

# **TRAINING MANUAL**

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

### **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 economic transformation and development there is need for an appropriate policy framework which interlinks the different sectors to facilitate increased domestic production and productivity. In fact, trade and trade related matters like investment are the most regulated sectors, with numerous policies, laws and agreements in place at national, regional and global levels.

Generally, the trade and investment policy making process involves interplay of different institutions and players through a complex process to guide the making of decisions. These include engagements at ministry level in individual countries, engagements at regional level and even at the global level within multiple groupings i.e. Africa group, Least Developed Country (LDC) group, among other. These processes are often influenced by different players with different power dynamics including corporations; influential institutions and powerful countries like the World Bank, European Unions, United States; business lobbyists, and select groups of media practitioners. Yet, trade unions, civil society, farmers' groups, and consumers, especially from the LDC groups, are seldom or sometimes completely unable to make their input due to a number of factors. In many cases, the level and quality of participation by these key stakeholders has a direct bearing on the kind of trade and investment policy and legal frameworks in place i.e. whether such frameworks contribute towards economic transformation and sustainable development or whether they derail this progress.

This underscores the importance of active and increased technical capacity of stakeholder to effectively engage and influence the policy making process. This is especially given the rising trend of modern slavery, amidst a rising unemployment rate, the mismatched technological change vis a vis the rate of labour skills development in the South, coupled with an increasing push by states, especially in the North to put in place global rules for various trade related issues. In parallel, the cost of essential parts of the middle-class lifestyle have increased faster than inflation. This happened in the context of rising job insecurity in fast transforming labour markets. The limited interrogation by key actors like trade unions of the implications these developments, informed by

neo-liberal ideologies, could have on workers' and how they can be challenged, is something that is imperative.

It is against this background that SEATINI Uganda together with EATUC have developed this Training Manual.

## **Objectives of the Manual:**

The Objective of the manual is to **enhance the capacity of East African trade unions to advocate for trade and investment policies and agreements that deliver decent work and protect workers' rights.**

The manual will discuss 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. The manual will examine the institutional frameworks for trade and investment negotiations, and classify the major stakeholders involved (both government and Non State Actors) and their respective roles, at regional, continental and global levels. This will analyse 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 processes concerning trade and trade related negotiations that Uganda and the EAC are involved 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.

## **Structure of the training manual**

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

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

- A) ILO Decent Work Agenda
- B) The UN 2030 Agenda for Sustainable Development (2015) and Decent Work
- C) Trade, investment, Employment creation and Decent work: the race to the bottom

### **II. 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

### **III. Bilateral and Regional Trade and Investment Agreements and their linkage to descent work.**

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

### **IV. 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

## **Step by Step Process**

- i. Welcome the participants; use an ice breaker to help participants get to know each other.
- ii. Have the participants share some of their expectations.
- iii. Through brainstorming prompt the participants to discuss the key issues to be covered in the session.
- iv. Encourage participants to share their experiences on the subject matter and have the answers recorded on a flip chart.
- v. Enrich the discussion using the facilitators' notes and case studies.

## **Training Methods**

The facilitators will use different methods that enable adult learning and these include:

- I. Lectures
- II. Brainstorming
- III. Group discussion
- IV. Case studies
- V. Question and answer
- VI. Plenary discussions

## **Training aids**

- I. Black board/Flip chart
- II. Chalk and markers
- III. Masking tape
- IV. Handouts (Notes and Case Studies)
- V. Projector
- VI. Sticks

## **Proposed methods to Evaluate Participants' Learning, these may include:**

- I. Observation
- II. A simple test/ learning exercise
- III. Verbal interaction on key issues learnt

# **1. The ILO Decent Work Agenda and SDG 8**

## **A) The 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.

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).

## **B) The UN 2030 Agenda for Sustainable Development (2015) and Decent Work**

Decent Work 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.

### **C) Trade, investment, Employment creation and Decent work: the race to the bottom**

Some governments have risked lowering their labour standards to remain competitive in a world economy which is 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 create decent work through economic and industrial policies. However, the forces of globalization – such as downward pressures on wages and reduced macroeconomic policy flexibility – have diminished the ability of national governments to achieve this goal on their own. Businesses create jobs from the local to international levels, and those operating across borders can affect international wages and working conditions. Multinational enterprises typically locate operations in countries where wages are at their lowest and so called "worker's rights" are less prominent. This is antithetical to the Decent Work Agenda, and it does contribute to 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. 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 achieving, it requires the proactive engagement of trade unionists.

## **2. The Multilateral Trading System**

The Multilateral Trading System is made up of trade and trade related agreement (also known as trade pact) with a wide-ranging taxes, tariff and trade treaty that often includes investment guarantees, rules around intellectual property, trade in goods, and trade in services. Some of the most common trade and trade related agreements consist of common features like (1) reciprocity, (2) a most-favoured-nation (MFN) clause, and (3) national treatment of nontariff barriers. This module contains sessions that will cover the negotiations in the Multilateral Trading system i.e. the WTO process at the moment had a number of ongoing negotiations. These include, among others, negotiations for global rules on e-commerce, investment facilitation for development, Micro Small and Medium Enterprises, market access, agreement on agriculture, etc. On the other hand, under the United Nations, processes such as the UN Conference on Trade and Development (UNCTAD), and the UN Tax Body decision making etc.; the Global Compact with Africa; the Marshall plan; and the role of various multilateral institutions and even powerful countries i.e. World Bank, IMF, OECD, BRICS, European Union, United States, China, and Japan are also ongoing, and have implications on Uganda's and the EAC trade in the global market.

### **A) Introduction to the WTO Agreement; The Basic principles**

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 prohibits discrimination between trading partners, but provides exceptions for environmental protection, national security, and other important goals. Trade-related disputes are resolved by independent judges at the WTO through a dispute resolution process.

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 ("fair" trade), Trade and development, Special and Differential treatment, and mainstreaming trade into national development policies. The WTO agreements cover goods, services and intellectual property.

## **B) Agreement on Agriculture and its implication on employment creation and decent work**

One of the key agreements includes 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 at risk of being unproductive, underemployed, and therefore unable to compete against very cheap imports that flow from developed economies.

At the First WTO Ministerial Conference in Singapore in December 1996 the issue of Decent Work was taken up and addressed in the Ministerial Declaration, which reaffirmed 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. Although this was recognized, while the decisions of the WTO can have far reaching implications on employment and decent work, the WTO is a trade regulating body and therefore cannot engage in regulating labour related aspects, despite impacting it adversely.

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

Within the last decades, the number of trade and investment agreements at national, regional and bilateral levels has grown greatly. These agreements have had a substantial impact on national economies, employment, gender, poverty and inequality. At the same time however, the involvement of trade unions has remained very limited. Many bilateral and regional trade and investment agreements either signed or under negotiations by African states do not contain labour provisions, which can be fundamental in reducing the negative impacts on workers. Instead, they contain provisions such as National Treatment, Most Favoured Nation Treatment, Prohibition of Performance Requirement Measures, strict Rule of Origin, etc. While this is so, other countries/ regional groupings such as the EU, US have provisions focused on the core labour standards, often including supplementary provisions such as occupation health and safety, minimum wages and hours of work. Similarly, some agreements provide for consultative mechanisms for trade unions, but this has not been the case for trade and investment deals developed for Africa. Investment agreements have frequently given a special privilege to multinational companies, which can take legal action against governments if policy changes threaten to reduce their profits.

The EAC partner states are signatory to a number of Trade Agreements, both reciprocal and non-reciprocal and, both bilateral and regional. Notably, the non-reciprocal trade agreements such as the Everything But Arms (EBA) and General System of Preferences (GSP) of the European Union and the Africa Growth Opportunity Act (AGOA) of the United States have been available to the EAC partner states as a response to the WTO requirement for developed countries to provide Special and Differential Treatment to Least Developed and Developing Countries.

Currently, the EU and US are pursuing reciprocal trade agreements with the EAC partner states. Specifically, in 2008, the EU embarked on a negotiation process with the EAC for an Economic Partnership Agreement under the auspices of the EU-ACP-EPA. However, until today, only Kenya and Rwanda have signed the agreement, making it unable to come into force. The EU has also embarked on the Post Cotonou process to redefine the EU - Africa relation. The UK has also expressed interest to partner with Africa around trade and investment issues. On the other hand, the United States, has also since 2012 made attempts to negotiate and sign a Trade and Investment Partnership Agreement with the EAC, however, with no success. The US has recently returned with a proposal to negotiate with individual states a reciprocal Free Trade Agreement, with the first country being Kenya. Aside from these states, countries like China, Turkey,

Reciprocal investment agreements also known as Bilateral Investment Agreements were signed between majority of the EU countries and African countries right after the latter got their



independence. At the moment, the individual EU states and individual EAC states have signed and have BITs in force. BITs are international agreements establishing the terms and conditions for private investment by nationals and companies of one state in another state. Investment agreements have frequently given a special privilege to multinational companies, which can take legal action against governments if policy changes threaten to reduce their profits.

At the regional level, the EAC partner states signed the Customs Union and Common Market, and are currently working towards a Monetary Union. Some of the members of the EAC are also members of COMESA and SADC. They have signed the COMESA-EAC-SADC Tripartite and are now working towards the Africa Continental Free Trade Area.

### **A) The Case study of the EU-EAC-Economic Partnership Agreement (EPAs) and decent work**

The Africa Caribbean Pacific (ACP)-European Union (EU) EPA Negotiations were launched in 2002 under the Cotonou Partnership Agreement (CPA) where the Parties agreed to conclude new World Trade Organization (WTO) compatible trading arrangements, remove progressively barriers to trade between them and enhance cooperation in all areas relevant to trade (CPA Article 36.1). In a bid to strengthen their regional integration agenda, the five EAC partner states in 2007 decided to reconfigure and negotiate the EPAs as a bloc, and subsequently, on November 27th 2007, they initialled the Interim Framework Economic Partnership Agreement (FEPA) in Kampala. Since then, negotiations have been ongoing on a number of contentious issues including Market access, Duties and taxes on exports, economic and development cooperation, Most Favourable Treatment (MFN) resulting from Economic Integration Agreements, and Agriculture.

Despite the prevalence of the contentious issues, the EU put a deadline for concluding the negotiations by revising her Market Access Regulation 1528/2007 to clearly indicate that any ACP country which would not have signed or ratified the EPAs by 1st October 2014 would be removed from the list of beneficiaries of the Duty Free Quota Free market access to the EU market.

While the stated overall objectives of the EPAs were namely; to ensure the sustainable development of ACP countries; to ensure their smooth and gradual integration into the global economy; and to eradicate poverty, the negotiations failed to adequately address these objectives. It is for this reason that countries like Uganda, Tanzania and Burundi have until today, not signed the EPAs, hence limiting its coming into force.

### **B) The Case study of the Bilateral Investment Treaty (BITs)**

Bilateral Investment Treaties (BITs) are "agreements between two countries for the reciprocal encouragement, promotion and protection of investments in each other's territories by companies based in either country. BITs primarily deal with the rules related to admission, treatment and protection of foreign investment. Research suggests that investors do not consider BITs in making their investment decisions. Historically, BITs have been used to advance three broad policy goals: protect investors and investment; facilitate investment entry and operation; and liberalize the economies of developing countries.

BITs are used to secure the rights of foreign investors. They provide; (i) Protection against discrimination vis-à-vis domestic investors and investors from other countries; (ii) Guarantee of absolute standards of treatment including 'fair and equitable treatment,' 'full protection and security,' protection against arbitrary and discriminatory measures; (iii) The right to transfer capital in and out of a host country; (iv) Protection against expropriation; (v) Restriction of performance requirements; (vi) The right to appoint senior management and board of directors; and (vii) Access to international arbitration mechanisms

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. 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. Concerns are being raised that the BITs also restrict 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.

The EAC partner states have signed a total of 64 BITs of which 37 are in force<sup>1</sup>. Specifically, 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.

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<sup>1</sup><https://investmentpolicyhubold.unctad.org/IIA/IIAsByCountry#iiainnerMenu>

## **4. 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 involved 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 multistakeholders. In Uganda, for example, the Ministry of Trade, Industry and Cooperatives which handle Multilateral Trade and Investment negotiations have the Inter Institutional Trade Committee (IITC). Positions papers developed within this committee, form the country position. The IITC brings together public sector, private sector, 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, 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) structures**

The EAC consists of a number of engagement structures i.e. the EAC Secretariat, the East African Legislative Assembly, the Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI), the EAC Secretary Generals Forum, the EAC Summit.

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

### **1. 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. The negotiation processes were undemocratic, based on sanctions, and deadlines, rather than content. In fact, some of the EAC partner states were coerced into concluding negotiations, signing and other in to ratifying due to threats of being suspended from the EU market. It was 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 negotiation process 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 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. The governments were therefore under immense pressure from not only these groups that had divergent demands, but also from the EU. This pressure was also augmented when the EU began to unilaterally set deadlines for the EAC partner states to sign the agreement. This was especially given the fact that the EU was meeting the costs of the partner states negotiating teams up to 85%.

Despite this pressure, 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 liaison committee which was a channel through which parliamentarians would meet and engage on the EPA negotiations.

The strategies adopted by civil society also involved mapping out which countries within the EAC were in support of the civil society, trade unions and farmers position. Taking advantage of these countries helped to influence strategic political engagements with countries whose positions were

not aligned to the “pro-development” position. Similarly, mapping out specific individuals was another strategy. For example, in Uganda, engagement with senior presidential advisors like Dr. Ezra Suruma, the Ministers of EAC Affairs during the time of the negotiations i.e. Hon. Ali KirundaKivejinja and Hon. Shem Bagaine to share our positions and ensure that a middle ground was reached was another strategy.

Support from the civil society at the global level was also very instrumental. 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 government. 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 which belong to the same ideology like the EU Green Party. This 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.

## **2. Influencing review of Bilateral Investment Treaties within the EAC region - the case of the Tanzania-Netherlands BIT**

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, 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 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 into 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 HakiMadini, Legal and Human Rights Center, Tanganyika Law Society, EACSOFF, 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 fear 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, SymbionPower, 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 Vrijshcrist 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.

### **3. 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 this 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.



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