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Transparency as a Tool in Realising Citizen Participation in the East African Community

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Abstract:

Transparency plays an important role in the realisation of a people-centred regional integration. In the East African Community (EAC) context, transparency is recognised as one of the operational principles ascribing the functioning of the organs of the Community. Despite being recognised under the East African Community Treaty, this principle is given little attention in the functioning of the organs and institutions of the Community. While the literature on EAC transparency focuses on how transparency enhances the insemination of information to the East Africans, this article investigates the extent to which EAC laws and policies related to transparency should promote the participation of East African people in the decision-making within the organs and institutions of the EAC. This article is based on a documentary review and information collected at the EAC headquarters and border posts of Kenya, Tanzania and Uganda through interviews. I claim that although there are legal and policy efforts made toward the principle of transparency in the EAC, the law is weak in realising transparency in the functioning of the organs and institutions of the EAC. It demonstrates that the EAC legal regime does not recognise access to information as a right of East Africans people. In the same vein, I further claim that communication policy, which ought to provide a framework through which transparency is made a reality, does not consider some national and local languages to be important tools for insemination of the EAC undertakings to the grassroots.

Keywords: *East African Community; Participation; Transparency*

1. Introduction

Transparency is a prerequisite for citizens' participation in the integration process, without which citizens cannot contribute to the integration processes for a lack of information on the activities undertaken by the organs and institutions of the Community and the Partner States. Transparency contributes to the legitimacy and democratic life of the Partner States and organs of the Community. Transparency and access to information are interdependent. Access to information fosters transparency, which ultimately legitimises the functioning of the Community. Through access to information, transparency becomes a reality. This work embraces access to information as a precondition for the realisation of transparency in the EAC. Transparency contributes to citizens' participation in the EAC integration process as it addresses the democratic deficit within the organs and institutions of the

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Community. Transparency is a crucial tool in strengthening democracy in the functioning of these organs and institutions.¹ Openness in the functioning of the organs and institutions of the Community enables the public to closely follow up and participate in the decision-making process, which in turn, legitimises the Community as a whole.²

2. Conceptualising Transparency

Like other concepts of democracy, transparency is more easily recognised than defined. Attempts to define it have been made by different scholars whose views are influenced by their inclination angles. According to Soderman,³ transparency is a process through which authorities' decisions are made not only open but also understandable to the public.⁴ Further, it entails that decisions made by respective organs of the regional body should include reasons and such information must be available to the citizens and the general public. Timmermans shares similar views and espouses transparency to embrace openness in decision-making, accessibility to legislation and the right to access documents held by institutions of the regional organisation. Nolan expands Soderman's exposition that officeholders must ensure openness on the decisions already made. The decision-maker should expressly provide reasons for their choices, and restrictions on the reasons for the decision should be upheld only when the public interest so demands.⁵

Furthermore, Grimmelikhuijzen *et al.*, define transparency as an aspect of openness in policy content and outcome meant to legitimize the government's actions.⁶ Accordingly, transparency is an instrument for public control over decision-making in the government as it empowers citizens and limits the government's powers. In the EAC, transparency has been described as a procedure through which Community decisions, processes and activities are open, accessible and simplified so that all individuals, stakeholders and

¹The Preamble to Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

²Irma Spahiu, 'Courts: An Effective Avenue to Promote Government Transparency? The Case of the Court of Justice of the European Union' (2015) 30 *Utrecht Journal of International and European Law* 5, 10.

³The European Ombudsman.

⁴Deirdre Curtin, *Executive Power of the European Union: Law, Practice and the Living Constitution*, (Oxford University Press, 2009) 20; Deirdre Curtin and Albert Meijer 'Does Transparency Strengthen Legitimacy? A Critical Analysis of European Union Policy Documents' (2006) 11 *Journal of Information Polity* 109, 111.

⁵The Committee on Standards in Public Life, (1995 CM 2850-1, London HMSO, 1995) 14.

⁶Stephan Grimmelikhuijzen, Gregory Porumbescu, Boram Hong and Tobin Im, 'the Effect of Transparency on Trust in Government: A Cross-National Comparative Experiment' (2013) 73 *Public Administrative Review* 575, 576.

interest groups in the Community can understand and follow them without needing special expertise.⁷

The above scholars have contributed enormously to the definition of transparency. However, they do not consider language as an important aspect that makes transparency a reality. Accordingly, transparency should consider that institutions of regional integration have the duty to ensure that information and documents are accessible to the general public to accommodate the needs of the society, which may be characterised by language diversity. Also, transparency should entail physical access to the institutions of the Community, access to documents, open debates of the institutions and clarity of interests in the decision-making process.

The expositions of the scholars deduce transparency as an instrument of democratic governance, which encompasses openness, access to information and clarity of legislation. Openness in decision-making plays a pivotal role in realising transparency in the functioning of the institutions of the regional organisation and the public who must involve in the decision-making process. It is one of the elements of democracy in the functioning of regional organisations.⁸ For instance, it has been an essential aspect of the democratic life of the European Union (EU). The EU recognises openness as one of the foundations of transparency in the functioning of its institutions.⁹ Accordingly, openness demands accessibility to information from the administrative authorities, allowing citizens to participate in decision-making.¹⁰ Openness extends to approaches through which meetings of public bodies are held that ensure access of the public to the relevant proceedings.

Regarding clarity of legislation, transparency calls for plain and clear legislative language that allows citizens to interact with public authorities accordingly.¹¹ Citizens need to understand laws and policies to exercise their rights entrenched in such laws and policies. To foster transparency, laws and policies must be drafted in a clear language understood by an ordinary citizen.

⁷Low Oluoch, 'Legitimacy of the East African Community' (2009) 53 *Journal of African Law* 194, 217.

⁸Alberto Alemanno, 'Unpicking the principle of Openness in EU Law Transparency, Participation and Democracy' (2014) *European Law Review*. Electronic copy available at: <http://ssrn.com/abstract=2303644>.

⁹Article 1 of the TEU provides that decisions are taken as close as possible to the citizen. Similarly, article 15 of the same Treaty emphasises that EU institutions should conduct their work as openly as possible.

¹⁰Bojan Bugarcic, 'Openness and Transparency in Public Administration: Challenges for Public Law' (2004) 22 *Wisconsin International Law Journal* 483, 487.

¹¹Paul Cooper, 'Is there a case for the abolition of 'shall' from EU legislation?' (RGSL Research Papers, 2011) 11.

3. Transparency and the History of the East African Community

Following a series of colonial cooperation among the East African States, in 1967, the participating states established the East African Community to replace the East African Common Services Organisation EACSO, which was thought to provide a narrow scope of cooperation. Commenters have claimed that development in important areas such as the common market and customs union was not satisfactory as there was a lack of a clear legal regime to achieve the intended goals. Therefore, Member States needed to rebrand the cooperation to achieve their long-term aspirations, including economic benefits and creating the East African Federation.

To realise the aspirations of the Partner States, the 1967 Treaty established several institutions vested with powers to act and perform functions aimed at achieving the objectives of the Community. The institutions established under the Treaty were the East African Authority, the East African Legislative Assembly, the East African Ministers, the Common Market Council, the Common Market Tribunal, the Communications Council, the Finance Council, the Economic Consultative and Planning Council and the Research and Social Council. Each of these institutions had distinct powers and had to function within the limits granted by the Treaty.¹² The structure of the Community's institutions and functions covered wider areas of common interests than any economic bloc in Africa; it was just behind the European Economic Community.

The 1967 Community collapsed in 1977, just ten years of its establishment. Scholars have attempted to give reasons for the disintegration and ultimate collapse of the Community.¹³ One of the reasons for the fall of the Community was a lack of political will among the Partner States as they influenced and promoted leader-centric governance rather than state-centric institutions.¹⁴ The governance approach rejected the role of citizens and civil society's participation. Indeed, even autonomous institutions at the regional level that would watch out for implementing the Community's decisions were ignored. Other reasons that contributed to the downfall of the Community were unequal distribution of the resulting benefits, differences in ideologies and conflicts among heads of states.¹⁵ Since the legal framework for the 1967

¹²Article, 3 of the Treaty for Establishment of the East African Community, 1967.

¹³Christian Potholm and Richard Fredland, 'Integration and Disintegration in East Africa' (1984) *Journal of African Economic History* 193, 225 – 226.

¹⁴ Hannington Ochwada, 'Rethinking East African Integration: From Economic to Political and from State to Civil Society' (2004) 29 *Africa Development* 53, 67.

¹⁵Arthur Hazlewood, 'the End of the East African Community: What are the Lesson for Regional Integration Schemes' (1979) 18 *Journal of Common Market Studies* 40, 44.

Community entrenched a leader-centric approach, transparency was not considered an essential tool for bringing the Community to the grassroots.

The collapse of the Community meant there were issues to be settled, such as the division of assets owned and liabilities owed to the defunct Community. As such, the Partner States appointed a mediator, Dr Victor Umbricht, to facilitate dividing assets and liabilities among the Partner States.¹⁶ During mediation, the Head of States of the Partner States observed that it was important for the three countries to explore areas of future cooperation. In 1984, the then Presidents of Tanzania (Nyerere), Kenya (Moi) and Uganda (Obote) signed the Mediation Agreement (Agreement for the Division of Assets and Liabilities of the former East African Cooperation). Under Article 14 of this Agreement, they agreed to explore and identify further areas for future cooperation.

Article 14 of the Mediation Agreement became the cornerstone of establishing the Permanent Tripartite Commission in 1993. The Tripartite Commission had powers to coordinate economic, social, cultural, security and political issues within the contracting states. In 1996, the Secretariat of the Permanent Tripartite Commission was launched to operationalize the cooperation of the three states in areas already noted above. One year after its establishment, the Secretariat was tasked to draft the Treaty for establishing the East African Community that would replace the Permanent Tripartite Commission.¹⁷ It took two years for the Secretariat to draft the Treaty, and in November 1999, the Heads of States of Kenya, Tanzania and Uganda signed the Treaty. By July 2000, all three states had deposited the instruments of ratification, signifying their commitments to the newly established Community.¹⁸ Burundi and Rwanda joined the Community by accession in July 2007. The Republic of South Sudan and the Democratic Republic of Congo became members in 2016 and 2022 respectively to complete seven Partner States.

As noted in this work, the early efforts of re-establishing the Community including the establishment of the Permanent Tripartite Commission were state-centric with little observance of the principle of transparency. Because of the lack of transparency, citizens' participation in the re-establishment of the East African Community is said to be little.

¹⁶ The Preamble to the Treaty for the Establishment of the East African Community, 1999. Dr. Victor Umbricht was appointed and accepted to facilitate Partner States reaching an amicable agreement in 1978.

¹⁷The Preamble to the Treaty for Establishment of the East African Community, 1999.

¹⁸About EAC, *Overview of the EAC*, available at www.eac.int/overview-of-eac, accessed on 28 November 2019.

Unlike its predecessor, the current Treaty was made in the consideration of the role of people in the integration process where partial involvement of citizens is noticeable. Public participation is partly because of the level and degree of involvement of citizens, especially at the grassroots which has not been appreciable. The public participation focused mainly on elites, the grassroots population was never reached. The argument that there was little public participation is supported by the consultative reports of the Partner States in which each Partner State collected and compiled public views on the draft treaty.

Partner State reports suggest that only elites were consulted. For example, Uganda was able to publicise and collect views from journalists, members of the parliament and the legal profession.¹⁹ In Kenya, only seven hundred and thirty copies of the draft treaty were distributed to the public (interest groups), the National Parliament and the judiciary which received thirty copies. In Tanzania, the draft was made available to the media houses, business organisations and political parties.²⁰ On the part of Tanzania and Kenya, no evidence is available on the consultation of citizens at the grassroots. In Uganda, the government stated categorically that it was unable to reach the grassroots population in rural areas due to resource constraints.²¹

Regarding the admission of new members to the Community, the procedure considers transparency in a narrow sense. Evidence from the East African Community website shows that the Community publicises information on the new applications and the verification process to ascertain compliance with the criteria for the admission of new members. However, the verification report is not availed to the public scrutiny to determine compliance with the criteria for the enrolment of new members of the Community. This challenge is a result of the lack of a stipulated procedure under EAC law that regulates the entire process of the enrolment of new members. The weakness of the law in this area renders the admission of new members to the Community a preserve of the organs of the Community and the Partner States.²²

4. Policy Framework for Transparency in the EAC

Policies play an overwhelming role in taking a regional organisation as close as possible to the people as they tend to provide guidance and mechanisms through which stakeholders are engaged in the integration process. In the EAC context, Partner States have adopted a Communication Policy and Strategy which guides intra-organisational and inter-organisational

¹⁹ Report of the 12th Meeting of the Tripartite Commission 1999, 29-32.

²⁰ Ibid.

²¹ Ibid.

²² *Patrick Walusimbi and Others v. Attorney General of the Republic of Uganda and Other*, Reference No. 8 of 2013.

communication in the EAC. This policy aims at enhancing communication among stakeholders including organs and institutions of the Community, ministries of the Partner States, non-state actors and citizens, to bring awareness about the Community among the East African people. Hence, the policy aims at promoting participation, publicity and marketing of the projects and programmes to the East Africans. Specifically, the policy aims to promote and maintain better visibility of the EAC's positive profile and brand identity, promote EAC as a dynamic people-centred ideal, ensure interaction between the EAC and the people so that suitable projects, programmes and priorities are established and implemented, and ensure that all citizens, legislative representatives and policymakers of the Partner States and external stakeholders are aware of the EAC. Adopting the Communication Policy demonstrates a positive attitude towards having a people-centred EAC. The policy is a positive initiative towards bringing the Community to the people at the grassroots as it enhances access to information authored by the organs of the Community. Despite the positive initiatives, the policy falls short of the political will and lacks a realistic methodology through which the objectives are to be achieved. For example, notwithstanding the efforts embarked on the policy, the problem of communication barriers such as poor telecommunication networks and the internet, especially in remote-located areas, has not been addressed. Many remote areas within the Partner States experience poor telecommunication networks and internet connections.

Furthermore, the implementation methodology of the policy does not consider the role of persons with disabilities as an important portion of the East African population who should contribute to the EAC integration process. For example, the policy does not describe how persons with different disabilities will benefit from the operation of the policy. Disregarding persons with disabilities started from the consultative process, which led to the adoption of the policy. According to the records available, the unstructured interview used to collect views on the policy did not include consultation with persons with disabilities. The trend of disregarding persons with disabilities is demonstrated in the policy, which does not expressly mention persons with disabilities as a special group of citizens that need special treatment. It is submitted that where organs of the Community or Partner States communicate or disseminate information to the public, they should consider disparities among East African people.

The question of language to be used in disseminating information and the whole communication strategy may jeopardize the practical achievement of the objectives. According to the policy, the EAC will endeavour to translate its communications into French to disseminate information to Congolese, Rwandans and Burundians. Hence, the policy undermines local languages' role in achieving its objectives.

5. Legal Framework for Transparency in the EAC

The EAC considers transparency an important tool in realising its objectives. It is recognised as one of the fundamental principles that the community's organs and Partner States adhere to.²³ Inclusion of transparency in the fundamental principles presupposes that accessibility to information for the general public is important in citizens' involvement in the Community's functioning.

Despite the efforts made to recognise the role of transparency in the functioning of the Community, it is narrowly entrenched as the Treaty does not designate provisions establishing obligations on the organs of the Community and Partner States to make their decisions openly as possible to the people. For example, the Treaty does not require organs of the Community such as the Assembly to hold public meetings.²⁴ In the same vein, the Treaty does not declare access to the Community's records as a right of the citizens. This lacuna leads executive organs of the Community to deny information to the public by treating such information as confidential and secret.²⁵ The Treaty's weakness on transparency contributes to the lack of clarity and application of the notion of transparency within the Community. So far, there is no jurisprudence on the extent to which organs and institutions of the Community are required to be as transparent as possible in the decision-making process.

It is important to note that transparency widens the opportunity for the public to fully participate in the legislative-making process and the functioning of the organs of the Community. This opportunity, among other ways, is realised when communication between the Partner States and Community organs becomes accessible to the citizens.²⁶ The opportunity extends to the situation where Community organs opine on the law and policy-making process; such information has to be available to the public even if the decision is not finalised.²⁷ When citizens become aware of the ongoing activities of the organs of the Community, they may intervene and contribute before the final decision affecting the Community is made.

Furthermore, negotiations and proceedings of the Community organs need to be shared with the public. In that case, the legal framework should offer the mechanism through which information is shared with the public. This is so

²³The EAC Treaty, article 6(d).

²⁴Practically, meetings of the Assembly are held openly, but that remains at their discretion, not under legal obligation. Therefore, they may decide to conduct their proceedings in camera/behind closed doors.

²⁵Annexe II of the 14th Ordinary Meeting of the Council of Ministers Report 2007.

²⁶*Access Info Europe v. Council of the European Union*, [2011] ECR 11-01073.

²⁷*Kingdom of Sweden and Maurizio Turco v. Council of the European Union* [2008] ECR 1-04723.

because, the stronger the legal framework put in place to regulate the accessibility of information, the more transparent the institutions become.²⁸ Transparency increases public understanding and trust in the organs and institutions. This may be achieved by increasing openness in decision-making in such organs and institutions.²⁹

It has been observed that the EAC does not have transparency rules detailing the execution of the principle of transparency under Article 6 of the Treaty. For example, there are no legal requirements that oblige organs and institutions of the Community to be open to one another in the realisation of the objectives of the Community.³⁰ Similarly, organs are not compelled to provide the public with information on their ongoing projects and activities, which either benefit the public or adversely affect them.³¹ Therefore, the absence of the transparency rules requiring organs/institutions to act per the public demands impedes access to information and ultimately limits public participation in decision-making.³² So far, there is no EACJ jurisprudence on the principle of transparency in the East African Community.

6. Access to Information as an aspect of Transparency in the EAC

The right to access information is a fundamental right recognised not only by international legal instruments but also laws of the Partner States.³³ The right to access information fosters the participation of citizens in the democratic life of the Community. Through access to information, citizens understand the Community and increase participation opportunities in the decision-making process or implementation of decisions made by organs of the

²⁸Gijs Jan Brandsma, 'Transparency of EU Informal Trilogues through Public Feedback in the European Parliament: Promise Unfulfilled' (2018) *Journal of European Public Policy*, Published online, available at <https://www.tandfonline.com/doi/full/10.1080/13501763.2018.1528295>.

²⁹Grimmelikhuijzen, S., *et al.* (5) 57.

³⁰Instead, the Community has adopted a Communication Policy as a soft law to guide the provision of information related to the benefits of the Community to the people.

³¹Evelyn Coremans, 'From Access to Documents to Consumption of Information: The European Commission Transparency Policy for TTIP Negotiations' (2017) 5 *Journal of Politics and Governance* 29, 31.

³²It has been observed that, although the Communication Policy and Strategy is in place, citizens living/working in Mutukula and Namanga borders of Tanzania, Kenya and Uganda lack information on the functioning of the organs and institutions of the Community. This is contributed by the absence of transparency policy, which could compel openness in the functioning of the organs and institutions of the Community.

³³Article 19 of the International Covenant on Civil and Political Rights, 1966. Except Burundi, Constitutions of the Partner States recognize access to information as a fundamental right of the citizens. This right is enshrined under Article 35 of the Kenya Constitution, Article 38 of the Rwanda Constitution, Article 18 of the Tanzania Constitution, Article 41 of the Uganda Constitution, Article 24 of the Constitution of the Democratic Republic of Congo and Article 32 of the Constitution of the Republic of South Sudan. In implementing their constitutional provisions, these Partner States have enacted specific legislation.

Community and Partner States. That is possible because the information is a necessary device for public participation at any level of governance.³⁴

It has been pointed out above that the EAC legal regime does not recognise access to information by citizens as their right. This suggests that accessibility to EAC documents is a discretionary power of the organs and institutions of the Community. The custodians of these documents are not bound to provide any information or document to an individual. On this aspect, the East African Civil Society Organisations' Forum notes that sometimes access to information depends on the relationship between the information seeker and holder. In this regard, an escape loophole exists for Community organs to choose to give or refuse to provide information/documents without being obliged to give reasons for their decisions. It is so because the law does not stipulate the information to be shared with the public. This being the case, the Community's organs are at liberty to share with the public or may decline to do so. A good example is the content of the websites of the organs of the Community in which some critical information and documents for public consumption are not posted/uploaded.³⁵

Since the right to access information does not exist in the EAC legal regime, no Community standards on accessibility to information with which the Partner States could comply. This situation is likely to affect citizens' participation, especially where a citizen of one Partner State wants to access information related to the Community from another Partner State. This means it is difficult for a non-citizen or a legal person to request documents supplied by a Partner State to the organs of the Community where they wish to know, contribute or challenge actions related to the Community. Access to communications between a Partner State and organs of the Community is important as it places stakeholders/citizens in an advantageous position to contribute to matters requiring public participation.

The author argues that documents relating to the Community should be kept by organs of the Community, which would determine access by the public per the standards set forth under the law. In addition, Partner States should not be permitted to invoke their national laws to curtail access to documents relating to the functioning of the Community. This is not the case in the EAC because the law does not set standards for one to access information from the organs and institutions of the Community and the Partner States. This lacuna affects transparency within the Community and, as a result, limits public participation through litigation and other avenues like petitions. Here,

³⁴Alessia Vacca, 'Evolution of the EU Law with Respect to Public Access to Documents and Transparency: The Treaty of Lisbon' (2012) 5 *International Journal of Liability and Scientific Enquiry* 79, 80.

³⁵Council and Summit Reports and Partner States' correspondences are not part of the documents accessible through the Community website.

citizens' involvement is hindered because of a lack of sufficient information that is accessible to the public.

The absence of standards on the right to access information limits the participation of citizens in the functioning of the Community. In *Antony Komu v. The Attorney General of the United Republic of Tanzania*,³⁶ a Tanzanian citizen challenged the process of electing members of the East African Legislative Assembly from Tanzania that it violated the EAC Treaty. The respondent, the Attorney General of the United Republic of Tanzania, raised a preliminary objection. He contended that the Applicant obtained the information from the parliamentary Hansard contrary to Section 19 of Tanzania's Parliamentary Immunities, Powers and Privileges Act. The respondent requested the Court to dismiss the application because the Applicant had unlawfully obtained the document. The court ruled in favour of the application on the grounds that the case was also supported by other independent evidence before the Court.

This case suggests that East African people may fail to participate in the enforcement of Community laws because of the non-existence of the standards at the Community level that regulate access to information in the organs and institutions of the Community and Partner States. As a result, this situation permits the Partner States to apply their restrictive national laws³⁷ on matters of a Community nature.

Information on decisions of the Partner States and Community organs regarding the realisation of the Community's objectives is of great importance as far as citizens' participation is concerned. Without information on the activities of the Community and Partner States, it is hard for the public to participate in the decision-making process. The lack of rules on access to information at the Community and the national level has contributed to poor participation of women in trade and business within the Community.³⁸

It has been observed that individuals at the grassroots strive to get information relating to the market, certification of goods and standardization in the Partner States because the question of access to information is left in

³⁶*Antony Komu v. The Attorney General of the United Republic of Tanzania*, Ref. No. 7 of 2012, 18.

³⁷The Collaboration on International ICT Policy in East and Southern Africa, A Comparative Analysis of Access to Information Legislation in the East African Community (2017) 4. Available at https://cipesa.org/?wpfb_dl=245, accessed on 20 January 2020.

³⁸A simplified Guide for micro and Small-Scale Women Cross Border Traders and Service Providers within the East African Community: EAC rules and regulations on right of establishment (2017) iv. Available at [http://eabconline.com/attachments/article/132/Simplified%20Guide%20for%20Micro%20and%20SmallScale%20Women%20Cross%20Border%20Traders%20and%20Service%20Providers%20within%20the%20East%20African%20Community%20\(EAC\).pdf](http://eabconline.com/attachments/article/132/Simplified%20Guide%20for%20Micro%20and%20SmallScale%20Women%20Cross%20Border%20Traders%20and%20Service%20Providers%20within%20the%20East%20African%20Community%20(EAC).pdf), accessed on 27 January 2020.

the hands of the Partner States.³⁹ At Mutukula border, for example, women traders lacked correct information on EAC trade matters, such as information on which goods are restricted from crossing from one Partner State to another. Because of a lack of information, the participants complained about losing businesses. Further, the lack of access to information encourages traders to smuggle goods across the border, fearing refusal to import from the national authorities.⁴⁰

Transparency in decision-making is possible only if organs and institutional structures permit it.⁴¹ Institutional design is important in facilitating easy accessibility of information to the public to allow timely participation in the decision-making process. This is possible once access to documents and information acquires the status of a legal right in the Community and the Partner States. Access to information to become meaningful, information related to the functioning of the community should be disseminated in a language understood by the intended population. It suffices to argue that language is an essential device in actualising access to information, an attribute of transparency.

7. Language Barrier towards Access to Information in the EAC

A language is an important tool in accessing information. It serves two purposes: firstly, it is a communication instrument through which information is broadly transmitted; secondly, it is a symbol through which identity related to culture is created. Through language, citizens understand decisions, directives, laws and policies of the Community affecting their affairs. Again, through it, citizens may interact with the organs and institutions of the Community by requesting information and following debates in the respective organs of the Community. The East African population is a multilingual society that speaks different local languages, including Kiswahili, spoken by more than 50 million people across the East African region.⁴²

In line with the foregoing, the understanding is that each Partner State has different official and formal languages dominating official communications. However, English and Kiswahili take precedence over other languages in Kenya, Tanzania and Uganda. For example, English and Kiswahili languages

³⁹The East African Community Communication Policy and Strategy does not set standards, which the Partner States have to implement. Instead, it concentrates on the channel through which Community information should reach the audience.

⁴⁰Similar views are shared by small traders and residents of Namanga Border.

⁴¹Gijs J Brandsma, Deirdre Curtin, and Albert Meijer, 'How Transparent are EU Comitology Committees in Practice?' (2008) *European Law Journal* 819, 819.

⁴²African Languages, Kiswahili, available at <https://africanlanguages.com/kiswahili/>, accessed on 27 January 2021.

are official languages in Tanzania. Similarly, in Kenya, English and Kiswahili are official languages.⁴³In Kenya and Tanzania, Kiswahili is the national language. While English is the first official language in Uganda, Kiswahili is the second⁴⁴. Unlike Kenya and Tanzania, where Kiswahili is a national language, in Burundi, Kirundi is a national language, while French is a *defacto* official working language.⁴⁵ Rwanda embraces Kinyarwanda, English, French and Kiswahili as official languages. In Rwanda, English is taught mostly in universities.

The Treaty recognises language's role in realising the Community's objectives. Article 137 embraces the English language as the official language of the Community. At the same time, Kiswahili is expected to be developed into a common language used by East African people who speak different native languages. Article 46 of the Treaty provides English as the only language of the Court. The Treaty provisions presuppose that all interactions between organs of the Community, Partner States and citizens should be made in the English language. Thus, while the working official language of the Community is English, Kiswahili is envisioned to acquire a *lingua franca* status.⁴⁶

Despite the existence of a Communication Policy and Strategy which provides for the channel through which the Partner States and citizens may be informed on the activities of the Community, most of the documents and information of the Community are in the English language, and communications to the organs of the Community are made in the English language. This suggests that access to information in the EAC is meant for the population acquainted with the English language. This position limits access to information to a large population of the Community which speaks other languages like Kiswahili, French and local languages. Citizens cannot understand the laws, policies and programmes of the Community because they are written in a language not familiar to them, leave alone getting access to the documents. Due to this challenge, citizens are likely to fail to access information available in different communication channels of the Community, like websites and social media. Websites of the Community and its organs contain most documents and information on the Community. Since some information is shared through social media like Twitter, Facebook, Instagram and YouTube, citizens may not be able to access such information because of the language barrier. In this, the key informant from the EAC Secretariat reveals that embracing English as the only official language through which

⁴³The Constitution of Kenya, 2010, article 7.

⁴⁴ On 5th July 2022, Uganda adopted Kiswahili as an official language and recommended teaching the language be made compulsory and examinable in primary and secondary schools.

⁴⁵The Constitution of Burundi, 2005, article 10.

⁴⁶The Rules of Procedure of the Assembly, rule 35.

documents and information are delivered is a big challenge in ensuring citizens' participation in the functioning of the Community.

This challenge made Burundi raise a concern that the French language should be recognised as one of the official languages of the Community.⁴⁷ The request came to facilitate access to information for Burundians. Responding to Burundi's concern, the Summit directed the Secretariat to initiate a study on the modality for inclusion of the language.⁴⁸ However, the process has been delayed for a lack of funds to undertake the study.⁴⁹ It is submitted that the inclusion of French as a language of the Community would widen the scope of accessing information in the Community, especially for the French-speaking population. However, instead of undertaking a study on the inclusion of French as the official language of the Community, the Summit could have used this opportunity to direct that the study to be undertaken to ascertain the role of other languages and how they are likely to bring the Community close to the people and thereby fostering citizens' participation in the integration process.

It is submitted that language is an important instrument for accessing information in the EAC. The EAC has not invested enough in language as a communication medium between ordinary citizens and organs of the Community.⁵⁰ The Community should identify more official languages to deliver information to a large population in the Community. This will avail ordinary citizens more opportunities to access information in the language they understand better; in turn, the process may facilitate public participation in the functioning of the Community. This argument stems from the fact that the more people get informed on matters of the Community, the more are they likely to participate in realising the Community's objectives through engagement in programmes and activities.

Indeed, information is power. Through information, citizens can know not only matters requiring consultation by organs of the Community and Partner States but also the time within which consultation will take place. Knowing when consultation on a particular matter will take place helps citizens to prepare for that consultation. Also, through information, citizens know how their representatives are elected and the extent to which they are represented in the decision-making bodies. Moreover, information helps citizens to

⁴⁷Annex VII of a Report of the 38th Ordinary Meeting of the Council of Ministers, Arusha, 6th – 10 May 2019, 9.

⁴⁸EAC Directive, *EAC/CM38/Directive 07*.

⁴⁹A report of the 38th Ordinary Meeting of the Council of Ministers, Arusha, 6th – 10 May 2019, 9.

⁵⁰Although the EAC Communication Policy and Strategy addresses national and local languages as a vehicle for information communication, it mentions them in vain without giving impetus to its communication channels like websites.

monitor the implementation of the laws, policies and decisions of the Community and evaluate the same *vis-a-vis* the objectives of the Community. A language policy in the EAC will likely affect the realisation of these important benefits to the people. Generally, considering the weaknesses of the principle of checks and balances between the organs of the Community, transparency and accessibility to information would foster accountability as citizens would also serve as watchdogs of the exercise of powers and functions of the Community organs and institutions.⁵¹

8. Digitalizing Information Communication to Promote Transparency

Today digital communication technology has simplified access to information in terms of cost and time within which information reaches an intended destination. An individual may access information through computers, smartphones and other electronic devices connected to the internet that links between the information source and the user. It is the fastest communication channel that allows the information seeker to access information on demand. Information is commonly digitalised through organizational websites and social media including Tweet, Facebook, Telegram, YouTube and Instagram.

The EAC is not walking far from the digital technology world, which has adopted communication tools to enhance the dissemination of information to the stakeholders, including the Partner States, organs and institutions of the Community, civil society, private sector and citizens. The Community owns three websites, which host the EAC, East African Court of Justice and the East African Legislative Assembly. These websites display information about the Community's general functioning and its organs in particular. Similarly, social media ensure that information on the Community's day-to-day activities, projects, and programmes reaches stakeholders quickly through mobile devices like computers, smartphones and tablets.

The EAC websites are vital in sharing information with the Community as they are rich in information that stakeholders may access and use, thus enhancing their participation in the integration process. For example, the EAC website has vital information, such as how the EAC integration process is undertaken, the institutional structure of the Community, opportunities available, press releases of various events, communique of the Summit of Heads of States, how to communicate and physical visit to the EAC offices and the EAC leadership. More importantly, the website includes legal, policy and strategic documents guiding the integration process like the Treaty, Protocols, Acts, annual reports, and budgetary speeches. This information is

⁵¹Pierpaolo Settembri, 'Transparency and the EU Legislator: 'Let He Who is Without Sin Cast the First Stone' (2005) 43 Journal of Common Market Studies 637, 638.

imperative to enhance popular participation in the functioning of the Community and the integration process.

The EAC also uses social media as a communication channel between Community organs and stakeholders/citizens. Social media has been an important communication channel for a large part of the population, especially in urban areas, and it has a visible impact on disseminating information in society. The EAC has been active in using social media as one of the communication channels to the stakeholders, who in turn contribute to the decision-making process. Twitter, Facebook and YouTube are actively used in communicating information to the public. Digital channel enhances transparency in the functioning of the EAC as information posted on such media reach citizens at a low cost. Since citizens may request information through a digital channel, interaction between citizens and the organs/institutions of the Community and the Partner States is simplified.

9. Conclusion

Citizens and interested groups in the EAC need to access information directly from the organs and institutions of the Community. Information obtained from secondary sources like the mass media does not suffice the need of citizens and interested groups to form informed opinions worth contributing to the decision-making process. For citizens to participate in the law-making process, for example, they must access draft laws and policies before they are called for public opinions. Supplying draft laws and policies to citizens means availing them of the choice of the modality of contributing to the law and policy-making process. They may also make their views known to the individual Member of the Assembly or channel the same directly to the respective Committee of the Assembly responsible for the Bill. Similarly, in the interest of transparency, decision-making approaches in the organs and institutions of the Community should be known to the citizens in order not only to legitimise the decision-making process but also to allow active participation of citizens in the decision-making process.