The Civil Society Guide to Regional Economic Communities in Africa

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1. Executive summary

Abbreviations and acronyms

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<th>Abbreviation</th>
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<td>AU</td>
<td>African Union</td>
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<tr>
<td>CET</td>
<td>Common External Tariff</td>
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<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<td>CSOs</td>
<td>civil society organisations</td>
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<td>EAC</td>
<td>East African Community</td>
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<td>EACSOF</td>
<td>East African Civil Society Organisations Forum</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>EPA</td>
<td>Economic Partnership Agreement</td>
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<td>RECs</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<td>SADC-CNGOSADC</td>
<td>Council of Non-Governmental Organisations</td>
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<td>WACSOF</td>
<td>West African Civil Society Forum</td>
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1.1 Regional Economic Communities

Regional Economic Communities (RECs) are the building blocks of the African Union (AU). The 1980 Lagos Plan of Action for the Development of Africa and the Abuja Treaty of 1991 establishing the African Economic Community provide the framework for Africa’s overall economic integration.

The AU recognises the following RECs on the continent:

- Economic Community of Central African States;
- Economic Community of West African States;
- Common Market for Eastern and Southern Africa;
- Intergovernmental Authority for Development;
- Arab Maghreb Union;
- East African Community;
- Community of Sahel-Saharan States; and
- Southern African Development Community.

Given the relatively low level of literacy and exposure among their populations, the movement towards people-driven RECs is only achievable with the intervention and active participation of civil society organisations (CSOs) acting as a bridge between the RECs and the peoples of their regions.
These RECs have gradually evolved away from purely economic cooperation, which was grounded in their colonial past. Their evolution towards associations of peoples that aspire to true economic, social and political integration – people-driven RECs – has created a “virtuous feedback” that civil society can leverage to great effect. The level of civil society involvement in the RECs’ agenda is still mostly in its infancy. This, arguably, is attributable to the fact that the processes and procedures of these regional blocs and the possible entry points for civil society intervention remain a mystery to many CSOs.

This publication aims to present an accessible, descriptive and analytic guide for civil society actors interested in the work of the following three RECs:

- East African Community (EAC);
- Economic Community of West African States (ECOWAS); and
- Southern African Development Community (SADC).

Each REC treatment comprises seven sections:

- Historical background and legal framework;
- Organs and institutions;
- Decision-making processes;
- Budgets and finances;
- Relationship with the AU;
- Civil society in the REC; and
- Current debates within the REC.

1.2 Historical background and legal framework

The EAC and ECOWAS have their roots in the economic and infrastructural links formed during the colonial period. Cooperation among the countries of East Africa dates back to the colonial period when the infrastructure for cooperation was put in place with the construction of the Uganda Railway (1897–1901). What is now SADC grew out of the struggle of the Frontline States to break the grip of apartheid-era South Africa on a de facto bloc of states under its economic dominance.

The three RECs are governed by constitutive treaties that spell out the objectives, scope, and institutional mechanisms for cooperation and integration, as well as fundamental principles and values. They also elaborate Protocols, Resolutions, Bills or Acts that are part and parcel of the treaties. The level of cooperation varies in the three RECs:

- The EAC Treaty provides for cooperation among the partner states in political, economic, social and cultural spheres.
- The ECOWAS Treaty provides for cooperation in political, judicial and legal affairs, regional security and immigration.
- The SADC Treaty aims at achieving common approaches and policies through protocols in areas of cooperation.

Having said that, in practice the three RECs appear to cooperate in the same areas; what is different is the depth of such cooperation.

The first legal regime for ECOWAS – adopted in 1993 – was replaced by the 2006 regime. However, the legacy of the first regime remains. On the one hand, under the 1993 revised Treaty regime, the highest forms of Community obligations were contained in the Treaty, the Protocols and the Conventions adopted by the Authority. On the other hand, forming the current regime are the
instruments introduced by the 2006 reform of the Community’s normative framework. Accordingly, Supplementary Acts are binding on Community institutions and member states while Regulations are binding and directly applicable in member states. This new regime is intended to transform the Community into a supranational organisation with organs or institutions authorised to exercise supranational powers in the sense of binding member states directly without the need for ratification.

The SADC Treaty was amended in 2001 to restructure its institutions and respond to new challenges such as poverty, gender, HIV/AIDS, globalisation, democracy and good governance.

The three RECs require existing and aspiring members to adhere to minimum standards of democracy, good governance, respect for human rights and gender parity. They also oblige member states to ensure other institutional reforms and capacity-building in key areas such as the judiciary, capital markets, deepening of financial inclusion, and peace and security mechanisms. Protocols and legislation at the regional level defining these standards are supposed to be “domesticated” through incorporation into national laws, regulations and statutes in the member states.

### 1.3 Organs and institutions

All three RECs have the following organs:

- A Summit of Heads of State and Government – the top political and decision-making organ – chaired on a rotational basis by the head of the “host” member state (supplemented in the case of SADC by the Troika, composed of the current and immediate past and future chairs);
- A Council of Ministers to advise the Summit;
- A Secretariat or Commission to administer integration and cooperation programmes and everyday running of the REC;
- A regional court;
- A parliamentary body – only the EAC Parliament enjoys legislative powers; the others are consultative or advisory.

ECOWAS and SADC have national focal points to enhance relations with member states and implementation of policies at national level.

Both the EAC and ECOWAS have established frameworks to facilitate civil society participation with criteria for granting observer status; observer status is, however, excluded in respect of the Summit of Heads of State and Government. SADC, on the other hand, is characterised by a state-centric approach in spite of Treaty provisions for people’s participation.

### 1.4 Decision-making processes

An insight into the process of how decisions are arrived at in practice alongside a knowledge of decision-making structures is invaluable for CSOs wishing to influence and make an input into such decisions.

In the EAC, decisions are made by the key policy organs by consensus. The organs hold periodic meetings, which enable them to make decisions. Usually, decisions of a higher-level structure will be binding on lower-level entities. Decisions of the Summit, for instance, will be binding on the Council of Ministers. The Protocols of the EAC deal with specific areas of cooperation such as trade, land, setting up the Customs Union, Common Market, and so on. Different organisations have used different fora to engage with the EAC. Some have been granted observer status, while others have signed specific memoranda of understanding with the Secretariat. The Consultative Dialogue
Framework for Civil Society and Private Sector recognises the East African Civil Society Organisations Forum as the platform for civil society participation. Organisations have also taken part in drafting legislation and have been able to advocate for their passage through Private Members’ Bills at the East African Legislative Assembly. CSOs with a legal and human rights mandate have successfully used the East African Court of Justice as an avenue for advocacy, particularly on extension of the jurisdiction of the Court to human rights. CSOs with particular expertise have joined working groups on some of the major issues of cooperation such as security.

In ECOWAS, the most important meetings – from a policy-shaping perspective – are the Summits of the ECOWAS Authority. The meetings of the Authority are normally preceded by meetings of the ECOWAS Council of Ministers. Council sessions have both opening and closing ceremonies at which public speeches are made. Though they may not make presentations themselves, this is still an avenue for CSOs who specialise in thematic areas to table pressing issues on the agenda of the Commission by lobbying the Council beforehand. The other influential institutions are the Council of Ministers and the President of the Commission, in that order. The bulk of decisions concerning the running of the Community emanate from the Council. The ECOWAS Commission, particularly the President's Office, initiates or at least has influence over all policy documents and legislative instruments that get to the Council and the Authority. The fact that all other institutions and non-statutory staff report directly or indirectly to the President of the Commission further amplifies the actual and perceived importance of this office. Although the ECOWAS Parliament is consultative, there are indications that it is growing in influence and will begin to play an important role in the affairs of ECOWAS. For instance, ECOWAS Parliamentarians are included in official ECOWAS election observation and monitoring missions.

In SADC, the Summit of Heads of State and Government is the supreme policy-making body. It approves policies before they are adopted into law. Civil society wishing to influence the Summit can do so through lobbying representatives of the member governments. Unlike the AU and other RECs, the agenda and papers for the SADC Summit are not made public. This makes it difficult to influence decisions of the institution. Often, influence at the level of the Summit is possible on political issues, but for other issues it is more effective to influence decision-making at lower levels. The fact that all decisions are taken at the Summit has caused some key stakeholders to express concern that issues get diluted as they go up the decision-making ladder. In addition, the perennial political problems faced in the region have resulted in SADC being seen as a political body in which economic issues have been sidelined. SADC decisions are made by consensus. However, there are some exceptions to the consensus rule. For example, three quarters of all members have to approve an amendment to the SADC Treaty for it to be passed. Decisions regarding admission of new members are based on unanimity. The SADC Treaty is silent on whether the binding decisions of the Summit have a direct effect on the laws of member states. In addition, SADC has no mechanisms to follow up implementation of the decisions of the Summit by member states, making implementation discretionary.

1.5 Budgets and financing

All three RECs are funded by a mix of contributions from international donors and member states. It is noteworthy that while the EAC and SADC are heavily dependent on donor financing (70% and 62% respectively), raising questions about their freedom from outside influence, ECOWAS is reportedly financing up to 87.5% of its activities through levies on member states.

EAC member states make equal contributions to the Community's budget. A new proposal to impose a 1% levy on imports of member states could, in theory, allow the EAC to become totally self-financing, but there are potential legal hurdles. The EAC pre-budget conferences, where budget priorities are determined, create an opportunity for civil society to take part in the process.

Since 2003, an ECOWAS Community Levy regime has been in place that requires member states to deduct and pay 0.5% of all import value from the national level to the ECOWAS Community Fund. ECOWAS estimates that its 2010 budget was largely financed by its own resources, as about
87.5% of the budget was financed with funds from the Community Levy, arrears of contributions and miscellaneous income, while only 12.5% of the budget was funded by development partners. The ECOWAS budgetary process is not generally open to external scrutiny and involves very little, if any, external participation, creating a perceived lack of transparency.

In SADC, the Secretariat prepares a Budget Outlook Paper every three years to ensure that there is balance between financial resources and the priorities set by both the Regional Indicative Strategic Development Plan and the Strategic Indicative Plan for the Organ. Drawing on the Budget Outlook Paper, the Secretariat prepares a corporate plan and a business plan on an annual basis. For 2011/2012, the SADC Council approved a budget of which 38% would be funded by member states’ contributions and 62% by International Cooperating Partners.

1.6 Relationship with the AU and other RECs

The EAC has observer status with the AU. The EAC Secretary-General is invited to all AU Summits and is in charge of all relations with the AU. In 2012, the EAC posted a liaison person to the AU. The AU also has a liaison person at the EAC Secretariat.

The relationship between ECOWAS and the AU was formalised by the latter’s 2008 Protocol on cooperation between the AU and RECs, and ECOWAS and the AU have agreed to cooperate and coordinate their policies and programmes. ECOWAS has specifically committed to deepening its ties with the AU; aligning its programmes, policies and strategies with those of the AU; and integrating with other RECs in accordance with the relevant provisions of AU Treaties. The ECOWAS office at the AU Commission has been operational since 2008 while the AU liaison office to ECOWAS in Abuja started its activities in 2014. The ECOWAS Mediation and Security Council collaborates closely with the AU’s Peace and Security Council, and ECOWAS-supported military forces constitute the West African brigade of the AU’s African Standby Force. ECOWAS and the AU have collaborated in military missions in Cote d’Ivoire and Mali.

The SADC Secretariat attends the regular Summits of the AU, including the January and July Executive Council and Assembly Meetings, as well as the annual meetings of the AU Commission, RECs and strategic partners. SADC and the AU have worked closely in areas of peace and security. For example, on the Zimbabwe crisis, the AU deferred to the SADC Organ on Politics to advise it on developments and recommended actions. The SADC Brigade of the Africa Standby Force was officially launched in August 2007. It was part of the AU deployments in Sudan.

1.7 Engagement with civil society

In their founding Treaties, all three RECs acknowledge the crucial role of civil society in helping achieve their economic, social and political integration objectives. They have committed themselves to involving civil society in decision-making and the integration process. More or less formal interfaces between the RECs and civil society have been set up in the form of the East African Civil Society Organisations Forum (EACSOF), the West African Civil Society Forum (WACSOF) and the SADC Council of Non-Governmental Organisations (SADC-CNGO).

The EAC has established a Department of Gender, Community Development and Civil Society to be the liaison with CSOs. The department works under the Directorate of Social Sectors. It also falls directly under the Deputy Secretary-General for Productive and Social Services, who in turn reports to the Secretary-General. As the focal point for civil society, the department has suffered from lack of capacity to handle the many requests for civil society participation in the EAC. The EAC Consultative Dialogue Framework for Civil Society and Private Sector provides for national and regional dialogues through the national ministries in charge of the EAC (national dialogue) and the EAC Secretariat (regional dialogue). The Framework recognises EACSOF as the platform for civil society participation and the East Africa Business Council for private sector organisations. At the
end of each year, the Secretary-General’s Forum for Civil Society and Private Sector brings together the different stakeholders to a meeting that makes resolutions on issues of importance to the stakeholders. These resolutions are then passed on to the Council of Ministers.

One of the main goals of ECOWAS Vision 2020 is to transform the organisation from an ECOWAS of states into an ECOWAS of people by 2020. This vision has brought about an increase in the actual room for participation of CSOs and non-governmental organisations (NGOs) in ECOWAS activities. Perhaps the most visible increase in actual participation is the growing involvement of WACSOF, as well as the increasing number of ECOWAS programmes aimed at creating greater awareness and involvement of civil society in Community affairs. CSOs can apply for observer status with ECOWAS. Such observers can influence decisions. They can be accredited to the ECOWAS Council of Ministers and may be invited by the Council to make an oral presentation. Through the President of the Commission, they circulate documentation to Council and may be invited to collaborate with committees. They may also, through the President of the Commission, submit questions or views for insertion in the provisional agenda of the Council and any other ECOWAS institutions, with the exception of the Authority. They also consult with the President of the ECOWAS Commission on matters of mutual concern. Despite the very elaborate provisions on obtaining observer status with ECOWAS, there are suggestions that in practice, organisations that have been engaging with ECOWAS do not necessarily have any official observer status with either the ECOWAS Commission or any other institution or agency of the Community. However, it would appear that CSO/NGO involvement is more in the area of implementation than in the area of formulation of policy.

The SADC Council of Ministers meeting in Luanda in 2011 declared that key stakeholders should participate in the SADC integration agenda through the SADC National Committees. This appears to block off direct participation at regional level, apart from existing arrangements with organisations such as memoranda of understanding (MoUs). However, CSOs can work directly at the technical level with departments. The SADC Secretariat has signed MoUs with some regional civil society networks, among them the SADC-CNGO, the Association of SADC Chambers of Commerce and Industry, the Southern Africa Trade Unions Council and the Forum for Former Heads of State and Government.

1.8 Current debates within the RECs

Integration in the EAC was envisaged through the Treaty to be a linear process involving three steps prior to the realisation of the Political Federation: the Customs Union, the Common Market and the Monetary Union. Many of the debates about the integration focus on subsequent processes, while some focus on the challenges that continue to face the process:

- **A two-speed integration process**: Kenya, Rwanda and Uganda have applied the principle of variable geometry on several occasions to make decisions that do not seem agreeable to the other two partner states, Tanzania and Burundi.

- **Multiple membership**: Three blocs with overlapping memberships – the Common Market for Eastern and Southern Africa (COMESA), the EAC and SADC – have commenced tripartite discussions to form one regional bloc that will encompass 28 countries with a population of 527 million and a GDP of USD 624 billion.

- **Consolidation or expansion of current membership**: The EAC restarted in 1999 with three member states, Kenya, Tanzania and Uganda. In 2007, Rwanda and Burundi joined to bring the total to five. Since then, Sudan, South Sudan and Somalia have applied to join the Community.

- **Rising poverty levels within a situation of deepening integration**: Trade between the partner states expanded from USD 2.2 billion in 2005 to USD 4.1 billion in 2010, but the distribution of the expanding wealth has not been equitable. If integration does not end in the advancement of the welfare of the people, then the EAC shall find itself confronting challenges of legitimacy.
• **Challenges in implementation of the Customs Union**: Implementation of the Customs Union started in 2005, but removal of non-tariff barriers continues to be a major issue of controversy.

• **Challenges in implementation of the Common Market**: The EAC entered the Common Market phase on 1 July 2010 after five years of implementation of the Customs Union. However, there remain disagreements over provisions involving free movement of labour. This is compounded by ongoing trade negotiations with China, the USA and the European Union (EU) that may undermine regional trade and increase poverty if citizens’ interests are not secured.

• **Funding for the EAC and the issue of self-reliance**: The EAC’s 2012/2013 budget factored in a member-state contribution of 29.06%. The contribution expected from donors amounted to 70.18%.

Current debates in **ECOWAS** revolve around:

• **Peace, security and stability**: Despite creating the Conflict Prevention/Resolution Management mechanism, the Conflict Prevention Framework and the Early Warning mechanism, ECOWAS has failed to prevent conflicts and crises in the region – as recent developments in Mali, Guinea Bissau, Guinea and Côte d’Ivoire have shown. In the absence of efficient preventive diplomacy or an effective West African Standby Force, ECOWAS’s ability to manage and resolve conflicts in the region is greatly undermined.

• **Democracy and good governance**: Despite the democratic gains in the region, ECOWAS still needs to take concrete and effective measures to deepen democracy by reinforcing the rule of law, strengthening the capacity of regional human rights institutions and promoting participatory and internal democracy in member states.

• **Protocol on Free Movement, Residence and Establishment**: The realities faced by citizens when moving around the region sharply contrast with the promises contained in this Protocol. Challenges are inappropriate border checks, rampant corruption, violence and abuse of citizens by border officials and the expulsion of nationals from other member states.

• **Economic growth and the fight against corruption**: The Common External Tariff (CET) adopted by ECOWAS was set up to standardise taxation on all imported goods going into any member state, thereby protecting local producers and encouraging local consumption. With the high level of informal trade and the relatively small economies in the region, the CET should guarantee the effective protection of national economies from other regions such as the EU. The Economic Partnership Agreement (EPA) between the EU and ECOWAS signed in February 2014 may undermine efforts towards the CET and regional integration in the region.

• **Institutional framework**: The Community’s current institutional framework is designed in such a way that the Commission largely dominates other institutions such as the Court of Justice and the ECOWAS Parliament. These institutions need to be strengthened.

Current debates in **SADC** revolve around:

• **Multiple memberships of RECs**: Most members of SADC are also members of other regional bodies, creating overlapping memberships that carry the risk of competing agendas. It is hoped the African Free Trade Zone Agreement (between SADC, the EAC and COMESA) will ease access to markets within the zone and end problems arising from the membership of multiple groups.

• **Negotiations with the EU on Economic Partnership Agreements**: Although SADC has 15 members, only seven are negotiating an EPA with the EU. The EPA negotiations are further complicated by the fact that South Africa already has a Trade, Development
and Cooperation Agreement with the EU. This risks undermining regional integration aspects of trade.

- **The SADC Free Trade Area**: The Free Trade Area was launched in September 2008. Twelve out of the 15 member states are already participating; this eliminates tariffs and non-tariff barriers on substantially all trade, but progress has been slow.