instance the **EAC Vision 2050** (the region’s blueprint for socio-economic transformation and development) highlights good governance, peace and security as key cross-cutting issues to be realised through entrenching democratic values, human rights, access to justice and the rule of law. The EAC also adopted the **2012 EAC Principles for Election Observation and Evaluation** which provide guidelines for EAC Election Observation Missions as well as the code of conduct for election observers.

Though not concluded, the EAC has considered the enactment of an **EAC Protocol on Good Governance**.<sup>5</sup> A draft was put forward for consideration by member states in 2011 but despite a series of reviews and dialogues over the years, the instrument is yet to be finalised and ratified.<sup>6</sup> This important delay raises the question of whether the instrument will ever be adopted, and it is indicative of the fact that while the mandate for the EAC to work on governance is strong, its member states have not prioritised it and substantial normative advances are now stalled. The next subsection examines political factors that explain this reluctance.

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<sup>5</sup> The draft protocol includes the following priorities: upholding constitutionalism, rule of law and access to justice; protection of human rights and promotion of equal opportunities; promotion of democracy and democratisation processes; upholding the principle of separation of powers; preventing and combating corruption; conflict prevention, management and resolution; promotion of economic governance; and promotion of private sector development and corporate governance. (see Article 3 EAC 2023e).

<sup>6</sup> See Monitor 2011 and EALA 2013: in this report the EALA notes that by 2013, the discussions on the protocol were still ongoing.

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## 1.2. Political factors hindering the EAC governance agenda

The role of the EAC as a transnational political governance actor should be understood from the context of the roles that RECs play in advancing continental integration as required by the African Union (AU).

### Box 1: The EAC in the AU's governance framework

Under the AU's collective vision of Agenda 2063, member states (of which EAC partner states are a part) prioritised democracy, good governance, and respect for human rights, justice and the rule of law as key pillars for Africa's inclusive and sustainable development (AU N.d.). Through the 1991 Treaty Establishing the African Economic Community (Abuja Treaty), the AU relies on RECs to further the agenda of integration and implementation of shared values such as those espoused in Agenda 2063.

The EAC is among the RECs that the AU has formally recognised on the continent and therefore, it is a statutory member of the African Governance Platform (AGP) and is expected to play a key role in fostering state compliance with AU democratic governance norms such as the African Charter on Democracy, Elections and Governance (ACDEG) which is considered a continental blueprint for democratic and accountable governance (AU N.d.b. and N.d.c.).

**The conferring of a mandate on political governance matters to the EAC does not mean that the EAC partner states have ceded their authority** for the Community to act independently on all matters within this scope. The approach in the EAC is 'shared competence' between the Community and states, which operates as follows:

...the Partner States are entitled to continue making and applying their own policies and laws—even on matters under the competence of the EAC—as long as the latter has not yet made a common rule applicable to all of the Partner States. In other words, the competence of the Partner States ends where that of the Community starts being exercised (Binda 2017).

**The high level of REC membership overlap plays against the EAC's governance role.** Six in seven partner states are also in the Common Market for Eastern and Southern Africa (COMESA) and three in seven are also members of the Intergovernmental Authority on Development (IGAD), which are recognised RECs alongside the EAC, while the (geographically) largest EAC member, the DRC, is also member of SADC and ECCAS alongside COMESA – and no less than fourteen regional structures in total (Byiers et al. 2023). At a minimum, membership overlap tends to limit the involvement of member states in their RECs because their efforts are spread thin. It also leads to thematic prioritisation: the EAC is the key structure for countries of the region to engage in trade integration but less so when it comes to other regional agendas (Medinilla et al. 2022).

**It results that the EAC simply isn't the right forum for all governance discussions.** EAC members are concerned with conflicts in the region and their spillovers, especially when it comes to the Horn of Africa and great lakes regions, and they don't shy away from looking into some of the governance drivers of these conflicts. But important players in these discussions, Kenya and Uganda, tend to use IGAD with its more developed peace and security framework. When it has a formal role in these processes, the EAC tends to simply follow suit on what has been decided in the other forum, although there are significant exceptions on security issues – for instance the recent deployment of an EAC regional force in DRC, or the consistent deployment of forces from the EAC region to AU missions such as the AMISOM (EAC 2022b).



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**EAC partner states have a limited track record of adopting regional governance norms.** Of the EAC's seven member states, only three have both signed and ratified the ACDEG (Ronceray et al. 2022, Okechukwu and Ronceray 2023). This level of uptake of Africa's foremost governance norm is low in comparison with the rest of the continent and with other RECs individually (10 in 16 for SADC and 13 in 15 in ECOWAS, for instance (Ronceray et al. 2022; Katundu et al. 2023). A less than fifty percent uptake means that the EAC's member states are on average less supportive of continental governance norms than others. This hinders the REC's ability to play its role under the African Governance Platform as an advocate of the ACDEG and a maker of further regional norms.

When it comes to high-level, very visible aspects of the democratic governance agenda that can make news headlines such as mediation missions, sanctions and suspensions following breaches of democratic norms, as an intergovernmental forum **the EAC has been ambivalent at best. Illustratively, the EAC stood out for its lobbying to lift sanctions** adopted under the auspices of the African Union and targeting EAC partner country Burundi (2016-2022) after a constitutional coup (The East African 2022).

**In sum, the region's countries are consistently unwilling to hold each other to account on democratic governance and to empower their regional forum to do this.** The implicit rule seems to be one of a tacit agreement to let political governance issues be internal matters of each country – 'live and let live' – and to focus on other areas. Without the endorsement of its members, the EAC cannot go beyond this general stance and play a proactive, substantial role in promoting improved governance. **For the time being and in light of these constraints, the EAC's main other activities around democratic governance consist in its election observation,** as well as the establishment of frameworks on youth and on gender.

### 1.3. Political factors that can vitalise the EAC governance agenda

Originally established as a court to interpret and apply the EAC treaty, **the East African Court of Justice (EACJ) is a factor of dynamism in the region's governance agenda** (EACJ N.d.). Indeed, its jurisdiction has expanded beyond strictly regional issues such as customs, and it now **hears cases on violations of the rule of law.** This includes human rights and electoral disputes, for instance recently with challenges to the Kenyan 2022 presidential election and previous ones (Milej 2022). The Court is also open to a wide diversity of actors in the region (individuals, Partner States as well as the Secretariat of the EAC). This ongoing journey to a more encompassing governance jurisdiction has not been smooth sailing for the court, with documented cases where member states have actively sought to thwart it when it threatened to rule against their interest (Apiko 2017). Illustratively, in the case of *Prof. Peter Anyang' Nyong'o and Others Vs Attorney General of Kenya and Others* where the court held that Kenya's process of nominating its members to the East African Legislative Assembly (EALA) failed to meet the required standards of the EAC Treaty, resulted in the Kenyan government introducing an amendment to impose a time-based limitation to accessing the EACJ (Kinyunyu 2023). But in addition to offering a form of recourse, it also offers structural reminders to mandate holders and citizens alike that human rights and democracy are part of the regional norms. If the court is able to continue this work, it is likely to progressively reinforce the EAC's governance agenda.

**The stated objective of consolidating the EAC into a political federation** could also reinforce the regional governance conversation. Deeper integration of the region's countries into a single federative entity remains a distant prospect, but it is one that remains on the agenda and continues to guide some of the community's work such as the drafting of a Constitution for the federation (EAC 2023a). Realising it would entail common agreement and enforcement of a substantial package of governance principles across the states that would form such a federation. A report by the East African Legislative Assembly on the status of good governance and progress towards the objective of a federation found that in order to advance on the pathway to integration, good governance "should be clearly articulated and binding on all EAC Partner States." (EALA 2013).

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**The EAC's expansion prospects, in the shorter term, also entails addressing governance regionally.** The application of Somalia to the EAC is under consideration, and the second admission criterion to assess this application is: "adherence to universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice"(EAC 2023b). This process is bound structurally to bring to the table the current performance of the applicant, but in case it proves a salient point in the application process, that dialogue may also bring up the respective records of current members and reasonable expectations for a newcomer.

Another possible factor is the fact that **the EAC secretariat is quite dependent on external donors.** As of 2022 its reported reliance on donors amounted to ca. 41% of its budget, on an overall budget of 91 million USD (EAC 2022b). This figure represents a progress towards self-reliance, compared to the figure of 60% of external funding in 2016. This partial dependence may mean that funders are in a position to encourage the pursuit of specific agendas by offering financial incentives, although they would be well advised to verify that some traction exists for the implementation of such programmes, and in general the EAC seems to be on a course towards self-dependence.

Compared to other RECs, and also compared to the African Union, the EAC has a **particularly active regional parliamentary assembly.** The East African Legislative Assembly (EALA) votes on the REC's budget, for instance, and produces model laws and documents, including the aforementioned report on good governance and the path to an EAC federation. The uptake of its productions is limited, and many proposed bills are never tabled. However, the work of the legislative assembly is reported to familiarise national politicians with the regional structures and agendas, and to create occasions for regional norms to be not only discussed at the regional level but also occasionally at the national level. This may play a slow but steady role in legitimising the regional governance agenda.

**Political change in the region may also play towards the governance discussion.** Most EAC partner states are rather closed politically, scoring consistently low on indicators such as V-Dem's democracy indexes, but there are exceptions and the picture is not static. Kenya is a contested democracy and Tanzania shows timid signs of opening in the last few years. Political change in one or a few more pivotal countries could represent a step towards rebalancing the region's outlook on the governance agenda.

## 2. Understanding civic engagement with the EAC

**People-centred integration is at the heart of the first principle laid out in the EAC treaty's Art. 7.** According to Odhiambo & Chitiga, this is due to a recognition that the EAC's predecessor organisation failed because it was disconnected from citizens. They add that there is legal ground to challenge Community decisions if they aren't sufficiently people-centred (Odhiambo and Chitiga 2016) although it does not seem to be happening in practice. However, significant efforts have been mobilised to operationalise Articles 127, 128 and 129 of the EAC Treaty, which require the community to engage not only with the private sector but *also* with civil society.

### 2.1. Official framework for dialogue

**The central piece of the EAC's citizen engagement approach is the Consultative Dialogue Framework (CDF).** It is defined as a "structured guide aimed at ensuring inclusive and consultative participation of the Private Sector, Civil Society, Professional Associations and other interest groups on the one hand, and the EAC on the other, towards realising the Community objectives and promoting a people-centred and market-driven integration process" (EAC N.d. p.11.).

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The CDF consists of **2 levels, namely, the Regional and National Dialogue Platforms**. Both levels invite interactions from civil society, professional bodies and private sector bodies. At the national level, the engagement is expected to take place from the grassroots to national apex bodies that are then expected to consolidate the various inputs for consideration by national policy makers (such as ministries dedicated to EAC affairs) and regional apex bodies who are recognised by the EAC for regional engagement.

As part of the CDF, the regional apex bodies for civil society, professional bodies and the private sector participate in the **EAC Secretary General Forum**. Via this forum, they can dialogue with the Secretary General and secretariat team on critical issues that can then be forwarded to EAC Sectoral Councils, Council meetings and Summit meetings if required (EAC N.d. p.19). It is worth noting that at the time of writing, this key avenue for engagement had been cancelled two years in a row (2021 and 2022). While the official reason for the cancellations was a lack of resources to conduct the exercise, some interviewees underscored that this would have to be resolved alongside other critical issues such as strengthening the dissemination of information to the public at all levels through accessible formats and concluding a protracted process (5 years and counting) of reviewing the accreditation procedures for civil society wishing to engage with the EAC. Despite these challenges, the interviewees remained hopeful that the forum sessions would resume in the near future.

Some of the regional apex bodies that have made use of this avenue to engage with the Secretary General Forum over the years include: the East African Business Council (EABC), the East African Civil Society Organisations' Forum (EACSO), East African Law Society (EALS), East African Local Governments Association and the East African Trade Union Confederation, to name a few (EAC N.d.). **Reportedly, business associations find it much easier to engage substantially via these formal platforms, while civil society organisations tend to see their contributions as a one-way street:** they are able to submit inputs but these are only 'noted' by the EAC and it remains very difficult to identify uptake.

## 2.2. Further engagement avenues

Outside the CDF structure, the EAC also undertakes civic engagement by granting **observer status** to organisations and entering into **Memorandums of Understanding (MoUs)**. This gives civil society a space for ad hoc meetings with the EAC Secretariat and other organs such as the EAC Council of Ministers. Additionally, civic engagement with the EAC also takes the form of public interest litigation before the East African Court of Justice (EACJ – see box 2 below), and through lobbying and advocacy engagements with the East Africa Legislative Assembly (EALA – see box 3 below) (EAC N.d. p.21.).

## Box 2: Civil society engagement with regional institutions – the case of the East African Legislative Assembly (EALA)

The EALA is the legislative organ of the EAC with a representative and oversight mandate that is meant to foster economic, social, cultural and political integration. It consists of members elected by each of the EAC's national parliamentary assemblies, as well as the EAC Secretary General and Ministers of each Partner State responsible for regional cooperation who sit as ex-officio members. The EALA holds some budgetary powers as well as a right to propose and prepare bills for the region's consideration. This makes it comparatively quite meaningful in regard to other regional assemblies on the continent and beyond.

Interviewees highlighted shortcomings of the EALA which include: political expediency and patronage in the nomination process of EALA's members (Ochieng and Jattani 2022); structural questions such as the venue where the forum meets and limitations to its public outreach; and more generally, the lack of uptake from the EAC of its products and lack of awareness of it from citizens and national parliamentarians alike. Additionally, the frequent and high turnover of the EALA's membership (as in the nature of a legislative assembly) is a source of concern as it makes it difficult to sustain advocacy efforts especially when identified champions on an issue do not make it back to the assembly. However, this turnover was also viewed by some interviewees as an opportunity to reinvigorate the relationship between the assembly and civil society and to identify new champions on citizen engagement.

Another positive note is that in lacking a precise constituency and supporting infrastructure, EALA legislators may welcome contributions from civil society when it comes to agenda setting, information gathering and bill-drafting.

**The EAC secretariat seeks citizen engagement with youth specifically**, through two initiatives: the EAC Youth Ambassadors Platform and the YouLead Summit. The Youth Ambassadors Platform (EAC-YAP) is an initiative of its Political Affairs Department with a mandate of “fostering youth participation in national and regional governance and EAC integration processes” (EACYAP N.d.). The key interventions of the EAC-YAP include EAC Youth Agenda Consultations ahead of the summits by the Heads of State, EAC National Youth Council Roundtables and convening the East Africa Youth Peace Network (EACYAP N.d.). It is through these forums that civil society can partner with the EAC to facilitate effective youth participation in the region's integration agenda and also advance key policy proposals pertaining to the youth- such as recommendations on maintaining peace during elections or ensuring the youth benefit from emerging opportunities in the areas of trade and digital transformation. The YouLead Summit is a joint initiative of the MS Training Centre for Development Cooperation (MSTCDC) and the East African Community (EAC) as a platform for “mobilising, skilling and tooling African young women and men for effective participation in economic and political life” (YouLead N.d.) This summit advances youth inclusion in political governance by facilitating dialogues between the youth and the political leadership of the EAC at various levels.

**The EAC has also embraced digital media as a space for enhancing citizen engagement.** The EAC as at February 2023 had over 155,000 followers on twitter, slightly over 5,500 subscribers on its YouTube channel and approximately 16,000 followers on Facebook.<sup>7</sup> Through these platforms and their official website, the EAC has livestreamed its conferences and meetings, shared important news items and communiques and invited the public to dialogue with key leadership such as the EAC Secretary General.<sup>8</sup> Alongside online resources such as an e-library

<sup>7</sup> See “East African Community (@jumuiya) / Twitter,” Twitter, February 7, 2023, <https://twitter.com/jumuiya>; “East African Community,” accessed February 7, 2023, <https://www.facebook.com/proudlyeastafican> and “East African Community - YouTube,” accessed February 7, 2023, [https://www.youtube.com/channel/UC\\_Nt3M0n4ftThoVVQMK\\_D3A](https://www.youtube.com/channel/UC_Nt3M0n4ftThoVVQMK_D3A).

<sup>8</sup> See for example East African Community [@jumuiya], “Join Us Tomorrow, 11th April 2022 on Twitter Spaces Time: 8pm EAT ...As We Delve in on DRC's Entry into the EAC and What This Means for East Africans. EAC Secretary General @pmathuki Will

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and a database of the EAC's key documents, the EAC website also has a data portal which provides statistics on key indicators such as environmental, social, macroeconomic and production statistics (EAC N.d.b.).

### **Box 3: Civil society engagement with regional institutions – the case of EACSOFF challenging Burundi before the EACJ on presidential term limits**

In 2015 Pierre Nkurunziza sought to run for a third term as President of Burundi. This decision triggered a crisis characterised by Parliamentary debate, violent protests, an attempted coup and a controversial decision by Burundi's Constitutional Court affirming Nkurunziza's eligibility to contest in the 2015 election (a decision later disowned by the Court's Vice-President from exile in Rwanda).

EACSOFF filed a case at the EACJ to challenge the legality of the Burundi Constitutional Court decision on the basis that granting Nkurunziza eligibility to contest the election went against provisions of the Burundi Constitution as well as the Arusha Peace and Reconciliation Agreement of 28 August 2000 (Arusha Accord) which had been critical to preserving peace in the country. The EACJ disagreed with the EACSOFF position and held that the decision of the Burundi Constitutional Court did not amount to a wrongful judicial act that could invite its intervention under the EAC Treaty. Instructively the EACJ stated as follows:

.....Consequently, we take the view that a judicial decision of a domestic court would only give rise to a cause of action, first, where it is established on the face of the record as depicting outrage, bad faith and wilful dereliction of judicial duty; and, secondly, where no or manifestly insufficient action has been taken by the appropriate judicial disciplinary body to redress such judicial outrage (EACJ 2020).

In this instance, the EACJ found that the Burundi Constitutional Court's decision could not be questioned for its judicial reasoning or outcome, but it confirmed the receivability of such a case lodged by the regional civil society umbrella organisation.

## **2.3. Challenges encountered**

Despite these various spaces for engagement, civic engagement at the EAC continues to encounter significant challenges. To begin with, the **EAC partner states themselves display a below average trend on indicators pertaining to civic engagement**. According to the CIVICUS 2022 monitor, all countries of the region operate with a 'repressed' civic space, except for Kenya where it is merely 'obstructed'.<sup>9</sup> The African Commission on Human and Peoples' Rights (ACHPR) expressed concerns about internet restrictions and about the safety of activists and opposition politicians engaged in governance issues in the region.<sup>10</sup> Legislative acts restricting civic space are being developed throughout the region, although CSO networks elaborate counter-strategies (EACSOFF N.d.a.).

The result is a **difficult environment for non-state actors that raise questions on matters of political governance**. Illustratively, EACSOFF noted in a public statement a concerning backlash against civil society in EAC partner states at the height of the COVID-19 pandemic.

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Answer All Your Questions on the New Addition & Current State of the Region. See Ya! <https://t.co/Ni3YvtGu22>," Tweet, Twitter, April 10, 2022, <https://twitter.com/jumuiya/status/1513064939690336256>.

<sup>9</sup> <https://monitor.civicus.org/>

<sup>10</sup> On internet restrictions see: ACHPR 2020. On Kenya see: ACHPR 2020c. On Uganda see: ACHPR 2020. On Tanzania see: ACHPR 2020d.

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In their efforts to control the spread of disinformation, governments have targeted and undermined [rights to information and the freedom of expression]. Human rights activists and social media influencers are among those who have experienced threats from the authorities due to the information shared on their social media platforms, mainly challenging the government to account for the use of funds (African Defenders 2020).

While there are spaces for civic engagement within the EAC as illustrated above, some of these spaces limit access for civil society on account of **restrictive qualification criteria** or how the EAC bureaucracy interprets the rules that govern such access. For instance, access to observer status at the EAC is restricted by the requirement to be a *regional* organisation. This means that **the CSO must have been registered and active in each of the partner states for at least three years**.<sup>11</sup> In light of the limited civic space in the region as well as the reality of limited resources, not many organisations can conceive being registered and active in each of the EAC's partner states, let alone for several years in a row with the adequate documentation.

According to interviews, **this rule is not carved in stone and can be bypassed at the Secretary General's initiative**, but this tends to be done only for business associations. Even the eminently regional EACSOF itself has reportedly not managed to establish recognised national chapters in three out of seven EAC countries – Uganda, Rwanda, Burundi – which on paper should make it ineligible for accreditation to the EAC due to not being 'regional enough'.

**The extent of participation or interventions by organisations with observer status is at the discretion of the chairperson** of the particular meeting that is being attended.<sup>12</sup> Specific rules and operationalisation documents could lift in part this uncertainty and dependence on the goodwill of the current chairperson, but as outlined above the EAC partner states have also failed to conclude the draft Protocol on Good Governance which could operate this clarification.

Interviewees reported that in some of the more repressive countries of the region, **officially registered civil society organisations are often appointed by the government itself to provide an appearance of diversity**. This creates dilemmas for other CSOs and networks, for instance whether they should engage with such 'quasi-governmental organisations', but also whether to share sensitive information, and it deteriorates the climate of trust and common vision that are required for cooperation.

Still, according to interviewees **the dialogue framework in place is more or less adequate, but the spirit in which it is handled is the problem** as the EAC leadership has not exhibited sufficient commitment towards vitalising the organisation's partnerships with civil society. The current tenure of the EAC Secretary General was characterised by interviewees as placing a strong emphasis on connections with the private sector as privileged counterparts rather than civil society. This differential treatment is palpable in the fact that the EAC tends to invite business associations to its own compound while conducting engagement with civil society in public venues.

This suggests that there is a **structural mistrust of civil society within the EAC itself** which plays against the realisation of the CDF's full potential. This also applies to ad hoc partnerships outside of the CDF: while some CSOs have obtained MoUs with organs such as the EAC Secretariat and the EALA, they have expressed that an MoU is "only as good as the goodwill of the person in front of you", suggesting that more often than not this goodwill is the limiting factor.

A related challenge lies in the **capacity of regional apex networks that are meant to represent civil society at the EAC level**. Illustratively, EACSOF has been characterised by some stakeholders as lacking clarity with regard to

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<sup>11</sup> Odhiambo and Chitiga 2016, p. 38.

<sup>12</sup> Ibid.

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representation in its national and regional structures and making the interaction with the EAC to be both cumbersome and a frustrating experience (Reinold 2019). While formal processes such as EACSOF leadership elections appear to be codified and transparent exercises that favour accountability, interviewees sometimes wondered whether it wouldn't be beneficial for civil society organisations to bypass umbrella networks and attempt to engage directly.

### 3. Opportunities for strengthening effective CSO digital engagement on accountable governance

While acknowledging the aforementioned challenges on civic engagement with the EAC, progress has been made and there are areas for advancement.

At a policy level, conversations on regulating digital technologies, on misinformation, on preserving civic space, on internet connectivity advancing open government, but also further deepening or enlarging the EAC offer **handles to discuss governance through the lens of civic technology**. It would be useful to review the EAC's existing and proposed frameworks relating to democratic governance to ensure that they address the increasing role of technology in democratic processes such as public participation and elections. This would offer an entry point for revitalising the discussion of the currently shelved draft governance protocol.

#### 3.1. Strengthening the capacity of EACSOF

**Since its establishment in 2007, EACSOF has grown considerably** in terms of its membership and outreach to influence the EAC. As of early 2023, EACSOF stated that it had a membership of at least 60 organisations, some of which were umbrella organisations with their own membership of 400 organisations. EACSOF also claimed a record in capacity building for its members, as well as policy achievements such as: advocating for the CDF and becoming the regional apex organisation for civil society; preparing a Draft Gender Protocol and Draft Youth Policy; advocating for the HIV/AIDS Prevention and Management Bill; lobbying for changes in the EAC Anti-Counterfeit Bill protecting citizens' access to quality generic medicines; advocacy to defend EALAs mandate to raise private members' bills; and collaborating with EABC to launch the EAC Health Forum, but to name a few (EACSOF N.d.b.).

The existing infrastructure and formal recognition of EACSOF by the EAC presents an **opportunity for expanded engagement, including through the use of civic technology**. Indeed, EACSOF in its 2021-22 strategy document prioritised digital rights and ICT for development as follows:

As [a] civil society network in [the] EAC region, we have the mandate to raise awareness, and building local capacity to independently monitor, analyse, and effectively overcome any restriction to digital rights or online democratic space, especially related to the work of the Civil society. [...] We propose applied research to build capacity in the EAC region to effectively monitor, analyse, and counter the insidious impact of surveillance and disinformation.<sup>13</sup>

Beyond facilitating advocacy on securing digital space, EACSOF can be supported to incorporate civic technology in its broader advocacy work as well as engagement with its membership. Some areas can include: Developing and sharing modules on civic technology and democratic governance through a Massive Open Online Course (MOOC); sharing civic technology tools that can help advance their members' advocacy at the national level; creating an online database of its membership and an interactive space for cross-engagements to catalyse collaborations and

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<sup>13</sup> EACSOF Strategy Paper 2021-22 p.6.

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innovations; and expanding its reach through the embrace of social media platforms as spaces for dissemination and dialogue with the EAC citizenry.

### 3.2. Leveraging existing partnerships and spaces for engagement with EAC organs

As highlighted previously, the CDF, MoUs, and ad hoc or issue-based meetings offer entry points for strategic civil society engagement with the EAC. Some specific leads are highlighted below.

The **East Africa Law Society (EALS)** utilises its observer status to engage EAC Sectoral Councils/Policy making bodies. They consider themselves “a key cog in the legal and judicial affairs committee as well as the Trade and Investments Committee” (East Africa Law Society N.d.). The EALS has utilised the Consultative Dialogue Framework Committee and the SG’s Forum to make presentations as well as engage in advocacy and lobbying especially towards the realisation of the Common Market Protocol (East Africa Law Society N.d.). The EALS also undertakes regular Continuous Legal Education trainings specific to the integration process. Its technical and legal know-how could help empower further organisations in their engagement with the EAC.

The **East African Business Council**, through its observer status and diverse membership, has undertaken high-level Public-Private Dialogues with the EAC Heads of State Summit and Council of Ministers. These dialogues are used to address issues such as economic growth and poverty reduction (EABC N.d.). Going forward, parts of civil society can learn from its methods in successfully engaging the EAC, for instance the choice to prioritise a few key messages (linked to the African Continental Free Trade Area, in their case). But the business community could also be an ally in the promotion of governance norms to the extent that its ability to conduct business is reliant on the rule of law.

Beyond the CDF framework, EACSOFF has also proceeded to seek a framework of **collaboration with the East African Legislative Assembly**. The objectives are to provide a structured framework for consultation and dialogue between EALA, its National Chapters and Civil Society on the East African integration process; to establish clear and effective communication and feedback mechanisms between EALA and CSOs on matters of regional integration; to enhance coordination of CSO positions in their relationships and engagements with EALA; and to enable EALA draw on the CSO expertise and knowledge base in discharging their mandate through representation, legislation and oversight (EACSOFF 2016).

**The content and impact of these partnerships can be enriched through the inclusion of civic technology.** Examples include developing and sharing tools to track progress on implementation of these partnerships and deliberations; supporting EAC organs to expand their reach through digital platforms by improving platforms, hosting engagements on civil society platforms or creating jointly-owned digital portals for citizen engagement and sharing of relevant information and governance data. Non-state actors can take a lead role in the development of these partnerships by adding the component of civic technology to advance open government and citizen engagement, especially in disseminating information through simplified and accessible digital formats and through accessing development partners and other funding to secure support for innovative projects that advance this agenda.

**An initiative like the CivicTech Fund** (CivicTech Fund Africa) managed by the Charter Project Africa has demonstrated the viability of this prospect, by identifying and supporting some civic technology projects by CSOs within the EAC region.<sup>14</sup> With appropriate financial and technical support, some of these CSOs can venture into strategic engagements and partnerships with the EAC to advance citizen engagement through civic technology and digital advocacy.

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<sup>14</sup> See for example CTIN 2023a and CTIN 2023b.



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## 4. Conclusion

This paper has identified **civil society engagement as a foundational pillar of the EAC's integration agenda**, the heart of which is to realise sustainable socio-economic and political development for the region and its people. This is expressed in the EAC Treaty as well as in the operational mechanisms of the EAC, the focal of which for civil society is the Consultative Dialogue Framework. Despite strong commitments, the experience reveals a mixed bag of successes and setbacks in the relationship.

This paper has outlined the **challenges** faced by civil society in its engagement journey with the EAC but also pointed out **instances of tenacity, innovations and successes in securing strategic partnerships with EAC organs** in order to advance key governance issues. The EAC-civil society relationship is currently hindered by ambivalent political will on the part of EAC member states and capacity constraints on the part of civil society, which has led to inconsistent and incoherent applications of the engagement framework.

However, the relationship also has considerable assets that can be consolidated, built upon and reformed towards meaningful and effective participation for civil society. These assets include: an established institutional framework; a robust civil society constituency that is attuned to engage with the EAC on matters of governance; and the potential for civic technology and digital advocacy to expand the spaces for engagement and accountability. **This paper is an invitation for stakeholders to explore these pathways to strengthen the EAC-civil society relationship and identify the aspects that they can contribute to in this regard.**

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This publication was co-funded by the European Union. Its contents are the sole responsibility of ECDPM and the European Partnership for Democracy and do not necessarily reflect the views of the European Union. This publication also benefits from the structural support by ECDPM's institutional partners: Austria, Belgium, Denmark, Estonia, Finland, Ireland, Luxembourg, The Netherlands and Sweden.

ISSN1571-7577



Co-funded by  
the European Union

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