Enhancing the capacity of EAC trade unions to advocate for trade & investment policies & agreements that deliver decent work & protect workers' rights

Advocacy Strategy 2021

Jargon Buster: Definition of Terms and Acronyms

AU - AFRICAN UNION: The African Union is a continental-wide body consisting of 55 countries. The AU promotes the political and socio-economic integration of the continent and promotes and defends African common positions on issues of importance to Africa and its peoples. Its headquarters are in Addis Ababa.

AfCFTA – African Continental Free Trade Area: An initiative launched by the African Union in June 2015 and entered into force on 30th May 2019 whose major aim is to create a free trade area across the whole of Africa. Its stated objective is to facilitate economic, trade and investment opportunities between African countries. The ultimate aim is to create an African Economic Community by 2028. AfCFTA negotiations cover trade in goods and services, movement of business persons, intellectual property rights, competition policy, and also investment. On 1st January 2021, trading under AfCFTA officially commenced, albeit a number of negotiations under Phase 1 (Tariff Schedule Offers, Services Liberalization Commitments, Rules of Origin) and Phase 2 Negotiations (Investment, Competition Policy, Intellectual Property) are ongoing.

BITs - Bilateral Investment Treaties: Type of International Investment Agreement between two countries which is intended to promote and protect the investments made by companies from those two countries in each other's territory. A BIT grants legally binding rights to investors and creates obligations on the part of the host governments.

EAC - East African Community: The regional inter-governmental institution for Burundi, Kenya, Rwanda, Tanzania, Uganda and South Sudan with its headquarters in Arusha, Tanzania. As one of the fastest growing regional economic blocs in the world, the EAC is widening and deepening co-operation among the Partner States in various key spheres for their mutual benefit. These spheres include political, economic and social.

Environmental and Social Impact Assessment: The formal process used to predict the environmental and social consequences (both positive and negative) of a plan, policy, project or programme prior to the decision to move forward with the proposed action. Formal impact assessments are generally governed by certain administrative procedures regarding public participation and the documentation of decision-making.

EPAs - Economic Partnership Agreements: Free Trade Agreements (FTAs) that the EU has negotiated with the Africa, Caribbean and Pacific (ACP) Countries since 2002 within the framework of the Cotonou Agreement signed in 2000.

EU - EUROPEAN UNION: Economic and political union of 27 European countries. It operates a single market which allows the free movement of goods, capital, services and people between member states of the EU.

EXPROPRIATION: The act of taking privately owned property by a government to be used for the benefit of the public.

FDI - Foreign Direct Investment: An investment made by a company or entity based in one country, into a company or entity in another country.

FET - Fair and Equitable Treatment: Clauses in an international investment agreement which require governments to treat investors `fairly' and not upset their `legitimate expectations' by introducing policies or regulations that might affect the returns they were expecting to earn on their investments.

FTAs-Free Trade Agreements: A Free Trade Agreement is a pact between two or more nations to reduce barriers to imports and exports among them. Under a free trade policy, goods and services can be bought and sold across international borders with little or no government tariffs, quotas, subsidies, or prohibitions to inhibit their exchange. The standard practice is that FTAs are premised on promoting regional integration, and on the belief that they create employment, fostering structural transformation, and raising living standards of the negotiating parties--rather than to maximize trade per se. In practice, however, promoting development and maximizing trade--have come to be increasingly viewed as synonymous, to the point where the latter easily substitutes for the former. Often, this can and does result in weakening and reducing regulations that protect social and environmental standards, including labour standards

ISDS – Investor- State Dispute Settlement: A clause in international investment agreements which enables foreign investors to seek compensation in special international arbitration courts for any action which threatens their profits, this can include raising minimum wages or bringing privatized services into public ownership. Only investors can use the ISDS clause – not the host governments.

ILO Decent Work Agenda: The ILO Decent Work Agenda is a balanced and integrated programmatic approach to pursue the objectives of full and productive employment and decent work for all at global, regional, national, sectoral and local levels. Decent work involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. The ILO Decent Work has for key pillars including; **Promoting jobs and enterprise, guaranteeing rights at work, extending social protection and promoting social dialogue** are the four pillars of the ILO Decent Work Agenda, with gender as a cross-cutting theme. These are crucial to advancing the entire sustainable development agenda.

MFN - Most Favoured Nation Treatment: A legal term which represents the status given to one country by another country in international trade. A country gives this status to another country if it is interested in increasing trade with that country. In trade agreements, the MFN obligation prevents a country from discriminating between the countries that have signed the agreement.

MNC - Multinational Corporation: A company that has facilities or assets in at least one country other than its home country. Such companies have offices or operations in different countries and usually have a centralized headquarters providing global management of the company.

NT - National Treatment: A legal term in international trade agreements which obliges countries not to discriminate against other countries.

Non-Discrimination: Legal term applied to international trade relations, linked to Most Favoured Nation Treatment and National Treatment obligations (see MFN and NT definitions above).

PR - Performance Requirement: Binding clauses that should be included in international investment agreements requiring investors to comply with minimum international standards on human rights, environment and labour, corporate governance etc.

Regulatory Chill: A common effect of Bilateral Investment Treaties whereby national governments refrain from introducing new regulations or policies of benefit to their citizens - for fear of triggering a compensation claim from one or more foreign companies.

Right of Entry and Establishment: A clause which should be included in international investment agreements to ensure that host governments can direct foreign investments towards helping to fulfil the country's national development objectives.

SADC - Southern Africa Development Community: Inter-governmental organization committed to socio-economic cooperation and integration as well as political and security cooperation across its 15 Southern Africa member states.

UNGPS- United Nations Guiding Principles on Business and Human Rights: Global Standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. They were unanimously endorsed by the United Nations Human Rights Council in June 2011.

I. Introduction

Trade has historically been a key to the promotion of development. This is because increased trade and trade opportunities incentivizes an increase in production and productivity which are central to facilitating development. However, for trade to be used as a tool for promoting good jobs, gender equality and sustainable development there is need for working people to be involved in the development of trade policy and trade negotiations.

Generally, the trade and investment policy making process involves an interplay of different institutions and players. These include engagements at ministry level in individual countries, engagements at regional level and even at the global level. These processes are often influenced by different players with different power dynamics including business corporations, influential institutions like the World Bank, and powerful countries/blocs like, the European Union, United States; and media. Yet, trade unions, civil society, farmers' groups, and consumers, especially from LDC countries, are seldom or sometimes completely unable to make their input into trade policy or trade negotiations, because the processes are often exclusive to only State Actors..

As a consequence of these powers lobbying there are global rules of trade that have displaced good jobs, undermined workers' rights and public services.

This underscores the importance of active and increased technical capacity of trade unions to effectively engage and influence the policy making process.

It is against this background that EATUC together with SEATINI Uganda have developed this Advocacy Strategy.

II. Objectives of the Advocacy Strategy

The Objective of the Advocacy Strategy is to enhance the capacity of Trade Union actors and increase their influence in advocating for trade and investment policies and agreements that deliver decent work, promote gender equality and protect workers' rights, and support sustainable development.

The strategy provides a guide to the organization and process of conducting capacity building sessions from trade union representatives. It highlights the Sustainable Development Goals, International Labour Organisation (ILO) Conventions and Recommendations, and the ILO Decent Work Agenda. It also highlights the history underpinning these agreements/ processes to help the trade union representatives to better understand how trade and investment frameworks appear to be evolving even though they do within the same ideological orientation, including labour provisions in trade and investment Free Trade Agreements. The Advocacy Strategy examines the institutional frameworks and existing structures for trade and investment policy making and negotiations, and classifies the major stakeholders involved (both government and Non-State Actors) and their respective roles, at regional, continental and global levels. It analyses the power centres and power dynamics in trade policy making processes at global levels, including their implications on regional and national trade and trade related policies as well as negotiating positions of the different negotiating parties. Finally, the Advocacy Strategy explains the processes concerning trade and trade related negotiations that the EAC Partner States areinvolved in, the key institutions governing these processes as well as the implications of these agreements at both sectoral and institutional level and the role stakeholders should play to ensure that these processes lead to pro-development outcomes, will also be analysed.

III. Structure of the Advocacy Strategy

The Strategy is structured in modules. It has 4 main sections covering various aspects. They include:

1. **The International Labour Organization (ILO) and the Sustainable Development Goals (SDG) Goal 8**

A) The ILO Conventions and Recommendations
B) ILO Decent Work Agenda
C) The UN 2030 Agenda for Sustainable Development (2015) and Decent Work
D) Trade, investment, Employment creation and Decent work: the race to the bottom
E) Labour Provisions in Trade and Investment Agreements

2. **The Multilateral Trading System**

A) Introduction to the WTO Agreement; The Basic principles
B) Agreement on Agriculture and its implication on employment creation and decent work
C) Trade, investment, Employment creation and Decent work: the race to the bottom

3. **Bilateral and Regional Trade and Investment Agreements and their linkage to decent work.**

A) The Case study of the EU-EAC-Economic Partnership Agreement (EPAs)
B) The Case study of the Bilateral Investment Treaty (BITs)

4. **Understanding the Engagement structures at global, regional and national level to aid effective trade unions' participation**

A) Negotiating groups in the WTO
B) National level negotiating structures

East African Community trade negotiations

EAC partner states signed the Customs Union and Common Market. Customs Union and Common Market involve removal of intra-Member States tariffs while adopting of common external tariffs, negotiating trade agreements collectively at EAC level and any common rules between countries respectively. EAC Partner States are also currently working towards a Monetary Union. Some of the members of the EAC are also members of COMESA and SADC. The three blocs have signed the COMESA-EAC-SADC Tripartite which seeks to liberalise trade and tariffs among Member States of the three blocs and are currently awaiting its complete ratification before it comes into force.

Current trade negotiations

The majority of East African countries receive tariff free access for the majority of their goods to the EU, UK and US markets through the following schemes:

- UK and EU Everything But Arms scheme (EBA)
- EU General System of Preferences (GSP)
- UK Developing Countries Trading Scheme
- United States Africa Growth Opportunity Act (AGOA)

This is due to the WTO requirement for developed countries to provide Special and Differential Treatment to Least Developed and Developing Countries.

However, the EU, UK and US have been pushing for tariff free access for their goods into East African countries' markets for a number of years. EAC countries have resisted these agreements primarily due to concerns that reducing tariffs to UK, EU and US goods would undermine domestic industries. –This is also due to different levels of industrialization, existing unequal power relations, and subsidies enabling goods to be produced at lower cost in the EU/UK/USA which end up flooding EAC Markets at below market prices, affecting MSMEs, Workers among others. Trade unions across Africa, the EU and internationally have also expressed concern these Economic Partnership Agreements will undermine regional integration and decent jobs and contain no requirements for EAC countries to respect labour rights, no protections for public services.[1] However, the EU and UK have pressured East African countries who have higher incomes to sign trade deals or risk losing their tariff free access to EU and UK markets. This undemines the operation of the EAC which is meant to negotiate trade agreements collectively.

EU-EAC negotiations

In 2008, the EU embarked on a negotiation process with the EAC for an Economic Partnership Agreement (EPA) which would allow EU goods to enter EAC country markets tariff free. All EAC countries except Kenya and Rwanda have refused to sign the EPA . During the 21st Ordinary Summit of the EAC Heads of State, it was resolved that Partner States who wish to do so should be able to commence engagements with the EU with a view to starting the EU-EAC-EPA implementation under the Principle of Variable Geometry[2].The principle of variable geometry allows Partner States in an integration bloc to implement integration projects at different paces. States within an integration arrangement are allowed to move-forward with integration activities, while leaving others to join at a later date.

UK-EAC negotiations

The UK is currently pursuing reciprocal trade agreements with the EAC partner states. After threatening to withdraw Kenya's preferential access to the UK market, the Kenyan government agreed to sign a trade deal with the UK in November 2020. Trade unions in Kenya, East Africa and internationally expressed concern about the UK-Kenya agreement owing to its negative impact on workers, regional integration and decent jobs.[3]

[1] https://www.etuc.org/en/publication/joint-ituc-africaetucituc-statement-eu-economic-partnership-agreements-central-africa
[2] https://www.eac.int/communique/1942-communiqu%C3%A9-of-the-21st-ordinary-summit-of-the-east-african-community-heads-of-state
[3] https://www.tuc.org.uk/campaign-groups-respond-announcement-uk-kenya-deal-has-been-finalised

US-EAC negotiations

The United States, has also since 2012 made attempts to negotiate and sign a Trade and Investment Partnership Agreement with the EAC that would allow US goods to enter EAC countries' markets tariff free. EAC countries have resisted to date The US has now stated it will negotiate with individual states and has begun bilateral negotiations with Kenya.

Africa Continental Free Trade Area (AfCFTA)

The quest for Afrian Unity and formation of African Economic Community goes back to the independence struggles and the struggles for economic decolonisation of Africa. These aspirations were translated into the the Lagos Plan of Action for the Economic Development of Africa (1980-2000) and the Abuja Treaty ; formation of the African Union and other initiatives like AIDA; BIAT (Boosting of Intra African Trade) ; PIDA. These processes are the precursors to the AfCFTA. The strengthenng of Regional Economic Communities like SADC; EAC; ECOWAS; AMU as building blocs to the AfCFTA is also rooted in Africa's quest for structural transformation and the formation of an African Eonomic Community. ACFTA is also entrenched in the Agenda 2063 of the Africa we Want.

In 2012, the AU Summit took a decision to establish the AfCFTA by 2017. In June 2015, African leaders launched negotiations to create a Continental Free Trade Area. Subsequently, at the special Summit of the Africa Union on 21st March 2018 held in Kigali, Rwanda, the framework AfCFTA was adopted and signed by 44 member countries, with others signing later. On 30th May 2019, the AfCFTA entered into force after deposit of 22nd instrument of ratification. Initially set to start on 1st July 2020, the unpreparedness of State Parties and COVID-19 led to the postponement of the commencement of trading under the African Continental Free Trade Area (AfCFTA). Subsequently, during a virtual meeting of the 13th Extra Ordinary Session of the Assembly of the Union on the AfCFTA, held on Saturday 5 December 2020, African Union Heads of State and Government adopted a decision that trading under AfCFTA commences on the 1st of January 2021.

The AfCFTA is the largest trading agreement in the world since the creation of the World Trade organization (WTO) with the potential to unite more than 1.2 billion people in a $2.5 trillion economic bloc and usher in a new era of development. It has the potential to generate a range of benefits through supporting trade creation, structural transformation, productive employment and poverty reduction.

EAC countries are engaging in the ongoing African Continental Free Trade Area (AfCFTA) negotiations in partnership with COMESA and SADC.

Key issues of focus under AfCFTA:

There are negotiations ongoing and planned under the AfCFTA which can provide an opportunity for Trade Unions to engage. These include Negotiations on:

- Liberalization Tariff Offers
- Rules of Origin
- Services Liberalization Commitments
- Investment

- Intellectual Property
- Competition Policy
- Electronic Commerce

Other related FTAs Negotiations to prioritise by Trade Unions include EAC-UK FTA negotiations; Kenya-USA FTA Negotiations and the EAC Regional Integration Process.

Bilateral Investment Treaties (BITs)

Bilateral Investment Treaties (BITs) primarily deal with the rules related to admission, treatment and protection of foreign investment. Trade unions have long raised concerns that they have allowed foreign investors the rights to challenge laws that threaten their profits. Some investors do what is called "treaty shopping" where they seek residence in a country merely because of the BIT it has signed to bring lawsuits against the country in question. This restricts domestic policy space and make it extremely difficult for host states to regulate in the public interest or to harness economic growth for sustainable and inclusive development. BITs also expose the host states to significant legal risks and liabilities through the international arbitration mechanisms. An example is Cortec Mining which sued Kenya. BITs are unbalanced in the sense that they focus on investor protection but not on investor obligations and they focus on the obligation of host states but not on the rights of host communities.

The EAC partner states have signed a total of 64 BITs of which 37 are in force[4]. Burundi has signed 10 BITs of which 6 are in force; Kenya has signed 19 BITs, of which 10 are in force; Rwanda has signed 10 BITs of which 4 are in force; Tanzania has signed 10 BITs of which 11 are in force; and Uganda has signed 15 BITs of which 6 are in force. It should also be noted that there is a rise of Free Trade Agreements (FTAs) with Investment provisions. Such include the AfCFTA; UK-Kenya FTA; USA-Kenya FTA and the proposed USA-EAC Cooperation Agreement on Trade and Investment

2. The ILO Decent Work Agenda and SDG 8

A) The ILO Conventions and Recommendations

International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers). They set out fundamental principles and rights at work. They are either Conventions (or Protocols), which are legally binding international treaties that may be ratified by member states, or Recommendations, which serve as non-binding guidelines. In many cases, a Convention lays down the basic principles to be implemented by ratifying countries, while a

[4] https://investmentpolicyhubold.unctad.org/IIA/IiasByCountry#iiaInnerMenu

related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to a Convention.

The ILO Governing Body has identified eight “fundamental” Conventions, covering subjects that are considered to be fundamental principles and rights at work: i) Freedom of Association and Protection of the Right to Organise Convention, 1948, ii) Right to Organise and Collective Bargaining Convention, 1949; iii) Forced Labour Convention, 1930; iv) Abolition of Forced Labour Convention, 1957; v) Minimum Age Convention, 1973; vi) Worst Forms of Child Labour Convention, 1999; vii) Equal Remuneration Convention, 1951; and viii) Discrimination (Employment and Occupation). As of 1st January 2019, there were 1,376 ratifications of these Conventions, representing 92 per cent of the possible number of ratifications. At that date, a further 121 ratifications were still required to meet the objective of universal ratification of all the fundamental Conventions.

B) The ILO Decent Work Agenda

The landmark ILO Declaration on Social Justice for a Fair Globalization is a powerful reaffirmation of ILO values and ILO’s key role in helping to achieve progress and social justice in the context of globalization. The Declaration promotes decent work through a coordinated approach to achieving four strategic objectives: full and productive employment, social protection, social dialogue, and fundamental principles and rights at work with gender equality cross-cutting. By adopting this text, governments, employers’ and workers’ organizations the ILO’s member States commit to enhance the ILO’s capacity to advance these goals through the Decent Work Agenda.

Decent work has become a universal objective and has been included in major human rights declarations, UN Resolutions and outcome documents from major conferences including Article 23 of the Universal Declaration of Human Rights (1948), the World Summit for Social Development (1995), World Summit Outcome Document (2005), the high level segment of ECOSOC (2006), the Second United Nations Decade for the Eradication of Poverty (2008-2017), Conference on Sustainable Development (2011) and in the UN’s 2030 Agenda for Sustainable Development (2015).

C) The UN 2030 Agenda for Sustainable Development (2015) and Decent Work

Goal 8 on Sustainable and inclusive economic growth and Decent Work for all is one of 17 Global Sustainable Development Goals. Under this goal, the target is to among others things, promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation. Encourage the formalization and growth of micro-, small- and medium-sized enterprises (MSMEs), including through access to financial services; achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value; substantially reduce the proportion of youth not in employment, education or training; take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and end child labour in all its forms; protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment; devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products; and develop and operationalize a global strategy for youth employment and implement the Global Jobs Pact of the International Labour Organization.

D) Trade, investment, Employment creation and Decent work: the race to the bottom

In order to attract foreign investors, governments promise favourable treatment of the investors with investment contracts or concession agreements that include stabilisation clauses, freezing clauses, economic equilibrium clauses and taxation provisions, among others. The literature makes a strong case that these clauses and arrangements have a negative impact on human rights, domestic legislation and public regulation. As a result, some governments have risked lowering their labour standards to remain competitive in a world economy which is rooted in neoliberalism and responsible for depressing wages and working conditions. Within countries arranged under similar regional economic blocs such as Uganda, Kenya, Tanzania, Rwanda, Burundi and South Sudan, ensuring that they can attract FDI, and or appear in a higher position in the World Bank Doing Business Report, has become more important for these governments instead of advancing decent work, and labour standards, including protecting labour rights of their citizens.

National governments can help create decent work through economic and industrial policies, public investment and regulations. However, the neoliberal approach to globalization has resulted in a downward pressures on wages, weakening of labour and environmental regulations, off-shoring, privatisation/outsourcing and reduced macroeconomic policy flexibility – which have diminished the ability of national governments to achieve the goal of decent work on their own. Businesses create jobs from the local to international levels, and those operating across borders can affect wages and working conditions internationally. Multinational enterprises typically locate operations in countries where wages are at their lowest and so called "worker's rights" are less protected, or there is weak enforcement of rights. This is antithetical to the Decent Work Agenda, and it does not contribute to sustainable and equitable economic development. Trade unions have the role of assisting employees in advocating for elements of Decent Work, from a so-called "living wage", to health insurance, to workplace safety standards, to equitable treatment. Trade unions face the challenge of meeting their members' immediate needs at home while supporting job creation and "workers' rights" in their countries, regionally and globally. International Financial Institutions provide loans or other assistance to national governments, and private sector entities, and require loan/ funding recipients to implement certain policy measures. However, existing programs generally exclude employment targets and have even been known to reduce job creation in the short term, as jobs which exist only through government market distortions are replaced with economically viable employment.

Trade negotiators can advance the Decent Work Agenda globally by including labour standards in trade and investment agreements, while policy makers (among others) can support their implementation. However, for this to be achieve, it requires the proactive engagement of trade unionists.

Primacy of social and human rights throughout trade agreements – every part of trade agreement (such as sections on investment protection or service listing) should be consistent with human rights commitments. For trade unions it is crucial that there are commitments to the Decent Work agenda (which include the ILO core conventions) and the Sustainable Development Goals including Decent Work for all.

Ensure adequate resources are provided to enable trade unions to be involved in monitoring labour rights commitments in agreements, and put in place Labour Attachés.

Finally, a strong labour chapter is urgent but there are also threats for workers in other parts of trade agreements – such as regulatory cooperation, public services and investment protection – that must also be addressed in order to ensure workers' rights are respected in trade agreements.

Recommendations developed by ETUC

Figure 1.

The ILO definition of labour provisions describe them as "any standard which addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation". This wide definition mirrors the large variety in labour provisions and their wide scope. At the minimum, all labour provisions include at least two core functions, explicitly or implicitly; (1) they describe a certain set of standards or commitments, and (2) they outline a mechanism to ensure compliance and adherence to these standards[5].

Nearly half of trade agreements concluded in the past ten years included either a labour chapter or labour provision that makes reference to international labour standards and ILO instruments. The evidence so far suggests that labour provisions have been an important tool for raising awareness and improving laws and legislation with respect to workers' rights, increasing stakeholder involvement in negotiation and implementation phases, and developing domestic institutions to better monitor and enforce labour standards[6]. But challenges remain, particularly with respect to sustainability of impacts, coherence, and cooperative efforts.

Labour provisions are found either in the main text of the trade agreement itself or as a memorandum attached to it, with or without explicit reference in the main text. In the main texts, labour provisions are found in separate chapters on labour or in chapters such as sustainable development, cooperation or investment.

[5] https://www.unescap.org/sites/default/files/Background%20Material%20-%20Labour%20provisions%20in%20Asia-Pacific%20PTAs.pdf Accessed 16th September 2020
[6] Assessment of labour provisions in trade and investment arrangements, 2016 https://www.semanticscholar.org/paper/Assessment-of-labour-provisions-in-trade-and-Aissi-Corley-Coulibaly/1cf5aa91e1834ed7faf2fc2b9ef817c0ff01480f Accessed 16th September 2020

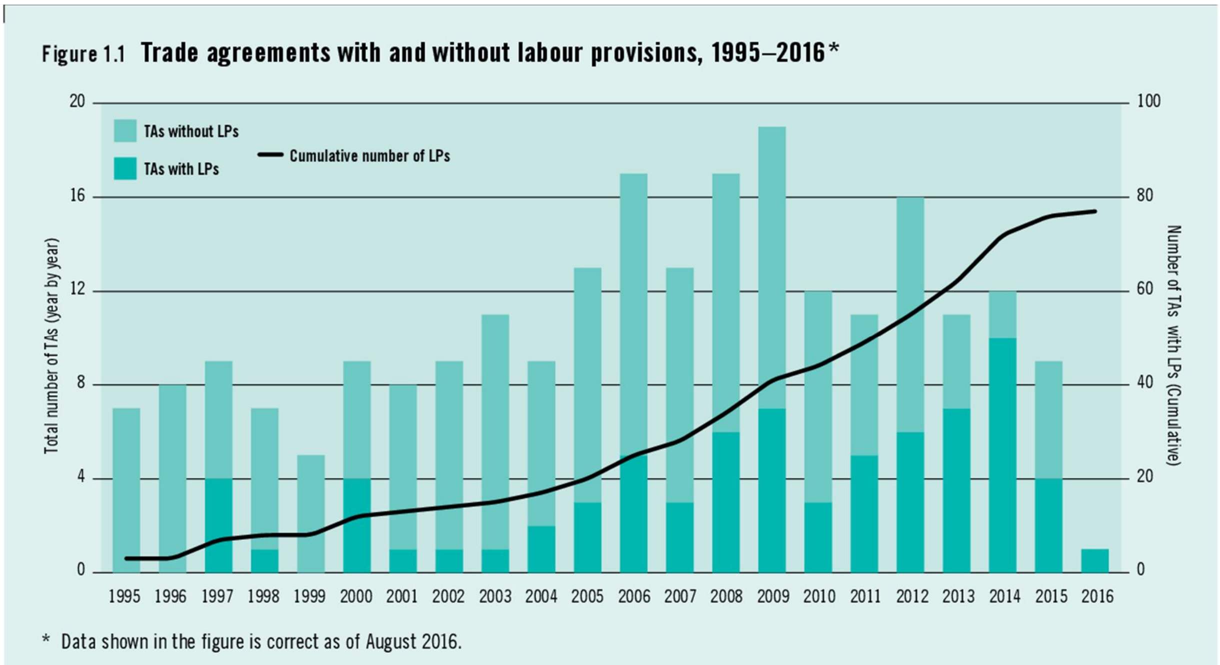
Figure 1.1 Trade agreements with and without labour provisions, 1995–2016*
TAs without LPs
TAs with LPs
Cumulative number of LPs
Total number of TAs (year by year)
Number of TAs with LPs (Cumulative)
20
16
12
8
4
0
100
80
60
40
20
0
1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016
* Data shown in the figure is correct as of August 2016.

Figure 2.

1. World Trade Organisation

A) As well as being bound by the rules of bilateral trade agreements, East African Community countries are also bound by the rules of the World Trade Organisation (WTO) as members of this organisation.

The WTO is the only global international organization dealing with the rules of trade between nations. The WTO officially commenced on 1 January 1995 under the Marrakesh Agreement, signed by 123 nations on 15 April 1994, replacing the General Agreement on Tariffs and Trade (GATT), which commenced in 1948. It is the largest international economic organization in the world.

At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The WTO deals with regulation of trade in goods, services and intellectual property between participating countries by providing a framework for negotiating trade agreements and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements, which are signed by representatives of member governments and ratified by their parliaments. The WTO, in theory, prohibits discrimination between trading partners, but provides exceptions for environmental protection, national security as well as a few other areas.. Trade-related disputes are resolved by independent judges at the WTO through a dispute resolution process.

East African countries are represented in the Africa bloc and some countries are in the Least Developed Countries bloc.

The principles of the WTO include Non-Discrimination, Most Favoured Nation (MFN), National Treatment, Predictability and Transparency, Liberalization: Freer trade through negotiations, Goods (tariffs, NTMs), services, rules, Trade remedies, 'Trade and development', Special and Differential treatment, and mainstreaming trade into national development policies'. The WTO agreements cover goods, services and intellectual property.

One of the key WTO agreements include the Agreement on Agriculture. The long-term objective of the Agreement on Agriculture, as stated in the preamble, is "to establish a fair and market-oriented agricultural trading system". The preamble also refers to food security and protection of the environment but not to employment in agriculture. As part of the WTO agreements, the Agreement on Agriculture should, nonetheless, aim to further the objective of ensuring full employment, as stated in the preamble of the Marrakesh Agreement establishing the WTO.

One of the most contentious aspects under the Agreement on Agriculture has been the amount of domestic support that developed countries give to their farmers. In fact, in the recent Ministerial Conference MC 11, concerns by Australia and New Zealand were raised noting that between 2001 and 2016, domestic support was estimated to be between \$322 billion – \$740 billion by large economies. However, in countries like Uganda, Kenya, Tanzania, Rwanda and Burundi, the size of their domestic support is either negligible or non-existent, something that puts these countries are risk of being less productive, underemployed, and therefore unable to compete against very cheap imports that flow from developed economies.

The WTO has so far failed to enforce workers' rights. While the First WTO Ministerial Conference in Singapore in December 1996 Ministerial Declaration, affirmed a 'commitment to the observance of internationally recognized core labour standards', – freedom of association, no forced labour, no child labour, and no discrimination at work, there are currently only WTO rules allowing tariffs to be imposed on goods produced using forced labour, there are no rules to promote respect for any other labour standards.

There are a number of negotiations currently taking places at the WTO which include global rules on e-commerce, investment facilitation for development, Micro Small and Medium Enterprises, market access, agreement on agriculture, etc.

Other multilateral bodies

EAC countries are also part of a number of other multilateral bodies which influence trade rules and workers' rights, these include:

- UN Conference on Trade and Development (UNCTAD)
- UN Tax Body
- Global Compact with Africa;
- The EU Marshal plan
- World Bank
- International Monetary Fund
- OECD

3. Understanding the Engagement structures at global, regional and national level to aid effective trade unions' participation

This module covers the strategies, structures and stakeholders for engagement in the trade and investment negotiation process. This process must begin with mapping where power lies and the stakeholders already involved in the process. This is because, advocacy is all about influencing powerful actors to bring about the changes you are seeking. It is also useful to identify potential allies likely to support the demands and actions you are proposing. Identify opponents likely to question the demands and actions you are proposing.

A) Negotiating groups in the WTO

Within the WTO, the physical presence of country trade policy negotiators in Geneva at the WTO carries opportunity for effectiveness and quality of legal and institutional participation of different stakeholders. But in order to even strengthen their voice more, African countries, just like other countries have formed or are part of a number of countries to form coalitions. These groups often speak with one voice using a single coordinator or negotiating team. These are some of the most active groups in the WTO. More specifically, there is the ACP group, the Africa Group, the LDC group, G-90, G-20 where Tanzania is the only EAC member, G-33 where Tanzania, Kenya and Uganda are the only EAC members, the W52 Sponsors, and Paragraph 6 countries of NAMA where Kenya is the only EAC member.

B) National level negotiating structures

i) The Republic of Uganda

At the national level, individual countries have put in place several negotiation mechanisms that consist of a committee of multi stakeholders. In Uganda, for example, the Ministry of Trade, Industry and

IN A NUT SHELL

The current framework of trade and investment policies, laws & agreements have been criticized for:

Generally being imbalanced as they:

- **focus on promoting commercial interests and protecting the rights of investors, investments, at the expense of the labour and environment, rights and development interests of the local communities.**
- **Only provide for the rights of investors without providing for their roles and responsibilities in development, human rights protection, and the environment sustainability.**

Instead, they offer:

- **foreign companies excessive rights at the cost of the host communities rights and development objectives**
- **They constrain the policy space of governments to pursue development including making policies without foreign or commercial interference**
- **They undermine government's right to regulate the activities of companies in order to protect things like employment, environment and health rights of citizens. Limit government's ability to execute their state obligations to protect, fulfill and respect their citizens' rights**

The most problematic features in trade and investment related policies, laws, and agreements that are used by corporations to infringe on human rights protection are:

- **Wide definition of what constitutes an investment which broadens the spectrum for legal enforcement of investor rights**
- **Investor State Dispute Settlement**
- **Prohibition of indirect expropriation**
- **National Treatment and Most Favored Nation Treatment**
- **Fair and Equitable Treatment**

Cooperatives which handles Multilateral Trade and Investment negotiations has the Inter Institutional Trade Committee (IITC). Positions papers developed within this committee, form the country position. The IITC brings together both public sector, private sector, trade unions (?), civil society, Ministries, departments and Agencies to discuss trade and trade related policy issues. However, it is constrained by; lack of capacity; limited funding and limited scope of its mandate given that it was set up to focus on WTO matters only.

ii) The Republic of Kenya

In Kenya, several consultative committees have been established. Firstly, the National Committee on the WTO which was formed in 1995 right after Kenya became signatory to the WTO in 1994. It is the main consultative forum that brings together all stakeholders from the public sector, private sector, and the civil society to discuss trade policy issues related to the WTO. The Joint Industrial and Commercial Consultative Committee (JICCC) and the Department of External Trade play a significant role in coordinating the discussions among the stakeholders; after which, the ministry draws up a cabinet memorandum seeking cabinet approval. In negotiating the Economic Partnership Agreement (EPA), preparations for the EPA negotiations were facilitated through the KEPLOTRADE Trade Negotiations Support Programme. However, trade union (?) and civil society engagement in this process was only through a separate forum, the National Development Trade Policy Forum (NDTPF).

iii) The United Republic of Tanzania

In Tanzania, the Trade Integration National Steering Committee which is chaired by the Ministry of Industry, Trade and Marketing (MITM) is responsible for providing overall strategic guidance to trade sector development and trade policy making within the framework of the Tanzania Trade Integration Strategy (TTIS). A TTIS Implementation Team led by a Team Leader and placed within MITM's Department for Policy and Planning under the leadership of the Director for Policy and Planning is responsible for ensuring overall day-to-day coordination of the TTIS implementation effort, providing substantive support to the National Steering Committee, and monitoring the efforts of the MITM. The TTIS National Steering Committee (NSC) provides overall guidance to the implementation of the TTIS.

iv) The Republic of Rwanda

In Rwanda, one key forum for consultation is the Private Sector Development Cluster (PSC). This Cluster reports to MINECOFIN under the ongoing Joint Sector Review and Joint Budget Review process, a monitoring and evaluation structure for the EDPRS. The Cluster meets every six weeks to discuss key issues in the sector. It is chaired by MINICOM and is co-chaired by a development partner. The forum is a crucial arena for bringing together development partners, Government and the private sector in dialogue on a range of issues on trade, the wider business environment and the Private Sector. A further forum on trade and development issues is the National Development Trade Policy Forum (NDTPF), which also serves as the steering committee for the Enhanced Integrated Framework (EIF). Although the NDTPF does not clarify its frequency of meeting, it is used as a consultative mechanism to make key decisions on the approach of Rwandan trade negotiators in regional and international trade negotiations.

v) The Republic of Burundi

In Burundi, a 2008 presidential decree established a public-private consultation framework with a general assembly, technical groups and permanent secretariat in order to make the dialogue on investment climate and trade-related issues more systematic.

C) The East African Community (EAC) Regional level structures

The EAC consists of a number of engagement structures in the areas of trade and investment i.e. the EAC Secretariat; the East African Legislative Assembly under the Committee on Communication, Trade and Investment; the Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI); the EAC Secretary Generals Forum; and the EAC Summit. At the national level, the EAC is represented by the Ministries of EAC Affairs.

D) Lessons from past Stakeholders' engagements which has resulted into successes

1. Influence UK-Kenya negotiations

When the UK and Kenyan governments announced the conclusion of a trade deal in November, trade unions in Kenya, East Africa and the UK collaborated to produce a joint statement opposing the agreement.[7] The EATUC-TUC Aid project developed further lobbying activities including meetings between trade unions and civil society with MPs and social media campaigns. This helped push the Kenyan government to agree in February 2021 to delay the UK-Kenya trade agreement being presented to parliament until there was engagement with trade unions and civil society. While the UK-Kenya trade deal was subsequently ratified by the Kenyan parliament, MPs and trade union members are now more aware of trade union concerns about the agreement and the Kenyan government has agreed to review the UK-Kenya trade deal in 2022. Concerns about lack of engagement will continue to have a high profile due to the legal case civil society groups are currently bringing against the Kenyan government for agreeing the UK-Kenya agreement without properly consulting agricultural groups.[8]

2. Influencing the EU-EAC-EPA negotiations

The EU-EAC-EPA negotiations began in 2008. This process was clouded with power asymmetry between a highly developed bloc, EU and a least developed bloc, EAC. As mentioned above, Kenay and Rwanda were coerced into concluding negotiations, signing and other in to ratifying due to threats of being suspended from the EU market. The EU also increased pressure on countries as they were meeting the costs of the partner states negotiating teams up to 85%.

[7] https://www.tuc.org.uk/campaign-groups-respond-announcement-uk-kenya-deal-has-been-finalised
[8] https://www.cityam.com/uk-kenya-trade-deal-ratified-overnight-despite-ongoing-legal-challenge/

It is an agreement which threatens EAC integration, industrialisation prospects, revenue losses, subject EAC to commodity dependence by exporting raw materials to the EU and its WTO+ (goes beyond the WTO scope by bringing in issues that were rejected by LDCs members of the organization).

The EAC's negotiation with the EU was guided by the framework of the EAC Negotiations Act. Positions were developed through the National Negotiation forums and submitted to the technical negotiation forum at the regional level for harmonization. Consultative meetings that were held by CSOs, private sector, farmers, trade unions and manufacturers, also developed statements/ position papers which informed the country and region's positions. Aside from the National Negotiation Fora within the individual partner states, the EPA also had a joint parliamentary…….?

The negotiation process has attracted a lot of stakeholder participation, i.e. manufacturers, trade unions, civil society, members of parliament. Rise of popular civil society movements like STOP THE EPA CAMPAIGN, MAKE TRADE FAIR, KENYA SMALL SCALE FARMERS, protesting the agreement, which is based on comprehensive analyses revealed that it would undermine the development aspirations of the EAC partner states in general but also specifically its citizens including small scale farmers, MSMEs, workers, among others. Apart from these groups, gig corporations, especially within the flower sectors also had interests for fear of losing the market access opportunity once the EAC partner states decided not to sign the agreement.

Support from the civil society at the global level was also very instrumental. Trade unions in the EU signed a joint statement with trade unions in Africa opposing the Economic Partnership Agreements in their current form.[9]

By linking up with the EU based civil society organizations like Both ENDS, 11-11-11, CONCORD, Action Aid, Oxfam and International Trade Union Confederation (ITUC). This aided civil societies in Africa with information on updates from the EU, and they disseminated African civil society positions and statements within the EU institutions. Solidarity partners like Rosa Luxemburg Stiftung also supported meetings between the EAC civil society and the EU Members of Parliament to present their positions. Identifying and engaging with political groups in the EU parliament helped to cause the EU to revise some of the timelines for submitting positions and deadlines for countries signing the agreement, and to undertake further consultation.

3. Influencing review of Bilateral Investment Treaties within the EAC region – the case of the Tanzania-Netherlands BIT

[9] https://www.etuc.org/en/publication/joint-ituc-africaetucituc-statement-eu-economic-partnership-agreements-central-africa

African states have for a long time signed Bilateral Investment Treaties (BITs) without comprehensive negotiations. BITs have for long been viewed as the magic bullet to increased FDI inflows. As a result, upon signing, many governments have not paid attention to their content, including their expiry with the hope that having these BITs in force will guarantee their countries FDI inflows from the countries with which they have signed the treaties. Consequently, the majority of BITs have been automatically renewed since they contain a clause which stipulates that if notice is not given by either parties to terminate the agreement, but also owing to it, it will automatically be renewed. Other reasons why BITs have been quietly rolled over include the limited appreciation by policy makers of the link between the provisions within the BITs and their implications on national laws and policies, and on the human and environmental rights, even though in other cases, the genuine lack of awareness by officials in charge of the BITs implementation has resulted in countries missing out of the expiry dates.

In the case of the United Republic of Tanzania, Both ENDS in partnership with SEATINI in July 2018, following the realization that the Tanzania-Netherlands BIT was about to expire, mobilized civil society Organizations, human rights lawyers and workers' representatives in Tanzania to appeal to the government to terminate the treaty. The civil society organizations included Haki Madini, Legal and Human Rights Center, Tanganyika Law Society, EACSOF, and EATUC. The Treaty was supposed to be terminated before 1st October 2018, beyond which it would be automatically rolled over for another 10 years. The treaty, which included a number of problematic provisions such as the provision on Investor State Dispute Settlement (ISDS) had like other BITs, exposed the Tanzania government to international arbitration.

Its automatic renewal meant that for the next 10 years the Tanzania government would risk being sued under the provisions of the treaty even if the actions it took were in the interest of protecting the rights of its citizens and environment as well as pursuing its national development interests. This recognition was drawn from the country's previous experiences such as in 2017, when attempts by the country to undertake a number of reforms in our mining laws, sparked off suits by foreign companies against the country in international courts of arbitration based on the ISDS provision in Tanzania's BITs and contracts. The claims brought against the country were made on the basis that the country, in reforming its mining laws was violating, among other provisions, the provisions prohibiting expropriation. Besides this, Tanzania had also been sued by foreign companies that have raised various claims. These include Standard Chartered Bank, Acacia Mining, Symbion Power, Bi Water Gauff (Tanzania) Ltd and Agro EcoEnergy project.

Through the campaign by organizations in the North and South, led by the partnership between Both ENDs and SEATINI, an appeal was presented to the Tanzania government to take advantage of the opportunity of the expiry of their BIT with the Netherlands to redefine the kind of BIT they would wish to have in future. The campaign was contributed to by a number of key actors who played varying roles. Notably, the Northern CSOs i.e. Both ENDS, SOMO, Traidcraft and Vrijshcrift provided technical support to the Southern CSOs, human rights lawyers and workers' rights activists both online, media and physically which helped to technically sustain the campaign both at the national level in Tanzania and globally. The outcome of the engagements led to the development of a statement and letter which were submitted by the Tanzania civil society to the Attorney General on 18th September, 2018 in Dar es Salaam. The Tanzania government eventually wrote to the Netherlands government on 27th September 2018 to terminate the BIT.

This successful campaign depicted the importance of stronger North to South collaborations in order to effectively challenge the existing unjust investment regime.

4. The US-EAC- Trade and Investment Negotiations

In June 2012, the United States (U.S) and the East African Community (EAC) met at the margins of the Africa Growth Opportunity Act (AGOA) Forum in Washington D.C. and agreed on the scope of the U.S. – EAC Trade and Investment Partnership. Subsequently, negotiation for the investment treaty began with a joint consultation meeting of Senior Officials from the EAC Member States on 26th-28 July 2012 in Arusha in response to the directive of the EAC Ministers responsible for Trade and Investment and the U.S Trade Representatives. These negotiations are built on the foundation of the AGOA and the U.S-EAC Trade and Investment Framework Agreement (TIFA) and were initially undertaken on the basis of the 2012 U.S. Model Bilateral Investment Treaty (BIT).

However, civil society raised concerns on the structure and content of the U.S. 2012 BIT model template noting that the outcomes of negotiations based on this template would not address the EAC region's development needs. They argued that these negotiations would minimize the authority, rights and policy space of the EAC to pursue its development objectives.

During the meeting of the EAC Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI) held on 26th to 28th September 2012, it was agreed that the EAC should develop a joint Investment Policy which it would use in informing the TIP and other future investment negotiations with third parties. The draft model investment treaty was discussed during the EAC experts meeting on the EAC-U.S.-Trade and Investment partnership held on 14th-18th April 2014. It should be noted that during this meeting, the position of the U.S., during the EAC-U.S. Joint Technical Officials Meeting held in February 2014, had pointed out that they are not willing to amend the content of the U.S. Model Bilateral Investment Treaty, noting that they would be willing to include areas of EAC interests either in the footnotes or Annexes to the proposed Bilateral Investment Treaty. This position implied that the EAC would not have an opportunity to have their interests covered and would disadvantage the Partner States as equal negotiating partners with the U.S. The EAC thus proceeded with the development of the EAC model investment treaty by presenting the draft to partner states for consultation. This model investment treaty has recently been approved by the SCFTI in February 2016.

On 5th-6th April 2016, the EAC-U.S- Technical officials met to discuss the Trade and Investment partnership more than two years after negotiations were halted to allow the EAC to develop a model investment treaty. During this meeting, the parties recognized the importance of the regional investment treaty and acknowledged that progress had been hampered by the lack of consensus on the approach for discussions on the regional investment treaty. When the EAC Model Investment treaty was adopted in 2016 by the SCTIFI, the EAC presented it to the US with the hope that the negotiations that had previously been halted would be resumed. However, the US noted that they didn't wish to proceed with the negotiations but would like to find alternative ways to cooperate with the EAC in the area of investment.

Advocacy and Engagement strategies

The strategies for engagement to influence the agenda and decision-making processes require that the trade union representatives engage directly with:

- Policymakers and political advisors (eg. through lobby meetings, and development and submission of policy reports)
- Trade union allies in the Global South and Global North
- Media
- Employer organisations
- Civil society organisations

Clear policy recommendations spelling outwhat action(s) you want policymakers to take is also imperative, backed up by research and evidence of the benefits to workers, all citizens and the country's development objectives.

Your approach:

Questions to help you identify your overall approach and your activities:

- What are your top priorities?
- What are the main objectives linked to these priorities?
- What is the timeframe you're working in?
- Who do you need to influence to achieve your objectives?
- What approach and activities are likely to persuade the person or institution we want to influence to take the action(s) we are seeking, based on past experiences?

- What kinds of activities can we engage in, given our skills, capacity, knowledge and expertise?
- How do we engage members and what are the expectations of our membership, managers, donors, supporters?
- What are the concerns of our membership regarding the proposed investment agreements/trade deals and what approach do they want us to take?How will we ensure that promoting equality is integrated into the approaches we take?
- What processes, 'hooks' or opportunities are coming up, for example regional trade talks, regional meetings between government officials, formal consultations, national or local elections?
- How can you build/strengthen alliances with other influential organisations, eg. employer organisations
- Which members of parliament will be sympathetic to your campaigns?
- Are there any media outlets or social media commentators sympathetic to your campaign?
- How can you build links with other organisations in the region or internationally to support the campaign?
- What social media channels can you use to build your campaign?
-

Who to involve?

Think about how you will involve all the members of the different trade unions, that have either been affected by trade deals/international investment agreements already or could be affected in the future (eg. users of essential services, health workers, communities affected by a company's environmental impact, etc). This should especially be done from a sectoral perspective as the challenges facing one trade union within a given sector may differ from those facing another within another sector. And it should also be done from an equalities perspective by including a range of voices. This will also give your advocacy initiative more legitimacy in the eyes of those you are seeking to influence. Consider working in coalition with other organisations in civil society and employer organisations at national, regional and global levels, both nationally and in the region in order to maximise the impact of your advocacy. Given that the EU, UK and the US are negotiating trade and investment agreements through regional blocs as well as bilaterally, networking/collaborating with trade unions and civil society in other countries in your region in order to create a coordinated advocacy initiative is critical.

Advocacy monitoring and evaluation should cover the:

- Changes that happened. Were these the outcomes we were seeking?
- Advocacy activities. Are they still the most appropriate activities?
- Resources being invested and whether they are still being used for the right activities. Engagement with members.
- **How will these be monitored and by whom?**

Matrix to guide Advocacy

Problem / Issue	Desired change	What needs to be done / Tools	Actors to engage / Target
Limited access to Trade and Investment related Information affecting proactive engagement of Trade Unions in these processes	Increased access to (and generation of) Trade and Investment related Information by Trade Unions	• Undertake research (policy briefs; articles, newsletters, issue papers); • Document Voices of Workers on Trade and Investment Agreements and processes; • Produce simplified and translated IEC materials; develop Position Papers & Statements; • Undertake Social Media engagements; • Create a platform to share periodical updates on Trade and Investment Agreements and processes; • Engage Government Institutions for Information Sharing	**Government Actors:** EAC Secretariat; Ministries of Trade, Investment, Finance, Agriculture and Labour in respective EAC Partner States; Office of the President in respective EAC Partner States; LESCO; National Parliaments; EALA **Trade Unions:** TUCTA; ZATUC; Sector Unions; EATUC; SATUCC; OATU; ITUC-Africa; TLS; EALS **CSOs:** SEATINI; HakiMadini; Haki-Kazi; HakiRaslimali; ECONEWS Africa; REPOA; Institutions of Higher Learning (DAR, Makerere; JKUAT)
Limited technical Capacity of Trade Unions to raise	Increased capacity of Trade Unions to link Trade and	• Organise Trainings;	

awareness of trade union officials and members about trade issues	Investment Policies and Processes to Labour Rights	• Undertake Awareness raising visits; • Organise Consultative meetings/workshops; • Organise Media Engagements	
Limited Linkages between Sector Unions to engage in lobbying on Trade and Investment policies and Processes.	Enhanced partnership and collaboration between Sector Unions engage in lobbying on Trade and Investment policies and Processes.	• Identify Focal persons; • Undertake joint research, conferences and lobby meetings; • Share periodical updates (on the platform) on Trade and Investment Agreements and processes	
Limited linkage between Trade Unions with like-minded CSOs	Enhanced partnership and collaboration between Trade Unions with like-minded CSOs		

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