



EALS House, Plot No. 310/19, PPFAGM Area
PPF Road off Njiro Road

P.O. Box 6240 Arusha-Tanzania; Tel/Fax: (+255) 272543227
Tel: (+255) 272543226; Cell (+255) 786821010; (+255) 786836545; +254721836545

E-Mail: info@ealawsociety.org, ceo@ealawsociety.org

Title: “DRC’s entry into EAC: What does the Country bring to the Table”

1. Introduction

The East Africa Community (EAC) is a regional intergovernmental organisation of seven Partner States comprising of Kenya, Tanzania, Uganda, Burundi, Rwanda, South Sudan and recently, the Democratic Republic of Congo (DRC). DRC was admitted into the EAC on 8th April 2022 and became a full member of the EAC on 11th July 2022. The Treaty for the Establishment of the East African Community (EAC Treaty) governs the integration path of the Partner States. The EAC Treaty was signed on 30th November 1999 and came into force on 7th July 2000.¹

The EAC Treaty is implemented by protocols which outline the main areas of cooperation, namely the establishment of the Customs Union as an entry stage, a Common Market, a Monetary Union and ultimately a Political Federation (Confederation) of the EAC Partner States.² The protocols describe the scope of applicability and the institutional mechanisms of cooperation and integration. The enlargement of the EAC memberships with the accession of DRC is a bright spot for the promising future of the Community. It is likely to expand the market where EAC citizens' goods, services, and capital could be traded and invested.

This article discusses DRC’s benefits and drawbacks to the Community while pointing out factors

¹ Treaty Establishing the East African Community (EAC Treaty) signed on 30th November 1999 and came into force on 7th July 2000.

² James Otieno-Odek, “Law of Regional Integration- A case Study of the East African Community”, in Johannes Döveling et al (eds), *Harmonisation of Laws in the East African Community, The state of Affairs with Comparative Insights from the European Union and other Regional Economic Communities*, (Nairobi: LawAfrica Publishing (K) Ltd, 2018), p. 23.

that could impede its full integration. In the course of discussions, urgent actions to be undertaken by DRC would be suggested before concluding.

2. What does DRC bring to the table?

Trade and investment facilitation is one of the DRC's priority policies. It is part of its "National Strategic Development Plan" with the primary purpose of leading the country to become a middle-income country in 2022, then to become an emerging country in 2030, and finally to be one of the developed countries in 2050.³ DRC's ambition to join EAC was not by default. Indeed, one of the mechanisms to promote and achieve DRC's trade and investment facilitation was to expand its regional integration. Naturally, EAC represented a prominent economic landscape that occupies a place of trade and investment opportunities in addition to the historical colonial background that DRC shares with Burundi and Rwanda as Belgian colonial territories. Bordering five EAC Partner States, including Burundi, Rwanda, Uganda, Rwanda, South Sudan and Tanzania, DRC accounts for about 6% of total exports from eastern countries and its accession into EAC fell right on the mark to embark into regional economic development with its counterparts.

The economy of DRC is highly specialised and largely dependent on the mining sector; 95% of its exports are raw materials (mainly copper and cobalt), followed by oil.⁴ The country has almost all the minerals needed for traditional and modern industries, starting with copper, cobalt, zinc, and iron. In addition to these minerals, there are precious stones and diamonds.⁵ Copper production has increased by 200% between 2005 and 2016, recently exceeding Zambia's output. Cobalt production, for which DRC has become the world's largest producer, is also promising.⁶ The EAC party states will likely benefit from this once the Protocol on establishing the East African Community Common Market is implemented.

DRC's trade policy complies with multilateral, regional and bilateral trade agreements to which it has committed. Indeed, DRC benefits from eleven major economic corridors that facilitate its trade and investment flows while connecting to Central Africa, Southern Africa, and parts of East Africa.

³ UNCTAD trade and development report 2018, p.79.

⁴ *Ibid.*, p.50.

⁵ *Ibid.*

⁶ *Ibid.*

The Country has signed the SADC protocol on the free movement of services in the sectors of transport, tourism, communication, finance, professional services, construction, and electricity.

With Burundi and Rwanda, DRC is a member of Economic Community of the Great Lakes Countries (CEPGL) a sub-organisation of Economic Community of Central African States (ECCAS) with a very commending trade regime where goods circulate without customs duties.

DRC and Uganda are committed to promoting cross-border trade and investment. On April 9, 2018, the two countries signed a Memorandum of Understanding in Kasese to improve bilateral trade relations. Several areas are covered by this agreement, including diversification of trade in goods and services, promotion of investment in the manufacturing sector, elimination of non-tariff barriers, cooperation on customs and cooperation on immigration issues.

Moreover, DRC has signed several regional agreements, including the tripartite free trade agreement SADC - COMESA – EAC since 2015, which is meant to deepen cross-border trade and investment. DRC is also a member of the COMESA free trade area. In addition, the Country is among the 54 countries that have signed the African Free Trade Area agreement. Although the ratification process is still undergoing in parliament, it has finalised the list of tariff concessions that will be transmitted to the African Union after validation. 90% of the products will be liberalised for 10 years, 7% will be sensitive products to be liberalised for 13 years, and the remaining 3% will be exclusion products that will not be liberalised. Concerning services, out of the 12 sectors and 166 sub-sectors, the Country has chosen five sectors to be liberalised: professional services, transport sector, tourism, communication, and the finance sector. The others will be liberalised progressively.

It is tempting to assert that the regional integration of DRC will run smoothly if we consider the abovementioned economic potentialities and conducive trade and investment arrangements. Still, it would also be appropriate to focus on a few obstacles.

3. Drawbacks of admission of DRC to EAC

Certainly, DRC brings to the table its large market of over Ninety Million people, which will be accessible by the EAC Partner States, coupled with its rich natural resources. We cannot, however,

downplay the drawbacks that DRC's admission to EAC will pose. They include:

(a) Security concerns

Whereas it cannot be said that the EAC before the admission of DRC was free from security shortcomings such as terrorism, most undoubtedly, its admission will recalibrate the peace and stability of the region due to the prevalent militia groups dominating the Eastern DRC. With the free movement of persons within the Partner States under the Protocol on the Establishment of the East African Community Common Market (CMP), integration of DRC to the EAC will certainly exacerbate security concerns within the EAC.⁷

The net effect of this is that the EAC will have to redirect its energy and more resources to address the security concerns posed by the militia groups within the DRC to counter and inhibit its spread to other EAC Partner States. These resources would have otherwise been redirected to core EAC pillars for integration.

(b) Increased poverty burden within the EAC

In the United Nations 2021 Human Development Index (HDI), DRC was ranked as one of the low-ranking countries on HDI. The parameters used to measure the HDI are life expectancy, level of education as well as the Gross National Income per capita of each country. From the Human Development Index, only Kenya was placed on the medium human development index, while all the other EAC members were ranked low on the index. The entry of DRC into the EAC might as well be addition of yet another struggling country into the bloc after the admission of South Sudan in 2016. With the admission of DRC, the EAC can also be construed as an alliance of the poor due to the low development in virtually all the EAC Partner States. Perhaps DRC's admission to EAC was premature!

(c) Language barrier

⁷ Article 7 of the Protocol on the Establishment of the East African Community Common Market.

Article 137 of the EAC Treaty provides that the community shall be English. This extends to the East Africa Legislative Assembly (EALA) and the East African Court of Justice (EACJ),⁸ whose proceedings are similarly conducted in the English language. DRC is the only country within the community that does not speak English as its official language. To accommodate the new entrant, virtually all systems need to be readjusted. At the same time, the treaties and protocols may have to be amended to introduce French and/or Swahili as official languages of the community. This alignment will require resources and time to implement, thereby shifting the focus of the community at the expense of vital and pressing needs for integration.

4. Some unavoidable roadblocks to integration

Despite the highlighted drawbacks above, DRC has already been admitted to EAC. It is therefore important to appreciate the challenges that could hinder the realisation of smooth integration of DRC into the EAC Community. It includes:

(a) Overlapping Membership

Before joining EAC, DRC was also a member of other Regional Economic Communities (RECs) recognised by the Africa Union, including COMESA, ECCAS, SADC, and ICGLR. Therefore, the multiple memberships of DRC in other community arrangements will inhibit the realisation of sustainable integration of the Country. DRC might be faced with a scenario of divided attention and or loyalty to the integration to EAC due to other commitments and or obligations it has on the different regional and economic blocs.

(b) Tariff and Non-Tariff Barriers

Most of DRC's trade and investment barriers occur with complex regulations, overlapping administrative agencies and a lack of capacity and control by public officials responsible for regulatory enforcement. In addition, enacting laws with restrictions, such as the legislation prohibiting foreign vehicles from loading mining products and exporting them from the DRC, is one of the important challenges for the Country to integrate into the community fully.

⁸ Article 46 of the treaty for the Establishment of the East African Community.

(c) Lack of Harmonisation of the Policies and Laws

An effective harmonisation of the policies and laws of DRC is of paramount importance. This is because some trade and investment measures cannot be well enforced unless the laws of the EAC Partner States are uniform. Therefore, the realisation of the DRC integration depends mainly on harmonising its policies and laws. Between 6th and 9th September 2022, the Secretary General of the EAC, Dr Peter Mathuki, led the EAC mission to DRC to meet key government officials to discuss the integration of various sectors to align with the EAC Instruments and Protocols. This positive stride taken towards integration must be applauded.

(d) Prevalence of the civil Law system

DRC inherited the civil law system predominated by the French language. This legal system does not facilitate interactions between other EAC Partner States' business actors using common law systems save for Burundi and Rwanda. This is also a hindrance to the adoption of common trade and investment policies, which could deepen the integration of DRC.

(e) Failure to take into account the Private Sector

The private sector is key to a country's integration within a particular community. However, little focus has been given to them in the process towards the accession of DRC into EAC, as expressed by the Private Sector of Kinshasa, the Chamber of Commerce and Industry and the leading employers' organisation. This breaches the people-centred principle enshrined in the EAC treaty's fundamental principles that consider consultation of the general public and, particularly, the private sector.

5. The Way Forward

To enable a smooth integration, it is important to suggest what should be done at this juncture.

(a) Address the Challenges of Multiple Memberships

This article addresses the challenge of overlapping memberships into multiple RECs. This will reduce the lack of commitments, hence concentration can be on integrating into relevant regional

arrangements, including the EAC community.

(b) Removal of Tariff and Non-Tariff Barriers

DRC would need to map roll back and stand still tariff and non-tariff barriers that hinder the smooth integration of the Country into EAC and remove them to enable free movement of goods, services and capital.

(c) Harmonisation of the Policies and Laws

This article recommends harmonising trade and investment policies and laws of DRC. This will help in the smooth undertaking of cross-border trade and investment and the full realisation of integration.

(d) Bridging the gap between the civil law system and common law

DRC can focus on the complementarity of the two legal systems with a view to simplifying trade and investment procedures at the domestic level.

(e) Inclusion of the Private Sector and General Public

This article suggests the inclusion of the private sector towards achieving efficient integration of DRC into EAC. The private sector is the key player in the implementation of trade and investment measures and, therefore, should not be left lagging in the process.

6. Conclusion

As mentioned above, DRC's membership in the EAC sounds promising but may be held back in several important respects. From the preceding, it is apparent that DRC's admission to EAC will yield more benefits to it as contrasted to the resultant benefits it brings to the table to the other EAC partner states. However, EAC can capitalise on the highlighted benefits that DRC brings to ensure a mutually beneficial relationship for all the partner states.

DRC can only run a smooth integration into the EAC if the challenges highlighted are well addressed, coupled with a strong political will. It is, however, important to underscore that the

current DRC administration continues to show immense political goodwill to its integration into EAC.

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Authors

A. **Faith Macharia** is the Chairperson of the East Africa Law Society Trade and Regional Integration Committee. Faith is a partner with the Dispute Resolution department at ALN-Kenya, with over 11 years post-admission experience in dispute resolution. Kenya’s leading business newspaper, Business Daily, rated her as one of the region’s leading women, Top 40 under 40, 2021, for her contribution to legal space in Kenya and the East Africa Community. Her practice includes domestic, regional, cross-border, and international representation of parties. She has handled a blend of complex matters at the East African Court of Justice (EACJ), all levels of court in Kenya, local tribunals, and international tribunals appointed by the London Court of International Arbitration. Faith has been recognised and ranked by Legal 500 and Chambers Global.

B. **Ange Dorine Irakoze** is the Secretary of the East Africa Law Society Trade and Regional Integration Committee. She has been an advocate of the High Court of Burundi since 2013. She practices law with the law firm RUBEYA & Co-Advocates, a member of DLA PIPER AFRICA, a swiss verein whose members are comprised of independent law firms in Africa working with DLA PIPER. She focuses on regional integration, legal regulatory, and improving the investment climate on integration matters within East Africa Community.

Chambers Global 2022 ranked Ange Dorine Irakoze in Band 1, General Business Law as an Up-and-Coming lawyer. Indeed, commentators said that “Ange Dorine Irakoze is a senior counsel who is an increasingly important lawyer within the group. She advises on

various corporate/commercial matters, including assisting clients with their investments in Burundi. "She has good writing and reporting skills."

Legal 500 ranked Ange Dorine Irakoze in Tier 1 (2022) as a rising star. It has been reported that Associate Ange-Dorine Irakoze also offers quality services on cross-border matters in the mining, energy and financial services industries.

Ange Dorine was appointed in February 2018 to be a member of the East Africa Law Society Editorial Board, to which she serves to date.