

ASSESSMENT OF CONSTRUCTION AND RELATED ENGINEERING SERVICES IN THE COMESA REGION



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List of Acronyms and Abbreviations

AfCFTA	Africa Continental Free Trade Area
ASEAN	Association of South East Asian Countries
CIDB	Construction Industry Development Board (Mauritius)
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EU	European Union
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IFC	International Finance Corporation
MRA	Mutual Recognition Agreement
NCC	National Council for Construction
NCI	National Construction Industry (Malawi)
SADC	Southern Africa Development Community
RECs	Regional Economic Communities
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organisation

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Executive Summary

Trade in services has emerged as the fastest growing trade segment over the last decade. The International Trade Centre (ITC) estimates that services account for up to 70 percent of global GDP, 60 percent of employment and 46 percent of global value-added exports. This reflects the importance of services to economic growth as well as the available market opportunities for firms.

The World Trade Organisation (WTO) has established a framework for governing and incentivizing international trade in services. This is through the General Agreement on Trade in Services (GATS), which provides guidelines within which services may be negotiated and traded.

This report explores the construction and related engineering services sector in COMESA and considers factors that can enhance regional trade in the sector. The study observes that the current state of trade in the services sector overall in COMESA is quite low despite the dominance of the sector in the region's domestic economy. It further finds that construction services trade in COMESA was such that only 10 Member States exported construction and related engineering services between 2016 and 2020 though more Member States imported the services. Construction and related engineering services in COMESA accounted for 2.1 per cent and 4.0 per cent of total services trade exports and imports, respectively. This was less than 1.0 per cent of the estimated potential market for construction in COMESA, which, according to Deloitte Africa, was \$340 billion in 2021. Thus, there is need for COMESA Member states to unlock this possibility through the on-going negotiations and to explore measures to improve the performance of the sector; including through enhancing trade openness and competitiveness of services sectors.

The status of commitments of COMESA Member States in construction and related engineering services at various levels varies quite widely across COMESA, influenced significantly by the regulatory regime and trade openness stances of the Member States.

From a literature review perspective, the importance of competitiveness and liberalisation in enhancing trade in construction and related engineering services is key. The structure of the construction and related engineering services sector was reviewed in detail from a practical perspective, with the study finding that the level of competition and level of liberalization in the sector are both relatively constrained, particularly when compared to the state of play in other regions off the African continent. A regional approach could be instrumental in enhancing services trade liberalization and therefore, could be explored as an option in the on-going negotiations in construction and related engineering services in the COMESA region.

The study observes the strong relationship between construction and related engineering services trade and professional services. That is, in the provision of construction and related engineering services, professions associated with the sector are relevant and required for managing construction projects. It is, therefore, found to be necessary to include in the negotiations the relevant professional services that support the construction sector.

In terms of the regulatory environment for construction and related engineering services in COMESA, the study found that the laws and regulations governing the construction sector are mainly characterized by: protection of local firms; restrictions for foreign firms; and requirements for registration of professionals with local regulatory bodies. The regulatory regime in COMESA is diverse and unique for various Member States; whilst some have specific laws and regulations for the sector, others have a series of laws and regulations that have an impact on the provision of construction services.

For purposes of negotiations, Member States must seek to understand the unique regulatory provisions of other members to effectively enable market access for stakeholders. Regulation has a direct impact on market access, commercial presence, movement of natural persons and Government procurement. Furthermore, due to the nature of the construction process and interaction with other sectors, construction services are also indirectly affected by laws and policies of other sectors.

Regarding the level of liberalization in construction and related engineering services in COMESA, to date, only 6 out of 21 Member States have made liberalization commitments under GATS; and 8 out of 9 COMESA States have made commitments in construction services in SADC. Commitments in the EAC were yet to be made as of the time of the study, whereas negotiations were ongoing in COMESA. Thus, trade openness in construction and related engineering services was relatively low in the COMESA region with few Member States having liberalized the sector. It is further observed that horizontal commitments affecting construction and related engineering services had significant impact on the supply of services in the sector mainly because they were generally designated for mode 4 by most Member States.

Despite the commitments made by Member States at WTO and in SADC, some of these commitments are not aligned with domestic regulations, which continue to present limitations and barriers for foreign services providers. Some Member States may need to harmonize their commitments at GATS with those in SADC as the practical application of specific limitations may conflict. It is further observed that Member States that have not made any commitments, have an opportunity to align their commitments to best practice and take full advantage of the benefits; whereas those with no commitments under GATS have the opportunity to adopt a GATS-plus approach where they can liberalize progressively.

The study identified competitiveness as an important factor for effectiveness of trade in construction and related engineering services. A number of factors were seen to affect competitiveness of construction services suppliers in general, and in COMESA specially, including: capacity of domestic firms; access to finance, technology, plant and equipment; conditions of development partners that may preclude local firms; availability of skilled labour; and the appreciation of trade in services principles and opportunities by services providers.

From the foregoing, the study concludes that considerable scope exists for enhancing trade in construction and related engineering services through improving the regulatory environment and opening up the sector through negotiated liberalization. Toward this, the study makes the following recommendations that could optimize the

benefits of trade in construction and related engineering services in the COMESA region:

- i. **Domestic policy and regulatory reforms:** To remove policy and regulatory barriers, COMESA Member States should consider reviewing and where necessary, reforming their domestic policy and regulations affecting the construction services sector based on sector-specific research and analysis, and inclusive national stakeholder identification and consultation process. This is particularly relevant with regard to restrictions in the Presence of Natural Persons and conditions for establishment of foreign firms.
- ii. **Coherence and consistency in domestic regulation and policy:** This process entails constant monitoring of regulatory changes and their impact on construction and related services trade as well as ensuring other sectoral agencies are sensitized on the member states obligations and commitments in construction and related engineering services. In addition, given the multi-sectoral scope construction and related engineering services, Member States should consider establishing Inter-Agency Coordination Mechanisms (IACM) to coordinate both domestic industrial organization issues around the construction and related engineering services sector and services trade.
- iii. **Facilitation of Capacity Building and Support:** Member States in COMESA recognize the need for additional support to their efforts by the COMESA Secretariat or other expert institutions. Given the specialized framework of trade in services, there is an apparent need for capacity building for both the public sector as well as service providers. It is recommended that a continuous process of capacity building and sensitization of all stakeholders be established.
- iv. **Increase Competitiveness:** Whilst the objectives of liberalizing construction and services is sound, there is need to address the impact this has on domestic firms which are mostly small and medium-size and most do not have capacity to provide their services internationally. Measures could include; establishing procurement frameworks that allow for small and medium construction services providers from COMESA Member States to participate in smaller projects; affirmative action policies and expanding the scope of local firms to include those from the COMESA region; promoting joint ventures among firms from the COMESA Region and sub-contracting to COMESA firms by large international firms; and provision of business development services (finance, lease of equipment, technical support etc) to firms supplying services in the region.
- v. **Clarity on Mode 1 of Supply of Construction and Related Engineering Services:** There is need for clarity regarding the scope as the interpretation by various states on the applicability varies. Some schools of thought indicate that supply of services in this mode can be undertaken for some sub-sectors especially those relating to pre-erection works, which in the most part include professional services. COMESA Member States need to agree which specific elements of this mode can be considered in construction and related engineering services.

- vi. **Mutual Recognition Arrangements (MRAs):** The construction sector, due to its broad scope, attracts a wide range of professions and skills. Whereas expertise such as architecture and engineering are provided for under professional services, there is still need for regulatory and professional associations from Member States to consider establishment of a harmonized set of standards for professions and skills in construction and related engineering services.
- vii. **Standard Registration and Qualification Criteria:** From the registration criteria of different Member States, it is observed that construction services suppliers are subject to varying sets of criteria for qualification to supply services. As such, it would be important to explore the harmonisation of this criteria by relevant regulatory agencies in the region.
- viii. **Tools for Monitoring and Tracking Commitments:** It is important that standard mechanisms for monitoring regulation and its impact on construction services trade are developed for member states to periodically provide information and to monitor the levels of liberalization and compliance with commitments.
- ix. **Disclosure of Policy and Regulatory Information:** The availability of policy and regulatory information impacting on the supply of construction and related engineering services would enhance the on-going negotiations as COMESA Member States could refer to these in framing their requests, offers and commitments. This would also strengthen and enrich the negotiations, because it would allow member states to enquire on or address specific issues. It is therefore proposed that Member States submit all relevant policy and regulatory documentation at the initiation of the next round of negotiations.

1.0 Introduction

Trade in services has emerged as a fast-growing global trade segment over the last decade, almost matching the pace of trade in goods. Over 2005-2021, world exports of services increased by 5.7 percent per annum on average, marginally slower than exports of goods at 5.8 percent per year (UNCTAD, 2022). Similarly, services imports grew by 5.3 percent per year on average over the same period compared to goods imports which were slightly higher at 5.7 percent per year.

The International Trade Centre (ITC) estimates that services account for up to 70 per cent of global Gross Domestic Product (GDP), 60 percent of employment and 46 percent of global value-added exports. This emphasizes the importance of services to economic growth as well as the availability of market opportunities for service provider firms.

Despite the positive growth however, the share of services trade in total trade remains relatively much smaller than that of merchandise trade. Total global trade in service (exports and imports combined) accounted for 22 per cent per year on average over 2005-2021; the rest 78 percent per year was trade in goods (UNCTAD, 2022).

Aiming to enhance performance, the World Trade Organisation (WTO) has established a framework for trade in services through the General Agreement on Trade in Services (GATS). The GATS framework provides guidelines for negotiating the liberalization of trade in services.

In COMESA, the domestic services sector accounted for 57.4 percent of the GDP on average over 2010-2020 (UNCTAD, 2022). It accounts for over 30 percent of employment in the COMESA economy. The services sector is dominated by transport and travel services, which, as of 2018, accounted for over 80 percent of exports in services and about 66 percent of imports in services.

The contribution of construction and related engineering services in regional domestic economies and trade in African at large, and COMESA in particular, seems low despite having considerable inherent potential given the underlying infrastructure gap. One of the reasons for this could be that it is an emerging sector for trade in services, as negotiations on the sector commenced in 2019. According to COMSTATS (2021), total exports and imports in construction and related engineering services in 14 Member States in 2020 accounted for approximately US\$762.8 million and US\$1.66 billion, respectively¹. This represented 2.2 percent of the total services exports and 4.0 percent of the total imports recorded in 2020.

In COMESA, services were identified as a key segment for enhancing overall growth in trade in the region. Within the services, key subsectors were identified in which Member States could target to engage towards sub-sectoral liberalization under the COMESA trade in services liberalization programme. As of 2014, COMESA Member States had participated in and completed the first round of negotiations for trade in services liberalization in four priority sectors, namely communications, financial

¹ COMESA COMSTAT Database (Countries included: Burundi, Congo DRC, Egypt, Eswatini, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Uganda, Zambia)

(insurance and banking), tourism and transport. The second round of negotiations in three additional priority sectors of business services, energy services and construction and related engineering services was initiated around 2019 and were still on-going as of the time of producing this study report.

1.1 Rationale of the Study

To support the on-going second-round negotiation process, the COMESA Secretariat embarked on, *inter alia*, an assessment of construction and related engineering services among others. This was to enable effective preparation and negotiation in this sector using an evidence-based understanding of the existing practices for trade in construction and related engineering services in the region, juxtaposed to the WTO, other Regional Economic Communities (REC) and bilateral country practices. Furthermore, the assessment was expected to take into account the various challenges for services providers, opportunities for increased trade and frameworks for facilitating services liberalization in COMESA in this sector.

At the heart of this undertaking was the need to unlock the potential of construction and related engineering services to contribute more meaningfully to the economic growth of the region; increasing trade with other regional blocks and globally; as well as enabling regional integration. It is with this at the fore, that careful consideration was required to be made of core issues affecting trade in construction and related engineering services such as regulation, liberalisation, competition, investment and regional integration.

Furthermore, it is by the above-mentioned parameters that negotiations in trade in services, and particularly in the construction and related engineering services are underpinned. It is crucial that the on-going negotiations take into account the impacts and benefits of liberalisation and regional integration; while ensuring that the objectives of domestic regulation enhance competitiveness and investment. The outcomes of this study are meant to enable COMESA Member States take a balanced approach in negotiating trade in construction and related engineering services liberalization, establishing a long-term perspective oriented towards growth of trade in the sector.

As already noted, in 2014, COMESA Member States completed the first round of negotiations for trade in services liberalization in the four priority sectors of communications, financial, tourism and transport services. Thereafter, in the second round of negotiations, COMESA Member States have now started negotiations on construction and related engineering services, among the three additional priority sectors. As part of the process of preparing to effectively negotiate in this sector, it is important to have an understanding of the existing practices for trade in construction and related engineering services in the region, juxtaposed to the WTO, other Regional Economic Communities (REC) and bilateral country practices and also assess the various challenges for services providers, opportunities for increased trade and frameworks that can facilitate services liberalization in COMESA in this sector.

1.2 Objectives

The broad objective of the study was to compile and complement existing information on trade in construction and related engineering services in COMESA and elsewhere with the view of assisting COMESA Member States' participation in the regional negotiations on trade in services.

In accordance with the terms of reference of the assignment, the specific objectives of the study were:

- i. To review and describe the current state of trade in the construction and related engineering services sector in COMESA;
- ii. To establish the status of commitments of COMESA Member States in the construction and related engineering services sector at WTO under GATS and other RECs;
- iii. To understand the regulatory regime and trade openness, structure of the sector and level of competition, and level of liberalization across the COMESA Member States' construction and related engineering services sector; and
- iv. To recommend appropriate approaches to be considered for adoption by COMESA in negotiating commitments in this sector, based on best practices including from other RECs and the WTO, towards maximizing the potential benefits of liberalization.

1.3 Methodology

The approach of the study included two key elements, namely: desk study and literature review; and stakeholder consultations. These elements are explained in turn below:

1.3.1 Desk Study and Reviews

A review of documentation and other information was undertaken as required in the TORs. However, the data and information required for the study was limited due to non-responsiveness from some Member States and absence of the information in the public domain. This notwithstanding, the study endeavoured, where possible, to glean information and data from the following:

- Review of economic reports and relevant documents relating to construction and related services trade in the COMESA and other regions;
- Reviews of member states' policies, laws and regulations impacting the sector;
- Review of member states' commitments under WTO and RECs;

The main sources of this data included the COMESA Secretariat, Member States, policy research organisations and think tanks; public research depository i.e., World Bank, WTO, etc.

1.3.2 Stakeholder Consultations and Feedback

Given that the goal of the study was to assess the status of the construction and related engineering services sector in all COMESA member countries, it was important then to obtain information and engage the stakeholders based on similar premises. This would enable benchmarking, and a clearer understanding of each country's

limitations or advancements relative to other countries in the region and to best practice examples.

In this regard, consultative meetings were arranged with stakeholders in Member States to discuss regulatory, trade and other issues of concern regarding construction and related engineering services. This was mainly structured in questionnaires tailored separately for private and public stakeholders. Meetings were held with stakeholders from Comoros, Eswatini, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Tunisia and Zimbabwe. Feedback from questionnaires was obtained from Comoros, the Democratic Republic of the Congo (DRC), Mauritius, Seychelles, Tunisia and Zimbabwe.

Due to the limited engagement with Member States, some of the information obtained from the public domain could not be verified. Most importantly, some key information could not be obtained, such as regulatory documents and other economic data for reference. As a result, this report is based on data and information that was made available by some Member States as indicated above and from the public domain.

2.0 Literature Review

In accordance with the methodology, the study undertook a desk review, including a literature review of trade in services in general as well as the construction and related engineering services sector specially. This was from various perspectives regionally in COMESA, in Africa and across the globe at large. The main observations of the literature review are presented herein below.

Construction has been widely described as a foundational activity for economic growth and development. Its multiplier effects offer structural transformation potential in addition to laying the infrastructural foundation for broad based economic growth. The OECD (2012) reckons that in Africa, infrastructure and construction can potentially contribute as much as 2.0 percent to GDP. In other parts of the developing world, notably in China, massive investments in infrastructure established the backbone for other economic activities such as manufacturing, which in turn fueled economic growth (OECD 2012). Conversely, deficient infrastructure can hamper economic activities and weaken human development efforts (OECD 2012). In Africa this potential is not effectively harnessed due to the fundamental competitiveness challenges of the sector. This inadvertently affects the construction sector, whose existence and prosperity depends on sustained infrastructure development.

Kirchberger. (2018) contends that a poorly functioning sector translates into higher prices which lead to low levels of output for a given level of expenditure. Kirchberger. (2018) further asserts that a poorly functioning construction sector leads countries to purchasing construction services from foreign firms, limiting local employment generation and local content. The productivity of the construction sector presents a broad range of consequences for the provision of basic infrastructure and services.

Furthermore, the competitiveness of the construction sector is affected by the structure of costs in the sector. According to Kirchberger (2018), higher costs of infrastructure decrease the amount of infrastructure a country can afford, the selection of projects

and the number of projects being carried out in the sector, which may lower the ability of the sector to expand its capacity. In general, the competitiveness the construction sector and that of local firms in Sub-Saharan Africa compared to other regions is low, especially measured against such indicators as winning contracts and contract sizes (Kirchberger 2018).

According to Kirchberger. (2018), there are several organizational, institutional, financing, procurement, availability of critical inputs (e.g skilled labor or equipment) and governance factors which are constraining the ability of firms in Africa's construction sector to grow. Such barriers to performance impede the potential of the sector to become an 'engine of growth' (World Bank, 1984). As a result, the construction sector in many African countries, even though it has potential is still relatively underdeveloped. Thus, a key policy priority for African policy makers is to build the competitiveness of the construction sector in Africa as foundational policy building block, upon which other strategic policy initiatives such as the liberalization of trade in the sector can be based.

Meanwhile, the role of construction is going to grow as the role of services and trade in services emerges. Lee and Lloyd (2002) provide a distinction between two definitions of trade in services with the first one which is covered in Article I of GATs, the WTO and the International Monetary Fund (IMF) Balance of Payments Manual (BPM5 of 1993) and comprises of current account transactions other than those involving goods and income payments.

The Economic Commission on Africa (2021) observes that contribution of the services sector to trade, investment, employment, and poverty reduction has outpaced traditional sectors such as agriculture and manufacturing in recent years. Services such as construction now contribute about 58 percent of GDP in Africa compared with 46 percent in Middle East and North Africa. At the same time, trade in services is going to be important for increasing the participation of African countries in global value chains (Saez, McKenna and Hoffman 2015). Simultaneously, investments in the construction sector, driven by an increase in infrastructure development, is growing; cementing the relationship between growth in the construction industry and investment. Indeed, empirical work indicates construction investments as being associated with growth in capital formation (Bakar, 2009, Ofori, 2005). Notably, though the role of private investment in African infrastructure has been limited, particularly due to weak enabling environments (OECD 2017)

African countries have also been making strides towards liberalizing trade in services by signing up to various policy frameworks such as the General Agreement on Trade in Services with African countries concluding over 165 bilateral investment treaties (Economic Commission for Africa (2021). The GATS framework, in particular Article V of GATS, lays out the provisions for regional trade agreements at the regional and bilateral levels. Among other things, the commitments address things such as the number of sectors, volume of trade and the elimination of barriers to trade. Notwithstanding, many of the agreements have not been consolidated to harness the benefits of liberalization (Economic Commission for Africa, 2021). At the same time, as suggested by the Commission, the continent has seen a consistency in policy fragmentation which contributes to Africa's competitiveness on global services with few African countries having scheduled service commitments. The Economic

Commission for Africa reckons that the signing of the African Continental Free Trade Area (AfCFTA) agreement will be an important platform for the liberalization and integration of services in Africa. The Economic Commission for Africa (2012) recommends adjusting trade regulations, reducing barriers, and promoting non-discriminatory measure as key to removing restrictions on services trade.

Ultimately, a regional approach to trade in services could enhance liberalization by fostering domestic reforms and increasing access to markets (World Bank, 2002). This could be the premise for the ongoing trade negotiations in services in the COMESA region, particularly in construction and related engineering services.

3.0 Background and Context

Furthermore, in accordance with the methodology, the study conducted a desk review which provided the basic background and context of construction and related engineering services presented in this section.

3.1 Construction in the Global Economy

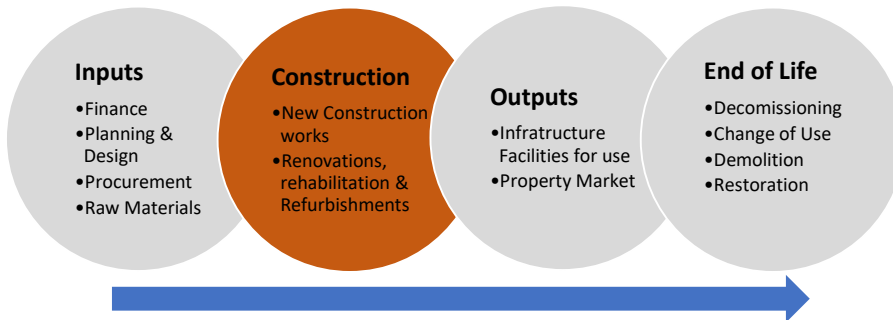
Construction is an industry that spans across time since the origins of civilization as it facilitated the provision of basic human needs for shelter and related amenities. The construction sector is therefore key to development, as it is necessary for the provision of infrastructure, which is a backbone of economic activity. In addition, the construction sector facilitates the creation of employment for both skilled and unskilled labour; as well as contributes to GDP of many economies. As such, the sector is considered crucial for job creation and sustainable growth.

Construction is defined broadly to include real estate, infrastructure, and industrial structures (McKinsey 2020). Construction also includes various activities which include design, engineering, procurement, and execution of infrastructure projects (Alagidede and Mensah 2016). In addition, activities which involve alterations, maintenance and repairing of infrastructure also fall under construction. Construction and related services are therefore critical for the installation of infrastructure and subsequent supply of services related to the infrastructure. The infrastructure development value chain is illustrated below in figure 1.

Construction and related engineering services are at the centre of the infrastructure development value chain; converting the conceptual designs and raw materials into physical infrastructure for use in the provision of related services (e.g., roads for transport, electric power generation plants for energy services, payment systems infrastructure for financial services, etc.). Construction is therefore a key element in the value adding process in the installation of infrastructure and provision of services. As such, it is used as one of the main measures of economic activity and progress, including within National Accounts Frameworks that estimate GDP.

The construction industry and its ecosystem are foundational to the functioning of the global economy even though the sector has traditionally underperformed in many regards (McKinsey 2020).

Figure 1: Infrastructure development value chain



Source: Adapted from One Planet and the International Resource Panel

In 2020, the construction sector made up 13 per cent of global GDP, which translated into approximately \$11 trillion in value added, and \$1.5 trillion in profits in the global construction value chain; this made it the biggest industry in the world, although it had historically underperformed due to characteristic time and cost overruns (McKinsey 2020). At the same time, the sector is undergoing significant shifts which are reshaping the sector at the global level. These include production optimization and specialization, increased value chain control, customer centricity and branding (McKinsey 2020). The construction sector's transition towards consolidation and internationalization are set to create scale; higher levels of investment in digitalization, research and development equipment; sustainability, as well as human capital (McKinsey 2020).

3.2 Construction Activity in Africa

Africa's construction sector has seen tremendous growth over the last twenty years or so. Approximately \$500 billion was spent on 452 of the continent's largest infrastructure and construction projects according to the One Planet and the International Resource Panel; implying an average of \$1.1 billion per project. African countries have increased expenditures on infrastructure in the wake of key drivers such as overall population growth, urbanization, trade expansion, and general economic development. Table 1 presents examples of selected large construction projects in Africa, by installation cost, between about 2000-2022

Linking the African context to the global perspective; globally, there has been a steady rise in construction owing to growing population, economic development, and growing urbanization following the Second World War (One planet and the International Resource Panel 2011). Following the Second World War, the developed countries engaged in increased construction activities during the period between 1950 and 1990s (One planet and the International Resource Panel 2011). This was followed by rapid build-up of buildings and infrastructure by countries such as China, India, Brazil,

and South Africa with many countries in Africa and Southern Asia entering into the construction phase (IRP, 2017a,2019).

The construction sector in Africa, like elsewhere in the world, is made up of different economic actors who play a variety of roles in its different segments. According to the One Planet and International Resource Panel, globally, residential buildings constitute the largest proportion of construction projects whereas the development of bulk infrastructure is the main construction activity in Asia-Pacific, Latin America, Africa and the Middle East. Governments play a key role in the design and development of institutional administrative buildings and other infrastructure while private companies play a key role in the design and development of residential and commercial buildings.

Table 1: Examples of some of the largest construction projects in Africa

Country	Project	Amount	Sector	Contractor
Algeria	Hauts Plateau Motorway	\$8.95 Billion, 2014-2025	Transport	China International Trust and Investment Corporation (CITIC) and China Rail Construction Corporation (CRCC)
Angola	Lauca Hydropower Plant	\$4.3 Billion 2012-2020	Energy	Odebrech
	Lom Pangar Dam and Hydropower Project	\$0.5 Billion 2012-2017	Energy & Power	Information not available
Egypt	Capital City Project	\$58 Billion, 2017-2022 (expected)	Real Estate	China State Construction Engineering Corporation
Kenya	Nairobi Naivasha Rail Project	\$1.5 Billion 2019-2021	Transport	China Communication Construction Company
Kenya	Konza Technology City	\$14.5 Billion 2016-2023	Real Estate	ICM, Huawei and Parklane Construction Ltd
Mozambique	Coral South Floating LNG Facility	\$4.6 Billion 2022-2024	Oil & Gas	TechnipFMC, JGC Corporation and Samsung Heavy Industries

Source: One planet and the International Resource Panel

In addition, the construction sector is configured around various processes that enable the conversion of plans into actual infrastructure facilities for use as depicted in the value chain shown in Figure 1 above. These processes typically involve design, execution and management. Table 2 below, shows the various actors and processes involved in the general segments of construction activity.

Table 2: Basic Structure of the Construction Sector

	Residential buildings	Institutional commercial buildings	and Specialized industrial construction	Infrastructure and heavy construction
Examples of type of use	Apartments, houses, dormitories, sheds, etc	Schools, offices, centres, retail stadiums, etc	hospitals, shopping stores, plants, etc	Chemical industry power plants, etc roads, bridges, sewage systems, pipelines, etc

Design	Architects, engineers	Architects, engineers	Specialized engineers	Government, architects, engineers
Execution	Construction companies, builders	Construction companies, builders	Industrial corporation specialized companies	Government agencies or and construction companies
Management	Individuals, real estate company	Retail: company private owner. School, hospitals: local / national government	/ local / national government Industrial corporation	Construction companies

Source: *One Planet and the International Resource Panel*

From Table 2, it is apparent that Governments and other public entities are involved in the provision of public infrastructure that facilitates social amenities such as education and health as well as infrastructure that provides the backbone for economic activity such as transport, energy, water and ICT infrastructure. Private sector entities tend to engage in infrastructure that has commercial benefits; whereas individuals undertake smaller-scale projects mainly residential and other own-property installations.

The composition of the construction industry the world over, is such that large firms with capacity for large-scale projects are few, whereas the medium and smaller sized firms tend to be the majority. In addition, the sector also attracts a wide range of human resources with specialized skills as well as those with limited or no skills. Construction services can be supplied as a whole undertaking by one contractor or in parts by specialized sub-contractors in limited areas.

The construction industry in Africa has been correlated to economic development in recent years. While much of the recent growth has been related to commodity booms of the previous decade, increased investments in the construction industry have also had an impact on economic development owing to its multiplier effects in the economy.

Experts suggest that the level of construction activity in a country is related to its stage of economic development. The construction industry is thought to follow an inverted U-shaped development pattern in which the share of construction in the economy increases in the early phases of development and then declines in later stages of development. The relationship between the construction industry and economic development shows that construction contribution to GDP tends to increase in the first stages of development and to stabilize in the middle-income range and declines in advanced countries (Lopez, et' al 2017).

Studies have shown that countries of Sub-Saharan Africa which have achieved middle income status and have also achieved a certain level of the construction industry activity (say 5 to 6 percent of GDP), the relative level of the construction industry tends to remain stagnant with the construction volume following the pattern of the general economy. On the other hand, countries that have low-income status, and are in the process of increasing economic growth, the construction industry activity increased not only absolutely but also relatively with the growth rate of the construction being higher than that of the general economy (Lopez et'al 2017). Furthermore,

infrastructure development, which is closely related to construction affects economic development in terms of both intermediate and final products.

The construction industry can be better appreciated by examining the significance of infrastructure. Good infrastructure facilitates the movement of the factors of production (labour, goods and finance) thereby improving productivity. Infrastructure also increases the flow of information, opening up new opportunities and reducing information asymmetries and other market imperfections. Economists assert that good infrastructure spurs growth and while increased growth results in demand for more infrastructure.

Thus, the achievement of the COMESA Region's development goals is closely related to the quality and levels of investments in its infrastructure. At the same time, inadequate infrastructure and services increase costs of production and transaction costs which in turn reduce overall competitiveness. The Economic Commission on Africa (2010) cites estimates which indicate that a 1.0 per cent increase in infrastructure stock adds 1.0 per cent to a nation's GDP growth. Similarly, a doubling of telephone connections from 5.0 per cent to 10 percent (rates observed in East Asia) can translate into an increase of 0.4 points in growth rate. In addition, increasing the per-capita growth of electricity consumption from 2.0 percent (observed in Africa) to 6.0 per cent (observed in East Asia) would lead to a 0.5 point increase in economic growth. The challenges of Africa's infrastructure and the impacts which they impose on Africa's development are recognized. The Asian Development Bank and the Economic Commission on Africa (2006) have highlighted some of the challenges:

- Only about 30 per cent of the population has access to electricity compared to 70 - 90 per cent in other major geographical zones of the developing world.
- About 65 percent of the population has access to safe water and sanitation compared to with rates of 80 - 90 per cent in other developing countries.
- The continent has a telecommunication penetration rate of about 3 per cent, compared with an average of 40 per cent in other parts of the world and it has low penetration of broad band services.
- Africa's road access rate is at 34 per cent compared with 50 per cent in other geographical zones with road being the dominant mode of transportation.
- Africa's rail network coverage is limited, characterized by low inter-connectivity.
- The African continent's transportation costs are among the highest in the world, with landlocked countries accounting for up to 70 percent of the value of exports.

The above challenges also present the potential demand for construction activity. Whereas the provision for infrastructure is dependent on economic capacity, the opportunity for the sector to grow remains high.

3.3 Drivers of Construction Activity

From the fore-going overview of the importance of infrastructure, it is apparent that the construction sector thrives and is driven by a number of factors, mainly:

- a. **Economic Growth:** The majority of economic growth in the recent decades has occurred in the developing world. According to the IMF (2013) some of the world's fastest growing economies in the world have been in Africa. Alagidede and Mensah

(2016) contend that while most of this growth has been driven by the commodity boom of the previous decades, the investment and expansion in infrastructure has had a part to play in the growth as well. These experts also observe that the United Nations Conference on Trade and Development (UNCTAD) shows that the construction sector in Sub-Saharan Africa has grown at about 5 per cent while showing generally upward trajectory

- b. (International, Regional and Cross-Border) Trade:** Associated to economic growth is trade. To facilitate this, infrastructure both tangible and intangible is necessary. Thus, construction services come into play by ensuring that relevant trade, transit and logistics facilities for goods and services are provided. The construction sector has also facilitated digitization, which has also made elements of trade possible especially services, through development of ICT platforms. As trade in both goods and services increases, so does the demand for construction services to facilitate trade. Common trade-related infrastructure includes: roads, rail lines, airports, seaports, etc, which support the functioning of transportation services; border infrastructure which supports trading across borders; logistics infrastructure like warehousing, cold chains, etc., which support storage services; commercial buildings, which support wholesale and retail trade in various commodities, etc.; etc.
- c. Urbanization:** Rapid urbanization has been a feature of many African countries in the recent years. The migration of rural populations into urban areas has seen many African countries including those in the COMESA region seeing a growth in the demand for infrastructure and construction services to cater for growing cities and supporting social and various forms of economic activity. African urban population growth has seen an upward trajectory as can be observed in selected countries such as Egypt with a 1.8 percent annual average urbanization rate, Ethiopia (4.6 percent), Kenya (4.2 percent), Uganda (5.7 percent), Malawi (4.1 percent), Rwanda (2.8 percent), Zambia (4.3 percent) and South Africa (2 percent) (World Bank 2019). A resulting impact has been rapid growth in urban populations across the countries in the COMESA region therefore, heightening the need for construction.
- d. Population Growth:** As population increases, so does demand for both economic and social amenities across both rural and urban areas. With this comes the need for housing, education, health and various commercial facilities necessary for human sustenance and development.

4.0 Construction and Related Engineering Services Trade

In line with the objectives of the study, going beyond the foregoing general discussion of the construction in the global economy and in Africa, it is important to now delve deeper into trade in construction and related engineering services. That is the focus of Section 4.

It has already been emphasized that construction and related engineering services plays a pivotal role in facilitating development in the region and in respective nations where they are delivered and consumed. Whereas on the one hand, this services

industry provides support to the development of infrastructure for trade, industrial development and social development, it is also a component of trade activity through the services being delivered across borders.

Services, unlike goods, have not always been recognized formally as a segment for international trade until 1995 when the GATS was formulated by the WTO. Whereas, services have still been exported and exchanged across borders, the focus of any agreements and the relevant regulations were mainly on goods. The growing demand for services and need to access foreign markets necessitated the recognition of trade in services on the international market.

Consequently, this led to identification of various sectors or services that are eligible for international trade; Construction and related engineering services was one such sector.

4.1 Scope of Construction and Related Engineering Services Trade

Construction and related engineering services are defined by the WTO as: 'Construction and related engineering services includes construction work for buildings and civil engineering, installation and assembly work, building completion and finishing work.'

The construction and related engineering services sector is one of the sectors classified for trade and which states may commit to liberalizing in order to allow market access to other states. Construction and related engineering services includes construction work for buildings and civil engineering, installation and assembly work, building completion and finishing work. The sector has been classified in five general components as follows:

- General construction work for buildings (CPC 512)
- General construction work for civil engineering (CPC 513)
- Installation and assembly work (CPC 514, 516)
- Building completion and finishing work (CPC 517)
- Other (CPC 511, 515, 518)

The above classification describes and determines the various construction and related services segments in which countries may formally trade in the sector. This further enables states to make commitments specific to sub-sectors, where necessary. These sub-sectors are described in the table below:

Table 3: WTO Descriptions of sub-sectors in construction and related engineering services

Classification	Description
General construction work for buildings (CPC 512)	Construction of all types of buildings, residential or non-residential, whether privately or publicly owned. This covers new work, additions, alterations, as well as renovations
General construction work for civil engineering (CPC 513)	Construction of non-building structures including roads, bridges, railways, airport runways, tunnels, waterways and harbours, dams, pipelines, energy infrastructure, mining industrial buildings, sports arenas, communication infrastructure;
Installation and assembly work (CPC 514, 516)	Assembly and erection of prefabricated constructions, installation work for heating and air conditioning, water plumbing, gas fitting, electrical wiring, fire alarm construction, insulation, fencing and lift construction.

Classification	Description
Building completion and finishing work (CPC 517)	Special trade construction work for the completion and finishing of buildings such as glazing, plastering, painting, floor and wall tiling, carpeting, carpentry, interior fitting and decoration, ornamentation fitting.
Other (CPC 511, 515, 518)	Pre-erection work at construction sites, as well as special trade construction work such as foundation work, water well drilling, roofing, concrete work, steel bending and erection, and masonry work. It also covers renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator.

Source: WTO

Due to the broad range of activities in the construction value chain, other services, especially professional services provided by Architects, Engineers or Surveyors are sometimes mistakenly considered as part of construction and related engineering services. However, as it can be noted from the classification and description of construction and related engineering services above, professional services associated with the construction sector are not part of the definition of construction and related engineering services.

The foregoing notwithstanding, these professions are still required in the provision of construction services, as they hold the necessary technical qualifications for managing construction projects. Therefore, construction and related engineering services suppliers are required to have among their technical teams, individuals qualified in any of the professions associated to construction for managing construction operations. As such, it is important that negotiations in construction and related engineering services include professional services related to the sector as well as issues related to the movement of natural persons. This is because these aspects are key to the provision of construction and related engineering services.

4.2 Modes of Supply for Construction and Related Engineering Services

Services are traded in four modes of supply and defined as follows by the WTO:

Mode 1 - Cross-border supply: This involves the provision of services from one nation's jurisdiction to another through virtual means such as architectural designs.

Mode 2 - Consumption Abroad: This is when a consumer from one national jurisdiction travels to obtain a service from another jurisdiction. Examples of this include health, tourism or educational services.

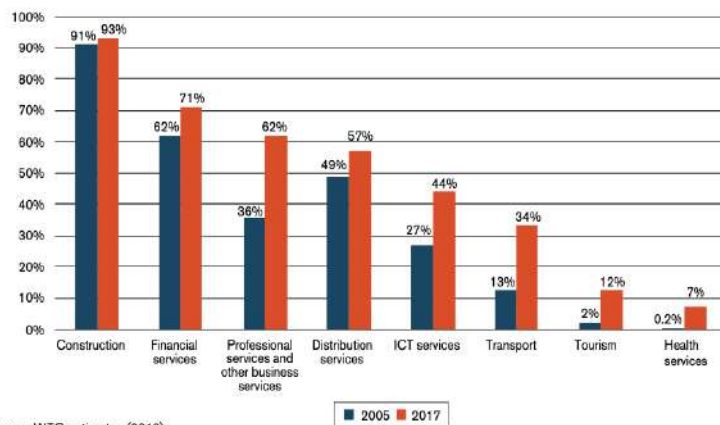
Mode 3 - Commercial presence: This means that a service supplier establishes physical operations in another national jurisdiction. This applies to almost all services when companies set up offices in another country. Examples include banks, telecommunication companies, energy supply companies, construction companies, etc.

Mode 4 - Presence of natural persons: This involves individuals from one national jurisdiction entering another territory member to supply a service; for instance, doctors, teachers, engineers etc.

Construction and related engineering services are typically traded in the modes determined for services although the most significant and practical being modes 3 and mode 4. Modes 1 and 2 are deemed not technically feasible or are non-tradeable in relation to construction and related engineering services as they involve the provision of services remotely, i.e., without in-person or physical presence of the service provider. However, with regard to mode 1, it is argued that some pre-construction services may be provided. Typically, construction being a physical activity does not generally apply to these modes.

Mode 3 of supply of services – Commercial Presence, is the most prevalent mode of supply of construction and related engineering services. This involves a service supplier of one territory establishing in another territory. The physical nature of construction requires that service suppliers in the sector establish their operations within proximity of their project sites permanently or temporarily. According to the WTO statistics, 93 percent of construction and related engineering services for five top developing economies was provided via mode 3, the highest of other modes.

Figure 2: Construction sector trends in Commercial Presence mode of supply in 5 leading developing countries



Source: WTO estimates (2019).

Regulations in some countries require that foreign service providers form joint-ventures with domestic firms, hence, this affects the extent to which a foreign construction services supplier can establish in a particular jurisdiction. In a joint-venture arrangement, the foreign services supplier may not have to register their presence as a separate entity or may not have to provide a full complement of staff.

Mode 4 of supply of services – Presence of Natural Persons is also significant to the construction and related engineering services sector. This is because the supply of construction services involves large movements of workers at various skills levels.

The modes of supply (3 and 4) are generally affected by market entry barriers such as foreign equity allowable in the sector, number of individuals and/or their qualifications,

or the capacity and thresholds of projects that can be undertaken. Construction services providers may therefore be prohibited or restricted from participating at certain levels or under specific circumstances stipulated by respective nations.

Due to the uniqueness of each nation in terms of economic structure, governance and other systems of function, these market access limitations may vary from country to country. This also presents another limitation in terms of access to multiple markets in the region and beyond, as it could be costly and complicated for firms, especially small and medium-sized ones. Regulations in some countries require foreign firms to pay higher registration fees, and limit the categories in which they can register, mainly the categories for largest firms. To this end, most small and medium sized firms cannot afford to establish in multiple jurisdictions and may inadvertently be disenfranchised from trade opportunities in the construction sector.

4.3 State of Construction and related Engineering Services in COMESA

COMESA statistics indicate that COMESA member states have been exporting or importing construction and related engineering services. Table 4 shows the data on construction services trade by COMESA member states from 2016- 2020.

Table 4: Construction and related engineering services exports (US\$millions) by COMESA Member States

	2016 (USD millions)	2017	2018	2019	2020
Burundi		0.1	1.3		0.3
Egypt	445.5	611.4	669.0	580.6	473.7
Eswatini	25.8	18.3	2.7	26.4	6.1
Ethiopia	10.9	16.0	15.6	19.5	18.3
Madagascar	10.7	15.2	13.3	5.6	3.9
Mauritius	18.2	14.5	15.1	7.0	0.5
Rwanda	36.9	34.2	35.8	39.5	14.0
Sudan	9.8			0.4	
Tunisia	302.5	281.3	282.5	260.1	173.3
Uganda	103.9	19.2	69.2	105.4	72.7
COMESA	964.2	1,010.2	1,104.5	1,044.4	762.8

Source: COMSTATS database

The table above indicates that only 10 COMESA Member States have exported construction and related engineering services between 2016 and 2020. According to these statistics, Egypt is the largest exporter of construction services in the region, followed by Tunisia and Uganda. Burundi and Sudan have the lowest proportions of exports in the sector and have only recorded exports for 3 years and 2 years out of five years, respectively.

The above trends indicate a general reduction in construction and related engineering services trade from 2018-2020 by reporting member states. This could be attributed to the emergence of the COVID-19 Pandemic, which resulted in the suspension of economic activity due to lock downs and other restrictions. The construction and related engineering services sector was heavily impacted due to its labour intensiveness.

On the other hand, there are more Member States importing construction and related engineering services, with higher value of imported services as can be noted from Table 5.

Table 5: Construction and related engineering services imports (US\$ Million) by COMESA Member States

	2016	2017	2018	2019	2020
Burundi	1.6	1.8	1.8	17.0	11.7
Congo DR	19.4	18.1	73.3	16.1	65.4
Egypt	372.8	308.9	175.5	406.3	190.7
Eswatini	9.9	7.2	17.3	11.9	2.1
Ethiopia	746.9	231.0	478.5	476.9	670.6
Kenya	397.4	421.7	403.5	402.3	390.3
Madagascar	17.4	21.2	16.9	7.7	14.1
Mauritius	7.1	27.9	6.4	7.2	3.0
Rwanda	94.0	16.2	10.2	9.2	3.3
Seychelles	4.5	5.8	3.1	5.5	6.1
Sudan	30.2	1.8	0.0	0.0	0.3
Tunisia	257.9	234.5	253.2	255.8	191.7
Uganda	76.1	26.8	80.0	110.2	86.5
Zambia	49.2	49.0	42.6	37.9	20.3
COMESA	2,084.4	1,371.9	1,562.3	1,764.0	1,656.0

Source: COMSTATS database

Compared to other sectors, construction and related engineering services in COMESA account for 2.1 per cent, whereas imports are 4.0 per cent. Table 6 shows the performance of construction services in relation to other sectors in 2020. It indicates that there is more import of Construction Services in the COMESA region than export thereof. As of 2020, Egypt, Eswatini, Rwanda, Tunisia and Uganda were the only Member States that had higher exports than imports of construction services. This therefore indicates that most COMESA Member States import construction services.

Table 6: Construction services trade in 2020 compared to other services in COMESA

Services Sector	Exports	Imports
Charges for the use of intellectual property n.i.e.	87.1	517.2
Construction Services	762.8	1,656.0
Financial Services	928.2	656.3
Insurance and Pension services	654.4	3,421.9
Maintenance and Repair Services	24.1	146.6
Manufacturing Services on Physical Inputs owned by Others	131.5	20.6
Other Business Services	2,147.9	7,573.3
Personal, Cultural and Recreation Services	2,284.3	135.8
Telecommunications, Computer and Information Services	2,647.9	1,743.6
Transport	14,712.9	20,405.7
Travel	10,004.1	4,701.1
COMESA	34,385.2	40,978.1

Source: COMSTATS database

4.4 Market for Construction and Related Engineering Services in COMESA

Despite the statistics showing that construction and related engineering services trade is quite low, there exists high potential for construction services trade expansion in the

COMESA region. Some of the key domestic COMESA market aspects are discussed in this sub-section.

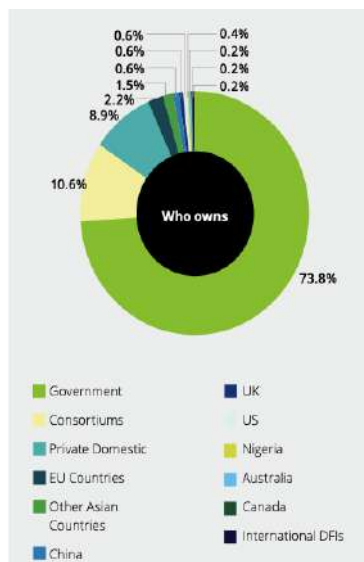
Seeing as the demand for construction is mainly driven by the rate of infrastructure development at all levels; the Sector therefore derives its market from the rehabilitation and development of infrastructure. Therefore, to understand the potential market for construction and related engineering services, it is necessary to consider the demand for infrastructure in the immediate and outlying regions. According to the Infrastructure Consortium for Africa (ICA), total infrastructure financing in Africa was over \$80 million with Eastern and Southern Africa (excluding South Africa) accounting for 24 per cent. This means that potentially the construction sector in COMESA had access to \$28 billion worth of projects in 2017 from various sectors including Transport, Energy, Water, ICT and others. Whereas, participation in these projects by services providers may be influenced by the sources of funding, for instance, countries providing development assistance in specific sectors may require their nationals to provide the construction services; a significant proportion of the funds, approximately 42 per cent, was funded by African Governments.

A significant proportion of infrastructure is provided by the public sector, making the construction and related engineering services sector subject to public procurement. Public-sector financing and public procurement play an important role in the consumption of construction services, generating as much as half of the total demand for the services. However, the exemptions provided for Government procurement under GATS, limit access for construction services providers to public sector opportunities as discussed further in the next chapter.

The emergence of Public-Private Partnership (PPP) mode of delivery of infrastructure and services, as well as privatization, may also impact the role of public procurement in the long run, especially in developing countries. PPPs are typically structured to include a partnership of financiers, operators and contractors from the on-set, thus, may preclude the inclusion of local or regional construction services suppliers as investors in PPPs aim to optimise returns on their investments and obtain special concessions from Governments which may exempt them from some regulatory requirements.

According to Deloitte Africa, African Governments are responsible for approximately 73 per cent of projects mainly in the transport sector and fund 31 per cent of the total value of projects on the continent (Figure 3). In addition, China contributes significantly to construction in Africa through funding and implementing the projects.

Figure 3: Proportion of construction project owners in Africa



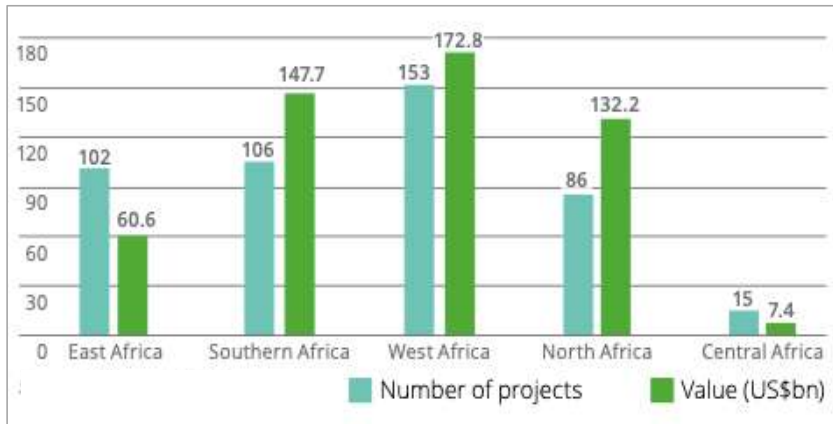
Source: Deloitte Africa

The market for construction and related engineering services in COMESA varies from one member state to another as indicated in Table 5. This is mainly due to the different economic structures or geographic location. Countries whose economies are advancing more rapidly than others such as Egypt and Kenya, tend to have higher opportunities for construction services. Island nations such as Mauritius, Madagascar or Seychelles, may have limitations regarding the extent and types of projects due to their limitations in land capacity, for instance, distances covered by road and railways is limited to their land extent; furthermore, their lack of connectivity to other countries, unlike the member states on the main continent, restricts the scope of cross-border projects; and their construction services suppliers sometimes have challenges operating in other jurisdictions due to mobilisation costs that may require repatriation of plant and equipment across the ocean.

On the other hand, some COMESA Member States belong to other regional economic communities where services trade is advanced and their markets are expanded; or where trade protocols enable services to be provided more easily in other countries of that region. Member States of COMESA who belong to the Southern Africa Development Community (SADC), thus, have an opportunity to supply services to a wider market. Members of the East African Community also have the advantage of the free movement of persons.

COMESA member states have access to a construction market worth in excess of \$340 billion as of 2021 estimates by Deloitte. This accounts for approximately 67 per cent of the estimated value of projects in Africa as indicated in the table below.

Figure 4: Regional number and value of construction projects



Source: Deloitte Africa

COMESA member states are located in all regions outlined above except West Africa. Hence, the opportunity for accessing markets within their geographic locations as well as in COMESA is significant. Egypt and Ethiopia, members of COMESA are listed among the top five countries with the highest number of projects. Kenya and Tunisia are included among the rapidly growing markets for the construction industry. This market is dominated by Government projects which account for over 70 per cent and 30 per cent of funding. To this end, there is need to harness the capacity of COMESA member states to take advantage of the opportunity for construction services trade in the region.

The potential presented by the market for construction services also highlights the need for COMESA Member States to unlock this possibility. With a potential market accessible to construction services suppliers in COMESA of over US\$300 billion, Member States have the opportunity through the on-going negotiations to explore measures to enhance the performance of the sector, which, so far indicates that it is about 10 per cent of the market.

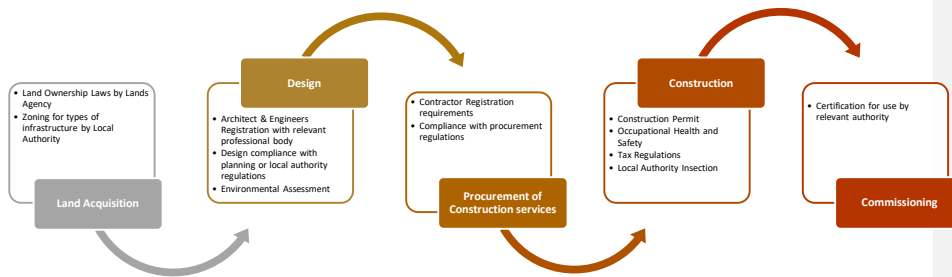
5.0 Regulation of Construction and Related Engineering Services in COMESA

The fact that construction and related engineering services trade is quite low in COMESA despite the market potentials for it suggests that rules and regulations might serve as a barrier, preventing the potential from being realized. Regulation is a significant influence to the supply of construction and related engineering services. Suppliers of construction services are subject to different aspects of regulation in their domestic markets as well as in foreign markets. This is because the construction value chain comprises a number of players and processes from design to implementation of projects. Whereas, the design elements are mainly supplied via professional services such as Architectural or Engineering, they still impact on the construction process as

non-compliance to regulations at that stage may impact the fulfilment of the other services in a project. Figure 5 below outlines some of the typical regulations that impact in construction and related engineering services at various stages of the construction process.

Regulations include controls on land use, building regulations and technical requirements, building permits and inspection, registration of proprietors, contractors and professionals, regulation of fees and remunerations, environmental laws, among others, which are enforced by various levels of Government.

Figure 5: Typical regulatory regime in the construction value chain



Source: Author's construction

However, of significance to construction and related engineering services trade are the following:

- Measures and limitations on the movement of natural persons
- The complexity in licensing, mainly due to the number of licenses required in some jurisdictions; duration of issuance of such licenses and permits; as well as fees required for foreign services suppliers;
- Restrictions on the establishment a of a commercial presence by foreign firms;
- Discriminatory taxes and subsidies that may be inconsistent with a state's national treatment obligations;
- Recognition of qualifications and credentials of foreign services suppliers. This can be exacerbated by the different criteria and assessment parameters in various jurisdictions;
- Government procurement allows for ambiguity in ensuring transparency and non-discrimination in the procurement of construction services due to the exemptions provided for in the GATS.

Other regulatory issues to note include restrictions on currency exchange and transfer of funds, arduous immigration procedures and restrictive professional practice regulations.

5.1 Construction Laws and Regulations in Member States

COMESA Member States have an organized and regulated construction sector governed by specific laws. These laws generally prescribe the qualifications for registration in that specific country and how foreign companies may be allowed to

provide services. Protection of local construction firms is also a feature in most of the regulations. This indicates that national interest is a key issue of consideration in trade in services. Below, in Table 7, are some examples of the laws governing construction in some COMESA Member States obtained from Member States and other sources.

To a large extent, the laws and regulations are characterized by the following:

- **Protection of Local Firms:** The laws and regulations in each country are designed to protect the interests of their nationals or locally registered firms. Whilst this is useful and necessary in some cases, this has not addressed some limitations that locals still face in terms of technical and financial capacity. As a result, in some countries, the locals are predominantly registered in categories for lower value works; and the number of firms in these categories are the highest.
- **Restrictions for Foreign Firms:** Foreign firms are subjected to varying conditions of registration in most jurisdictions. These are usually in form of restrictions which include the categories of registration, employment of local workers or procurement limitations. This also includes the shareholding proportion that foreign companies may hold.
- **Registration of Professionals with Local Regulatory Bodies:** There is a requirement for the registration of individuals and experts with relevant professional or industry associations or institutions for recognition of qualifications and competence; as these are required for managing of construction projects. Whilst this is best practice, it could be a barrier where onerous conditions are instituted. It is therefore important to consider mutual recognition of qualifications and skills especially due to the transient nature of the sector.

Table 7: Laws and regulations relevant to construction services in selected COMESA Member States

Member State	Laws
Comoros	Community Planning Act
Democratic Republic of Congo	Act n°10/010 of 27 April 2010 on public procurement.
Egypt	Law no. 182 issued 2018 and its executive regulation regulating contracts concluded by public entities; Law no. 104 issued 1992 and its executive regulation establishing the Egyptian Federation of Construction and Building Contractors.
Eswatini	Construction Industry Council Act
Ethiopia	Directive for Registration of Construction Professionals and Contractors (2012)
Kenya	Constitution of Kenya 2010, Kenya Roads Act 2007, Kenya Roads Board Act 1999, Land Act 2012, Land Registration Act 2012, National Land Commission Act 2012, East African Commission Vehicle and Load Control Act, 2016 National Construction Authority Act
Madagascar	Loi n°2015-052 du 03 février 2016 relative à l'urbanisme et l'habitat à Madagascar Loi n°2021-034 relative à la promotion du logement à Madagascar Décret n°2019-1956 du 16 octobre 2019 fixant les délais d'instruction du permis de construire Loi n°2015-039 du 09/12/2015 sur le Partenariat Public-Privé Loi n°2016-055 portant code des marchés publics

Member State	Laws
Malawi	National Construction Industry Act
Mauritius	Construction Industry Development Board Act
Seychelles	Physical Planning Act, 2021 Licenses Act, 2010
Somalia	Somalia Public Procurement, Concessions and Disposal Act
Tunisia	Décret 71/1978 du 26 janvier 1978 réglementant les missions d'architecture et d'ingénierie, Décret 2656/2008 du 31 juillet 2008 réglementant les conditions et procédures d'octroi et retrait des agréments des entreprises de bâtiment et des travaux publics, Décret 1039/2014 du 13/03/2014, régissant les marchés publics Décret 967/2017 du 31 juillet 2017 réglementant la construction des bâtiments civils, Arrêté du ministre de l'équipement et de l'habitat du 26 novembre 1991 fixant les procédures et critères de désignation des concepteurs pour la réalisation des projets de bâtiments civils, Arrêté du ministre de l'équipement et de l'habitat du 18 Aout 2008 relatif les activités, les spécialités, les catégories et les plafonds pour l'octroi des agréments des entreprises de bâtiment et des travaux publics et les moyens personnels, matériels et financiers, Arrêté du ministre de l'équipement et de l'habitat du 09 février 2009 relatif aux cahiers des charges des bureaux d'études, Arrêté du ministre de l'équipement et de l'habitat du 09 février 2009 relatif aux cahiers des charges des ingénieurs conseils, Arrêté du ministre de l'équipement, de l'habitat et de l'infrastructure et du ministre de l'économie, des finances et de l'appui à l'investissement du 31 mars 2021, fixant le cahier des charges relatif à l'exercice de l'activité du contrôleur technique dans le domaine de la construction.
Zambia	The National Council for Construction Act
Zimbabwe	Rules of the Construction Industry Federation of Zimbabwe (1992)

Source: Author's Compilation from Member States

From the laws outlined above, it can be noted that the construction and related engineering services is subject to a series of laws in some COMESA member states, underpinning the need for reduction of any potential restrictions to the supply of construction and services resulting from need to comply with several laws and regulations. It can also be observed that some member states have specific laws for the construction sector, which provides ease of reference during trade negotiations. Below are some highlights of selected Member States' regulations regarding foreign firms. Table 8 provides a snapshot of specific provisions in the laws of Eswatini, Ethiopia, Kenya, Malawi, Mauritius and Zambia that potentially impact trade in services in the sector.

Table 8: Examples of legal provisions affecting construction services trade in some COMESA Member States

Member State	Provision in the Law	Implications of the Legal Provision
Eswatini	Construction Industry Council Act 2013 27(4) b – Different requirements for the registration of a foreign company or a foreign firm	Though not specified, this could potentially enable restrictions for foreign firms that may restrict market access
Ethiopia	Directives for the Registration of Construction Professionals and Contractors (Directive No. 714/2012)	

Commented [TBN1]: It sounds like national treatment not market access.

Member State	Provision in the Law	Implications of the Legal Provision
	<p>5 Registration</p> <p>5) All foreign contractors who want to take part in National Competitive Biddings (NCB) shall only be registered for only class 1 and they shouldn't participate in NCB below Class 1</p> <p>8) Professional with foreign educational qualification shall present equivalent credential from Ethiopian higher education system certifying recognition by authorized body</p> <p>10) Foreign professionals who want to be registered should provide evidence of both work and residence permits</p>	<p>5) restricts the level of entry into the market by foreign firms, mainly local firms from other COMESA Member States whose capacity may be limited to lower classes eligible for works of a smaller magnitude</p> <p>8) Affects movement of natural persons and necessitates Mutual Recognition Arrangements (MRAs)</p> <p>10) This may present a potential conflict as work and residency permits may require evidence of employment in a particular jurisdiction; however to be employed, one may need to be registered.</p>
Kenya	<p>National Construction Authority Act (2011)</p> <p>18. Registration of foreign contractors</p> <p>(1) The Board may accredit a firm incorporated outside Kenya to carry out construction works in Kenya for a prescribed period where the firm meets the conditions prescribed by the Board and satisfies the Board that the firm—</p> <p>(c) has lodged an affidavit with the Board to the effect that, once the contracted works are completed and the period of defects liability or maintenance has elapsed, it shall wind up business and shall not engage itself in the construction business within Kenya.</p> <p>(3) Registration of a firm under this section shall entitle it to undertake work only for the period of time prescribed by the Board in subsection (1), and on the expiry of that period that firm shall cease to be so registered, and shall return the registration certificate to the Board.</p> <p>(5) Notwithstanding the provisions of this section and sections 14 and 16, the Minister, in consultation with the Board, shall make regulations stipulating ownership structures of foreign firms seeking registration under this Act, clearly stating the categories of contracts for which foreign firms may apply and those which shall be strictly reserved for local contractors.</p>	<p>(C) & (3) – implies that foreign construction services providers would only be allowed to provide their services only for the duration of their contract. This may create a barrier where establishment costs are high; ie hire or movement of equipment, labour costs, where laws may restrict temporary employment of certain levels of staff.</p> <p>(5) Allows for restrictions on shareholding and supply of services in certain categories of construction work</p>
Malawi	<p>National Construction Industry Act (1996)</p> <p>Clause No.29: The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may</p> <p>(d) make provisions for the registration, control and regulation of foreign firms</p>	<p>Allows for restrictions to be placed on foreign firms that may limit their market access</p>

Member State	Provision in the Law	Implications of the Legal Provision
	carrying on business in the construction industry	
Mauritius	<p>CIDB Act (Ammended 2021)</p> <p>20. Provisional or temporary registration of foreign consultant or foreign contractor</p> <p>(1) No foreign consultant or foreign contractor shall provide consultancy services or carry out construction works in Mauritius, as the case may be, unless he or it is temporarily registered under this Act.</p> <p>(2) (a) A foreign consultant or foreign contractor who or that intend to provide consultancy services or carry out construction works in Mauritius in respect of a project shall –</p> <p>(i) before bidding for the project, apply for provisional registration in such form as may be approved by the Council and in such manner as may be prescribed; or</p> <p>(ii) where he has been awarded a contract for the project, apply for temporary registration in such form as may be approved by the Council and in such manner as may be prescribed.</p> <p>(b) An applicant shall pay such non-refundable processing fee as may be prescribed.</p>	<p>(1) – Temporary registration creates a barrier with regard to establishment costs depending on the tenure of the project as well as attendant costs relating to plant and equipment as well as labour.</p> <p>(2)(a)(i);(b) – This presents a barrier to entry in that foreign services providers would bear costs even if they are not awarded the works</p>
Somalia	<p>Public Procurement, Concession and Disposal Act</p> <p>Article 14: Language</p> <p>1. Bidding documents for all international biddings should be in English Language and for National and local biddings may be in Somali language.”</p> <p>Article 34: Margin of domestic preference and preference scheme</p> <p>1) A Procuring Entity may subject to such other criteria and provisions as may be set out in the Regulations, grant a margin of domestic preference in the evaluation of bids under open competitive bidding to:</p> <p>Bids by domestic contractors when compared to bids offered by foreign contractors.</p>	<p>Article 14 – Implies that foreign firms would only be eligible to participate in internationally tendered works; it also presents a barrier with regard to language for national and local biddings.</p> <p>Article 34 – Whereas the margin of preference may be intended to benefit domestic services suppliers, qualifying foreign contractors may be from outside the region, thus transferring the benefits to other jurisdictions where the Member States may not have any advantages</p>
Zambia	<p>NCC Act (2020)</p> <p>Clause No. 43 (1) Subject to this Act, a foreign contractor shall participate in a tender for construction works, if the foreign contractor bids for, and undertakes, the construction works as a joint venture with a Zambian contractor in a manner and to the extent as may be prescribed.</p>	<p>43 (1) – This may be a barrier to entry where a joint venture partner is not identified</p>

Source: Author's Compilation from Member States' Construction Laws

From the table above, it can be noted that there is apparent diversity of the regulatory regime in COMESA. This presents a need for Member States to understand the unique regulatory provisions of other members as they consider negotiating.

5.2 Impact of Regulation on Construction and Engineering Services Trade

Regulation affects construction and related engineering services trade in the following ways:

a. Market Access

Restriction in the class of registration and prescribed value of works to be undertaken required can be a barrier to entry for services suppliers from other Member States. In addition, fees prescribed for foreign firms add another barrier especially for local firms from Member States whose financial capacity may not be adequate to enable them register in multiple jurisdictions due to the costs. Of greater importance to trade and services, this infringes on the principle of National Treatment where foreign services suppliers of other member states are to be given the same treatment as locals. This can be noted from Table 9 below showing an example of fees for local and foreign firms. Full schedules of fees from Eswatini, Kenya, Malawi and Zambia are also included in the Annexures.

Table 9: Examples of registration fees for foreign and local firms in some COMESA Member States

Member State	Categories/Classes eligible for Foreign Firms	Fees			
		Category/Grade 1		Category/Grade 2	
		Local	Foreign	Local	Foreign
Eswatini	B1/BF – Building	E12,250	E31,500		
	C1/BF – Civil Works	E24,500	E63,000		
Kenya	NCA 1	KShs 100,000	US\$2,500 (KShs 300,000)		
Malawi	Not Specified	K1,000,000	US\$ 2,500 (K2,500,000)		
Zambia	Grades 1 & 2	ZMW17,500	ZMW238,100	ZMW13,075	ZMW191,225

Source: Author's Compilation from Member States Contractor Registration Information

In addition to fees, the classes or categories of registration of contractors allowed for foreign firms may limit their market access. For instance, in Kenya and Mauritius, foreign contractors are only allowed to register in the category for the largest contractors; whereas in Zambia it is the two highest grades. This limits entry of smaller firms who are the majority and are mainly nationals of the Member States.

b. Commercial Presence

Restriction on the duration of operations to the project duration as in the case of Kenya and Mauritius may be an impediment for construction services providers from other

Member States, who may wish to explore additional opportunities. This is because the cost of establishment may be high, especially where the contractors are required to hire or move plant and equipment. Furthermore, depending on the labour laws in some member states, employment of staff may be costly as there may be requirements for high severance costs for short term employment due to short duration of projects.

In addition, restrictions on shareholding may be a barrier for firms that have established presence and experience in multiple jurisdictions. This is because their influence in the operations would be limited especially where they are required to have minority shareholding. On the other hand, this may also foster abuse in that, local individuals that may not be competent would be used as fronts for some foreign firms.

c. Movement of Natural Persons

Whereas it is needful and relevant to ensure that qualified individuals are involved in the supply of construction and related engineering services, these qualifications need to be aligned from one Member State to another. The absence of Mutual Recognition Arrangements (MRAs) in construction and related engineering services in construction and related engineering services may affect the ease with which construction services experts and skilled persons are allowed to participate.

d. Government Procurement

Public procurement regulations have a significant impact in the supply of construction and related engineering services. Whilst Government Procurement is exempt from trade in services commitments and obligations, there is still scope for the supply of construction and related engineering services by foreign firms. This opportunity is provided for formally through international bidding procedures but may in most cases be restricted to high value or complex construction works.

However, despite this, in a regional setting such as COMESA, local firms from member states may be disadvantaged due to their capacity to undertake such works. In addition, despite the exemption of Government procurement in trade in services, this does not seem to apply where the projects are large, as then only few local firms can participate; this then provides advantage to foreign firms with more capacity from other regions. This is demonstrated in Section 6, Table 6, where statistics from Eswatini, Rwanda and Zambia indicate that the construction sector is dominated by small firms. In the case of Zambia, large firms in the sector are predominantly foreign.

It is therefore important that COMESA Member States consider removal of this exemption for services suppliers from other member states, to allow more participation by construction services providers in the region especially small firms.

e. Impact of Other Domestic Laws and Policies

The construction sector is subject to regulation beyond construction operations, thus the impact of other domestic laws and policies, where applicable, could be significant if not harmonized accordingly. This is more so because other regulations may be enforced by different Government agencies, for instance, the registration of companies, immigration permits, and tax compliance processes are typically managed

Commented [TBN2]: My understanding of restriction of project duration is that it applies only to companies that do not want to establish permanently but applies to enter the market to execute a specific contract. The restrictions would thus be consistent with Mode 4 conditions of temporary stay for the juridical person.

by different organs of Government yet are relevant to the establishment and registration of foreign construction services suppliers.

Regulation is key to the growth and sustainability of trade in COMESA. The objectives of regulation are relevant to safeguarding the interests of stakeholders. However, with regard to trade in construction and related engineering services, these need to be examined and considered in relation to the optimization of the benefits of regional trade in the sector and to the local firms. It is also necessary for COMESA Member States to provide the laws and regulations affecting the supply of construction and related engineering services as they embark on negotiations so that relevant provisions may be noted and addressed in the negotiations.

6.0 Liberalisation of Construction and Related Engineering Services in COMESA

Although the services sector in Africa is experiencing growth, services are still faced with many challenges which hamper the potential for trade. These include underdeveloped policy frameworks, poor infrastructure, and lack of information. In many African countries there remains the need to carefully evaluate the potential for services trade and to design the policy infrastructure which will help countries to realize the potential. To achieve this objective, many African countries have since signed up to a number of policy instruments and frameworks aimed towards liberalizing trade in services. Furthermore, at the global level, General Agreement on Trade in Services (GATs) through the World Trade Organisation, which is the foremost multilateral agreement, covers trade in services.

The growth path of African countries has changed over the last decades. According to UNCTAD, the period between 2007 to 2017 for instance, has seen agriculture's share of GDP grow from 15 to 16.8 per cent while manufacturing has declined slightly from 35 per cent in 2007 to 29.5 per cent in 2017. In contrast, the share of services, which include construction and related services, to GDP has increased. For instance, between 2000 and 2015 the contribution of services to employment increased from 27.6 per cent to 32.3 per cent, while its share of GDP increased from 50 per cent in 2007 to 53.6 per cent in 2017 (as the total value of services exports and imports grew to \$296 billion in 2018). However, trade in services remains largely invisible and connected to national, regional, and international movement of people, information, money and goods. In the context of the COVID and post-COVID environment the importance of trade in services will continue to grow as the way of doing things in the world keeps transforming.

Given the trajectory of, and trends in trade in services, it is imperative to prioritise the liberalization of services such as construction and related engineering services. The liberalization of the sector will deliver a variety of benefits for COMESA Member States even though their country profiles of economic development and growth vary. When the export component is taken into account, the significance of the construction and related services and other services trade in general, assumes even more importance. The Economic Commission on Africa makes this case for African countries in general, which have a large component of services in their export mix; where they illustrate how direct service exports make up more than 20 per cent of total exports of countries

such as Ethiopia and Tanzania and more than 30 per cent of countries such as Cameroon, Egypt, Kenya, Mauritius, and South Africa. Increasing trade in services will be crucial to supporting Africa's industrialization and transformation given the crucial foundational base of the services sector to any process of economic transformation. More importantly, a vibrant services sector will also enable the crucial connectivity and integration which is needed by the continent as it seeks to embed itself into global value chains.

Liberalization of the construction services sector in COMESA is currently dynamic as some member states have not formally made commitments under GATS or in their respective RECs. So far, only 6 out of 21 member states have made commitments under GATS; and 8 out of 9 COMESA States have made commitments in construction services in SADC. Commitments in the EAC have not been made yet, whereas negotiations are currently ongoing in COMESA.

6.1 Commitments of COMESA Member States in Construction and Related Engineering Services

Some Member States in COMESA have made commitments in the General Agreement on Trade in Services (GATS) and in their respective RECs, specifically members of the Southern Africa Development Community (SADC).

With the exception of Egypt, member states that have made commitments under GATs, namely, Burundi, DRC, Malawi, Seychelles and Zambia have no limitations on market access and national treatment in Mode 3. Egypt has placed limitations on market access in Mode 3 with requirements for joint ventures and equity for foreign firms not exceeding 49 percent.

In SADC, Eswatini and Zimbabwe have placed limitations on market access for Mode 3 with a requirement for joint venture and a cap on foreign equity of 40 per cent and 49 per cent, respectively. With regard to National Treatment, Mauritius and Eswatini have indicated higher registration fees for foreign contractors. Eswatini has further added a requirement for transfer of skills.

A number of issues can be noted from the commitments made by member states:

- i. Whereas some member states have liberalized the construction and engineering services sector, their domestic regulations still provide limitations. Some member states like Zambia, who have higher registration fees for foreign construction services firms.
- ii. Member States have specified sub-sectors of construction and related engineering services in which they have made commitments. With the exception of Zimbabwe, where commitments under mode 3 are different for General construction services of other non-residential buildings – Convention and Conference facilities (CPC 54129), the rest of the commitments in all modes are the same for all sub-sectors specified. Table 10 below indicates the various sub-sectors specified by COMESA Member States.

Member States, however, need to examine the rationale for these specifications as they may not be very applicable for Malawi and Zambia, who have generally liberalized the sector at the WTO. Other Member States may also wish to assess the impact of the sub-sectors they have specified on their economies and more importantly on their objectives for trade in construction and related engineering services.

Table 10: Sub-sectors listed by COMESA Member States in the GATS and SADC Schedules of Commitments

Member State	Specific Sub-Sectors of Commitment in Construction and Related Engineering Services
WTO/GATS	
Egypt	<p>Construction work for civil engineering Bridges, elevated highways, tunnels and subways - Waterways, harbours, dams and other water work - Long distance pipelines, communication and power lines (cables) - Construction for mining and manufacturing Special trade construction work: - Steel bending and erection (including welding) - Other special trade construction work Installation work: - Gas fitting construction work Electrical work: - Fire alarm construction work - Other electrical construction work - Other installation work - Lift and escalator construction work - Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator</p>
Seychelles	<p>General construction work for building (CPC 512) class one only, including pipelines and mining. General construction work for civil engineering (CPC 513) class one only, including pipelines and mining. Site investigation work (CPC51110) Site preparation work for mining and energy services (CPC 5115) Renting Services related to equipment for construction or demolition of building or civil engineering works, with operator (CPC5180)</p>
SADC	
DRC	<p>General building construction work (CPC 541) General civil engineering construction works (CPC 542) Including: General construction services of long-distance pipelines, communication and power lines (cables) (CPC 5424) General construction services of local pipelines and cables and related works (CPC 54251 + 54252) General construction services of mines and power plants (CPC 54261 + 54262) Installation and assembly work Installation services (CPC 546) Assembly and erection of prefabricated construction (CPC 544) Building completion and finishing work (CPC 547) Other Site preparation services (CPC 543) Special trade construction service (CPC 545) Rental services related to equipment for the construction or demolition of buildings or civil engineering works, with operator (CPC Prov.NU) *(CPC 518)</p>

Commented [TBN3]: Include Burundi, Zambia and Malawi

Eswatini	<p>A. General Construction Work for Buildings (CPC 512) – only for building works of a value above E120million</p> <p>B. General construction work for Civil Engineering (CPC 513) - only for building works of a value above E200million.</p> <p>C. Installation and Assembly Work (CPC 514 & 516) – only for projects above E60million</p> <p>Assembly and erection of prefabricated constructions (CPC 514)</p> <p>Installation work (CPC 516)</p>
Malawi	<p>General construction work for buildings (512)</p> <p>General construction work for civil engineering (513)</p> <p>Installation and assembly work (514+516)</p> <p>Building completion and finishing work (517)</p> <p>Other (CPC 511 + 515 + 518)</p> <p>Pre-erection work at construction sites (CPC 511)</p> <p>Site investigation work (CPC 5111)</p> <p>Demolition work (CPC 5112)</p> <p>Site formation and clearance work (CPC 5113)</p> <p>Excavating and earthmoving work (CPC 5114)</p> <p>Site preparation work for mining (CPC 5115)</p> <p>Scaffolding work (CPC 5116)</p> <p>Special trade construction work (CPC 515)</p> <p>Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CPC 518)</p>
Mauritius	<p>General construction work for buildings (CPC 512)</p> <p>For one and two dwelling buildings (CPC 5121)</p> <p>For multi dwelling buildings (CPC 5122)</p> <p>For warehouses and industrial buildings (CPC 5123)</p> <p>For commercial buildings (CPC 5124)</p> <p>For hotels, restaurants and similar buildings (CPC 5126)</p> <p>General Construction work for civil engineering (CPC 513)</p> <p>For constructions for mining and manufacturing (CPC 5136)</p> <p>For construction for sports and recreation (CPC 5137)</p> <p>For engineering works n.e.c (CPC 5138)</p> <p>Installation and Assembly Work (CPC 514 + 516)</p> <p>Installation and erection of prefabricated construction (CPC 514)</p> <p>Installation work (CPC 516)</p> <p>Heating, ventilation and air conditioning work (CPC 5161)</p> <p>Water plumbing and drain laying work (CPC 5162)</p> <p>Building completion and finishing work (CPC 517)</p> <p>Other (CPC 511 + 515 + 518)</p> <p>Pre-erection work at construction sites (CPC 511)</p> <p>Special trade construction work (CPC 515)</p> <p>Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CPC 518)</p>
Seychelles	<p>General construction work for building (CPC 512) class one2 only, including pipelines and mining.</p> <p>General construction work for civil engineering (CPC 513) class one only, including pipelines and mining.</p> <p>Site investigation work CPC 51110</p> <p>Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator. (CPC 5180)</p>
Zambia	<p>General construction work for buildings (CPC 512)</p> <p>General construction work for civil engineering (CPC 513)</p> <p>Installation and assembly work (CPC 514 + 516)</p> <p>Building completion and finishing work (CPC517)</p>

² See annex 2

	Other (CPC 511 +515+518)
Zimbabwe	General construction services of other non-residential buildings – Convention and Conference facilities (CPC 54129**) (Mode 3 – None) General construction services for civil engineering works General construction services of highways (except elevated highways), streets, roads, railways and airfield runways (CPC 5421) General construction services of outdoor sport and recreation facilities (CPC 5427) General construction services of other civil engineering works (CPC 5429) Assembly and erection of prefabricated constructions Assembly and erection of prefabricated constructions (CPC 5440) Special trade construction services Pile driving and foundation services(CPC5451) (Mode - 3 Joint Venture partnership requirement with foreign ownership limited up to 49 percent)

Source: WTO/GATS & SADC Schedules of Commitments in Construction and Related Engineering Services

Most of the member states who have not made any commitments at any level, have an opportunity to align their commitments to best practice and take full advantage of the benefits;

The member states with no commitments under GATS have the opportunity to adopt a GATS-plus approach where they can liberalize progressively.

Of special interest to Member States, are the underlying horizontal commitments affecting construction and related engineering services. Whilst these are applicable to all sectors, they have significant impact on the supply of construction services, mainly because they are generally designated for mode 4 by most Member States. Table 11 summarizes the horizontal commitments made by member states in GATS and SADC. Details are included in the Annexures.

For Member States that have commitments at GATS and SADC, Democratic Republic of Congo, Malawi and Zambia the horizontal commitments in SADC are more specific and outline the limitations on Market Access in the categories of persons under mode 4 in their SADC commitments. Seychelles has maintained the same detailed specifications for both GATS and SADC.

Horizontal commitments that outline limitations on National Treatment maintain the limitations under Market Access but also make provision for acquisition of land for Egypt and Seychelles. Zimbabwe has included the requirement for training and transfer of skills. Zambia and Malawi have included limitations on access to credit for foreign firms, which may be a barrier, as construction firms may require to access funds to secure or guarantee their bids for or performance of projects.

Table 11: COMESA Member States' commitments in construction and related engineering services in GATS

Member State	GATS Commitments in Construction and Related Engineering Services							
	Limitations on Market Access				Limitations on National Treatment			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Burundi	None	None	None	Unbound. Except for managers	None	None	None	Unbound. Except for Managers
D.R. Congo ³	None	None	None	Unbound, except as indicated in part 1	None	None	None	Unbound, except as indicated in part 1
Egypt	Unbound	Unbound	-Commercial presence only allowed for Joint Venture companies -Foreign capital equity shall not exceed 49% of the total capital required for the project	None	Unbound	Unbound	None	None
Malawi	None	None	None	Unbound, except as indicated in the horizontal section	None	None	None	Unbound, except as indicated in the horizontal section
Seychelles	None	None	None	Unbound, except as indicated in the horizontal section	None	None	None	Unbound, except as indicated in the horizontal section
Zambia	None	None	None	Unbound, except as indicated in the horizontal section	None	None	None	Unbound, except as indicated in the horizontal section

Source: WTO

³ Refers to General Construction Work for Civil Engineering

Table 12: COMESA Member States' commitments in construction and related engineering services in SADC

Member State	Commitments in Construction and Related Engineering Services in SADC				Limitations on National Treatment			
	Mode 1	Mode 2	Mode 3	Mode 4	Mode 1	Mode 2	Mode 3	Mode 4
Comoros								
SADC. R. Congo	None	None	None	Unbound, except as indicated in horizontal section	None	None	None	Unbound, except as indicated in horizontal section
Eswatini	Unbound	None	A joint venture with a Swazi contractor will be required with foreign ownership of up to 40%.	Unbound, except as indicated in the horizontal commitments	Unbound	None	Higher registration fees for foreign contractors. Foreign contractors are required to transfer technical skills to a national (natural or juridical person).	Unbound, except as indicated in the horizontal commitments
Madagascar								
Malawi	None	None	None	Unbound, except as indicated in the horizontal section	None	None	None	Unbound, except as indicated in the horizontal section
Mauritius	None	None	None	Unbound, except as indicated in the horizontal section	None	None	Higher processing/registration fee for foreign contractors/consultancy firms on a project basis.	Unbound, except as indicated in the horizontal section
Seychelles	None	None	None	Unbound, except as indicated in the horizontal section	None	None	None	Unbound, except as indicated in the horizontal section
Zambia	None	None	None	Unbound, except as indicated in the horizontal section	None	None	None	Unbound, except as indicated in the horizontal section
Zimbabwe	Unbound	None	None (CPC 5421, 5427, 5429, 5440, 5451) Joint Venture partnership requirement with foreign ownership limited up to 49%	Unbound, except as indicated in the horizontal section	Unbound	None	None	Unbound, except as indicated in the horizontal section

Source: SADC

Table 13: Horizontal commitments by COMESA Member States in GATS and SADC

Member State	Commitment	Limitations on Market Access	Limitations on National Treatment
Burundi	GATS	Unbound, except for medical specialists, specialized senior management and managers	Unbound, except for specialists, specialized senior management and managers.
D. R. Congo	GATS	(4) Unbound, except for measures affecting the entry and temporary stay, for a period of one year, which may be extended, without requirement of the economic need test for senior executives and specialists who possess knowledge essential for the provision of the service concerned	(4) Unbound, except for measures affecting the entry and temporary stay, for a period of one year, which may be extended, without requirement of the economic need test for senior executives and
	SADC	4) Unbound, except for measures affecting entry and temporary stay for natural persons mentioned in the following categories, is subject to obtaining a work permit for a period of two-year renewable: - Business visitors - Contractual services suppliers: - Employees of foreign service providers: Managers, Executives and Specialists	4) Unbound, except for measures concerning the categories of natural persons mentioned in the Market Access column.
Egypt	GATS	4) The entry and temporary stay of natural persons - the number of foreign personnel necessary to the supply of services in any entity, shall not exceed 10 percent of the total number of personnel employed therein, unless otherwise specified in a sectoral entry of this schedule.	3) Acquisition of land Authorization is required for the acquisition of land and/or real estate property. Applications in this respect are considered on the basis of the evaluation of the specific projects for which the acquisition is requested and in accordance with the national policy objectives. Acquisition of land and/or real estate property in free zone areas is unbound. 4) None
Eswatini	SADC	4) Unbound, except for measures affecting the entry and temporary stay of natural persons in the following categories: Intra-corporate Transferees: must have at least 2 years' prior employment in their home country and will be allowed to stay for a maximum period of up to 2 years.	3) Foreign subsidiaries employing ICTs are required to train one Swazi citizen per ICT during the duration of the posting in Eswatini. 4) Unbound except as for measures concerning the categories of natural persons referred to in the market access column.

Commented [TBN4]: Mode 3?

Member State	Commitment	Limitations on Market Access	Limitations on National Treatment
		Executive and Managers: Maximum of 2 depending on the size/type ⁴ of the company Business Visitors: Entry and stay will be granted for up to 90 days in every 365 days. Contractual Services Suppliers: Entry and stay of such persons will be granted up to thirty (30) days, renewable to no more than ninety (90) days in every 365 days.	
Madagascar	SADC	4) Unbound, except for measures concerning the entry and stay for a renewable period of up to one year of natural persons who fall into the following category: Persons transferred within a company: Only for executives and managers	3) Within three months of the registration of a company, at least one of its corporate officers must be resident in Madagascar - Foreign natural and legal persons cannot directly access land ownership. However, they may freely and without prior authorization take out an emphyteutic lease ⁵ , for a maximum duration of ninety-nine years. 4) Unbound, except for measures concerning the category of natural persons mentioned in the market access column.
Malawi	GATS	(4) Unbound except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment. The employment of such persons shall be agreed upon by the contracting parties and approved by the Ministry of Home Affairs.	3) With permission from the Reserve Bank of Malawi, a foreign-controlled company can obtain loans or overdrafts of up to one third of the value of its paid-up capital 4) Unbound except for measures concerning the categories of persons referred to in the market access column.
	SADC	4) Unbound except for measures concerning the entry and temporary stay for the following categories of natural persons as defined in the annex on Movement of Natural Persons: Intra-corporate Transferees: Executives, managers and specialists - Their entry and stay shall be for a period of up to 2 years. Business Visitors: Entry allowed for up to 90 days in a calendar year. Contractual service suppliers (CSS): Entry and stay shall be for a period of up to 2 years.	4) Unbound except for measures concerning the categories of persons referred to in the market access column.
Mauritius	SADC	3) Foreign service suppliers need to incorporate/register, in Mauritius. 4) Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories: Business Visitors: Entry for persons in this category shall be for a period of not more than 90 days in any 365-day period. Intra-Corporate Transferees: Contractual Service Suppliers– .	4) Unbound, except for measures concerning the entry and temporary stay of natural persons referred to in the market access column. For intra-corporate transferees, the employer may be required to appoint a suitable Mauritian counterpart to be trained by the foreign natural person during the posting in Mauritius.

⁴ The size/type of the company is as defined in sectoral policies and/or legislations.

⁵This is a long-term lease of at least 18 and maximum 99 years.

Member State	Commitment	Limitations on Market Access	Limitations on National Treatment
		Persons in (b) & (c), they may apply for an Occupation Permit to work and reside in Mauritius for a minimum of 3 months and a maximum of 3 years, which may be renewable. If they are holder of a Work Permit and Residence Permit, they may work and reside in Mauritius for a maximum of 5 years, which may be renewable	
Seychelles	GATS	(4) Unbound, except measures relating to entry and temporary stay of natural persons who fall in one of the following categories: (a) Business Visitors (b) Intra-corporate transferees (ICT) (c) Contractual services suppliers: (e) Installers and maintainers	(1), (2), (3), (4) subsidies is unbound. (3) Foreign services suppliers may lease/rent non-movable property for up to two years without requiring sanction from government. Two -yearly extensions beyond that also do not require government sanctions. Foreign service suppliers may also lease/rent non movable property for longer terms, up to 99 years, subject to sanction from the government. Foreigners may also acquire freehold land held in private ownership in inner island ¹ , subject to government sanction. (4) Unbound except for measures concerning the categories of natural persons referred to in the Market Access.
	SADC	4) Unbound, except measures relating to entry and temporary stay of natural persons who fall in one of the following categories: Business Visitors: Intra-corporate transferees (ICT): Entry and stay shall be for a period of two years which may be renewed Contractual services suppliers Entry and stay of such persons shall be for a period no more than 3years consecutive contracts of 2years duration each, that is, a maximum of 6years. Installers and maintainers: Temporary entry is granted for periods of stay of no more than 90 days.	(1), (2), (3), (4) subsidies are unbound. (3) Leasing of land to foreign enterprises and any extensions thereof requires Government approval. Unbound for land acquisitions. (4) Unbound except for measures concerning the categories of natural persons referred to in the market access.
Zambia	GATS	4) Unbound except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment. The employment of such persons shall be agreed upon by the contracting parties and approved by the Ministry of Home Affairs. Enterprises must also provide for training in higher skills for Zambians to enable them to assume specialized roles.	3) With permission from the Bank of Zambia, a foreign-controlled company can obtain loans or overdrafts of up to one third of the value of its paid up capital 4) Unbound except for measures concerning the categories of persons referred to in the market access column
	SADC	(4) Unbound, except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment as follows: Business Visitor Intra-corporate Transferee	(4) Unbound, except for measures concerning the categories of persons referred to in the market access column

Member State	Commitment	Limitations on Market Access	Limitations on National Treatment
		<p>should apply for Employment Permits which may be issued up to two (2) years and may be extended for periods of two (2) years. required to possess practicing certificates from the Zambian National Professional Regulatory bodies where applicable. employment of such persons shall be agreed upon by the contracting parties and approved by the Government of Zambia</p> <p>Contractual Service Supplier Contractual Service Suppliers are entitled to a maximum period of stay of 30 days in any given period of 12 months.</p>	
Zimbabwe	SADC	<p>4) Unbound, except for measures concerning the entry and temporary stay of the following categories of persons as defined in the Annex on Movement of Persons (Mode 4):</p> <p>(a) Intra-corporate Transferees (ICTs):</p> <p>b) Business Visitors: Entry and stay is allowed for up to 90 days in 365 days but each visit is not to exceed 30 days.</p> <p>(d) Contractual services suppliers:</p>	<p>4) (a) Executives, Managers, and business visitors: None (b) Specialists: foreign commercial presence required to train and transfer specialist knowledge and skills to a Zimbabwean citizen.</p>

Source: WTO & SADC

6.2 Trade Openness of COMESA Member States

Trade openness is considered the extent to which trade is enabled through liberalization, taking into account the regulatory and competitive environment of a given nation or region. At a more technical level, trade openness can be measured by the proportion of trade to a country's GDP, roughly reflecting the extent to which a country or region's total economic activity is dominated by goods and services export and import activities. For this study, trade openness is considered in the context of liberalization, with particular reference to the regulatory regime in COMESA Member States and how it opens up the region for services trade.

In the COMESA region, trade openness in construction and related engineering services is relatively low since few Member States have liberalized the sector. The levels of liberalization as has been noted in the preceding sections of this chapter vary from one Member State to another. However, as has already been noted above, COMESA Member States that have made commitments at WTO and in SADC have in their horizontal commitments placed their limitations mainly in modes 3 and 4. This presents barriers which hamper trade in construction and related engineering services, thus constricting the openness of trade in the sector.

Experts assert that openness of international trade, foreign direct investments and the international movement of people is vital for successful development (World Bank, 2008). This is further underscored by the suggestion that trade openness enables growth, market opportunities, increases productivity, enhances innovation and creates jobs.

It is therefore, important that COMESA Member States approach negotiations in construction and related engineering services with consideration to the level of openness they wish to achieve for the benefit of their domestic firms and economy. They should also systematically think through their market access expectations of other Member States. In this regard, Member States would need to examine and if necessary, reform their regulatory regimes and other policies affecting construction and related engineering services (and possibly other services sectors) to ensure that they are aligned with their objectives and goals for trade in the COMESA Region.

6.3 Benefits of Liberalization of Construction and Related Engineering Services to COMESA Member States

The liberalization of trade in services, and construction and related services in particular, promises many benefits for countries in the COMESA region. For one thing, there exists a strong linkage between services trade liberalization and general productivity. The benefits of these can be hampered however by limited opening of the services sector to competition. The various cross border restrictions which countries have in Africa may impede the many benefits, positive spill-over effects, and innovations which may accrue as a result of increasing construction sector trade as an example. Tellingly policy barriers and restrictions to services trade persist in many African and COMESA region countries. The Economic Commission (2021) on Africa observes that policy barriers to trade tend to be more obstructive than barriers to goods trade as their estimated costs often exceed the average goods trade tariff. Thus, the services trade restrictions in place in many African countries could undermine the potential of which services hold within the context of the integration agenda.

Some specific benefits of liberalisation include:

- Increased flow of investments, technical capacity and trade;
- Free movement of people
- Increased market opportunities
- Enhanced harmonisation in trade and other economic processes
- Enhanced co-operation between Member States to optimise on and complement each other's competitive advantages

Member States have been confronted with the challenge of creating a balance between liberalization and protecting their domestic firms from what has been perceived as 'undue' competition from foreign firms, especially those from advanced economies. Seeing as the construction sector is dominated by small firms, with little or no capacity to participate in sophisticated, large-scale projects, Governments are compelled to create space for their local firms through domestic regulations. For instance, Zambia and Malawi liberalized the construction services sector earlier, thus, have little room to adapt to changing economic environments and to make provisions in their commitments that would enable them to protect their local firms. However, despite this there still remains scope to fully realize the benefits of liberalization as more countries in the COMESA Region and globally progressively open their markets.

Liberalisation has sometimes been considered as a disadvantage to those who have fully opened up their markets; however, it should be seen as an opportunity to benefit from the opportunities that it brings about from trading partners. Developing countries especially, may fully take advantage of liberalisation to grow their economies.

7.0 Competitiveness of Construction and Related Engineering Services Sector in COMESA

Competitiveness is the ability of firms in a given economy or region to produce goods and services at the least cost possible and thus be able to compete fairly and successfully in international trade markets over time. Competitiveness is one of the most important drivers of international trade success.

In COMESA, the advent of new competitors, most of them foreign, has brought to the fore key competitiveness challenges and issues facing construction sectors in the member countries. One of the key features of the construction sector in many COMESA countries is the limited participation of local construction companies in the heavy, large scale, and civil construction projects. Compared to their foreign counterparts, construction companies in COMESA countries face competitiveness challenges which adversely affect their ability to participate in local construction markets, and much less in the regional and cross border construction projects.

Whilst there is a growing cadre of construction services and related engineering services providers in the COMESA region, there is still limited capacity to access markets within the region by construction companies from member states. With the exception of Egypt, construction service providers in all Member States have not penetrated the regional market. This has paved way for competitors from other regions, mainly Asia, Europe and South Africa.

Construction firms domiciled in COMESA find themselves at the intersection of megatrends which are shaping the construction sector: on the one hand, the growing trends of urbanization are driving population growth into urban centres, which is leading to growing demand for urban and social infrastructure. On the other hand, the advent of economic growth is driving the need for heavy and large-scale construction projects for infrastructure such as railways, dams, airports, roads, and highways. However, even though the demand side of the construction sector is growing, the supply side is underperforming, given that local firms in many markets do not participate in the larger scale construction projects and end up performing low value projects within the construction value chain.

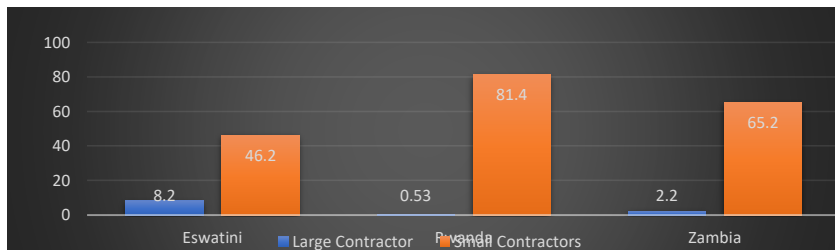
Limitations in technical capacity, technology and finance, tend to hinder services providers in the construction sector from accessing regional or international market. The composition of the construction industry in most member states is dominated by local firms with limited capacity to undertake large projects, which are typically allowed for foreign firms. This limitation applies to the domestic markets as well. Thus, international companies from other regions tend to dominate the segment of large projects. These companies also have easier access to financial instruments that enable them access high value projects and to employ highly qualified technical personnel.

The ascension to the Africa Continental Free Trade Area (AfCFTA) by some member states, adds a new dimension regarding the competitiveness of construction and related engineering services providers in COMESA. With a wider market and more players, there is need for services providers to take advantage of the opportunity in COMESA and position themselves to adequately meet the competition in the AfCFTA.

In addition, local economic conditions in respective member countries affect the competitiveness of the sector. That is, competition in construction and related engineering services sector is influenced by various factors relating to capacity to undertake projects, structure of the industry, regulation, as well as the business environment. The Africa Competition Forum has identified skills, cost of doing business and regulatory barriers as some of the key impediments to the competitiveness of African construction firms.

The structure of the construction industry in most countries including developed countries is such that firms that undertake large scale projects and have capacity to operate internationally are few compared to small and medium firms. This can be seen from the example of Eswatini, Rwanda and Zambia (Figure 6), where the number of contractors with the capacity to undertake high value projects is low; however, companies in the lowest categories are in the majority as indicated in the figure below. In Rwanda, firms with the highest classification comprise 0.05 percent of the total contractors registered; whereas the category with the lowest classification comprises 81.4 percent of the total construction firms registered. The Zambian statistics are even more telling in that foreign firms comprise over 60 percent in the classification grade of those with the highest capacity.

Figure 6: Proportion of the smallest and largest firms in Eswatini, Rwanda and Zambia

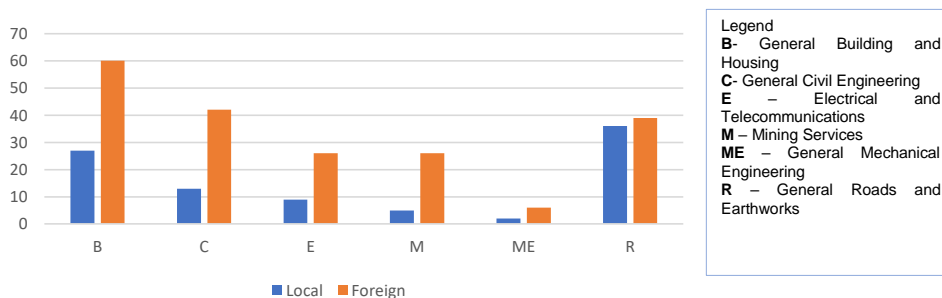


Source: Author's Compilation

Small contractors are comprised of local firms mostly owned by citizens. Clearly, there is need for enhanced capacity of domestic firms in the COMESA region.

Conversely, the chart below highlights the composition of Zambians and Foreign firms in the large-scale category of registration with capacity to undertake large-scale construction projects (Figure 7). There are more foreign contractors in this category, mainly Chinese companies.

Figure 7: Foreign contractors vs local contractors in the highest value classification in Zambia



Source: National Council for Construction, Zambia

The key factors affecting competitiveness in the COMESA Region include the following:

Lack of capacity of local firms: As seen in figure 6 above, local firms, while they are in the majority lack capacity to undertake high value construction projects. This limits their capacity to participate in construction services trade as it is the higher value projects that are usually open to participation of foreign firms.

Access to Finance: Finance enables firms to harness their capabilities in order to improve their competitiveness. This mainly depends on their capacity to secure adequate financing for implementing or guaranteeing the projects as may be required by procuring clients. Large foreign firms tend to have better access to finance from their countries of origin or due to their capacity to obtain funds from various sources in the local financial markets.

Access to relevant technology, plant and equipment: Tied to limitations of financing referred to above, are constraints of accessing the relevant technology, plant or equipment to undertake large projects. This includes related logistical cost attendant to mobility of plant and equipment.

Development Funding Conditions: A large percentage of infrastructure projects especially high value projects such as roads, bridges, hydro-power plants etc., are funded by multilateral or bilateral donors who determine the conditions and criteria for selection of contractors to provide construction services. Further, some of these conditions require that the tendering process is open to international firms, which limits the likelihood for most domestic firms to access such opportunities.

Human Resources and Skilled Labour: The construction services sector is sustained by relevant skills and expertise to execute projects. To this end, it is important that construction services suppliers have the ability to mobilise the necessary skills for projects. Key to this is the ability to enable for movement of natural persons. This is a key aspect for consideration in the on-going negotiations in the COMESA region.

The factors above are consistent with issues raised at the WTO and in various RECs. The construction services sector is capital and labour intensive, hence, beyond policy issues are the elements of practice in the provision of relevant services.

Other factors affecting competitiveness of construction services suppliers in COMESA include:

Demographic Structure: One of the characteristics of the COMESA region is that it comprises three official languages – Arabic, English and French. This presents limitations in terms of accessing markets where language becomes a barrier.

Limited Understanding of Trade in Services: There is a general lack of understanding of trade in services among stakeholders in both the public and private sectors. The private sector in particular, is most affected as they depend on respective Governments to sensitise. Furthermore, construction and related engineering services are closely associated with various professional services such as engineering and architecture, which are classified as professional services. Thus, in addressing issues affecting the sector, there is often some misunderstanding with regard to the scope and classification. It should be understood that while construction related expertise is necessary in construction, their roles and responsibilities are different when performing construction services. In construction firms, architects, engineers or surveyors are part of the firm staff who mainly manage construction operations and projects. They are required to ensure the works are undertaken according to required specifications and standards. Professional ethics do not allow architects and other construction professionals to undertake dual roles.

This phenomenon in Figures 6 and 7 above reveal the fact that, whereas the goals of regulation and liberalisation by COMESA member states may be focused on protecting interests of their domestic or local firms, this may not lead to the realisation the full benefits of trade. This is because in setting restrictions to entry of foreign firms in construction services, most local firms in COMESA countries are inadvertently excluded. The question then becomes, for whose benefit would the negotiations in construction and related engineering services be? It is apparent that even when Government procurement is applied, the possibility of the benefits of trade in construction and related engineering services may accrue to firms outside the region.

Considering that foreign construction and related engineering service suppliers that are local in COMESA countries will typically have received some form of support from their respective Governments, a useful strategy for COMESA might be to do the same. For example, anecdotal evidence abounds on the role that research and development (R&D) grants, Science, Technology and Innovation (STI) awards, and other affirmative actions or subsidies have significantly helped firms in Asia and Europe to increase their productive capacity, efficiencies and ability to compete internationally. In addition, the procurement “fine-print” that come with construction and engineering related aid, foreign direct investment (FDI) and even debt financing tends to give the better informed and higher capacity firms in the source countries of the aid, FDI and debt a strong competitive edge to readily capture large-scale construction contracts.

Most countries in Africa, COMESA countries included, do not receive such “helping hands” from their Governments. Local content policies and strategies and affirmative action arrangements might then become a viable option for lifting the local firm competitive advantages and mitigating potential losses of business and jobs.

8.0 Regional Integration and Scope for Enhanced Trade in Services

Regional integration is gaining momentum across Africa as countries begin to pursue the benefits thereof. The implementation of the regional integration agenda has been enlarged from the level of the RECs (COMESA, EAC, ECOWAS, SADC, etc.) to include the continental level through the African Continental Free Trade Area (AfCFTA). All this is in a bid to drive greater trade, economic growth and sustainable development as a common good.

Many of the countries have signed and ratified regional trade agreements within of context of regional integration efforts. However, even though the countries have moved to prioritise integration, it has not been without challenges. This has resulted in the slower than expected implementation of the regional integration initiatives. As a consequence, intra Africa trade remains low compared to other regions around the world, including other developing regions of the world. Nonetheless, African countries have been able to pursue deeper connections with their regional economies and the large global economy. Countries and regions which have accelerated the processes of integration have begun to see increased trade and investment.

According to the Economic Commission on Africa, it has been noted that despite the growth of intra-African regional trade flows, the progression has been generally low primarily due to poor infrastructure development, maintenance, and connectivity; conflicts and security issues; as well as trade barriers. Thus, even though there have been increased linkages and trade flows in the recent years, more still needs to be done to reap the full benefits of trade. Furthermore, in order to increase regional trade and investment, it is imperative that African countries liberalize and streamline existing regional trade agreements (RTAs). Owing the factors such as the foregoing, African Governments have intensified efforts towards building better connectivity within Africa as well as with the rest of the world in order to create large markets and to facilitate the achievement broader development.

The Africa Regional Integration Index (ARII) measures integration across five parameters, namely, trade integration, productive integration, macro-economic integration, infrastructural integration and free movement of people.

To determine the level of trade integration, ARII uses indicators that measure the share of trade (imports and exports) over GDP, share of intra -regional trade and the average import tariffs. Services are not explicitly highlighted but some of the principles can still be applied. Macro-economic integration is considered as the degree to which a country is macroeconomically coherent with its neighbours helps investors to calculate the value and potential of their investments. Furthermore, a country is deemed well-integrated productively if its productive capacities complement those of other countries in the region; that is, if it specialises in stages of production where it has a comparative advantage and can benefit from economies of scale. Infrastructure integration denotes how well a country's infrastructure is developed to facilitate connections within the country, the region it belongs and beyond. Free movement of people is measured by the requirements for a visa and ease of obtaining one at the border.

COMESA's regional integration is considered low with its best score in trade integration and its lowest performance in productive integration. Other RECs such as SADC and EAC, to whom some COMESA Member States are members, perform well on the movement of people.

The COMESA Treaty has among its objectives the following:

- i. To attain sustainable growth and development of Member States by promoting a more balanced and harmonious development of its production and marketing structure.
- ii. To promote the joint development in all fields of economic activity and joint adoption of macro - economic policies and programmes to raise the standard of living of its people's and to foster closer relations among its Member States.

The above objectives support integration. Construction and related engineering services trade could be enhanced by aligning the objectives of trade negotiations and other sector development initiatives to the COMESA objectives. One of the principles of integration that could significantly benefit construction and related engineering services trade is the Free Movement of Persons.

In order to achieve integration as well as the related objectives of liberalization the free movement of persons across borders is essential. The free movement of people, labour, and skills is essential for the region's efforts for integration and development, particularly for the construction and related engineering services sector.

So far, African Governments and regions have been developing a variety of policy initiatives to promote the free movement of persons. The Economic Commission on Africa envisages that the free movement is expected to contribute to services and boost competition internal markets in many African countries. The African Development Bank and African Union (2018) observe that Africans enjoy visa-free entry to only 25 per cent of other African countries, must secure visas on arrival in 24 per cent, and must have visas to travel to 51 per cent. Following the adoption of the 2018 protocol to the Abuja Treaty on Free movement of persons, right of residence, and right of establishment 33 countries have signed the protocol, four have ratified it, with a required 15 ratifications remaining before the protocol can come into force to be implemented (Economic Commission on Africa 2021). In 2020, the eVisa was made available in 24 countries representing about 46 percent of all countries (Economic

Commission on Africa 2021). In the same year 50 countries improved their scores on the Visa Openness Index with 20 moving upward in ranks (Economic Commission on Africa 2021). Whilst this applies to the Africa as a whole, COMESA, is well positioned as a region to advance free movement of people in order to enhance trade and the fulfilment of the objectives of the COMESA Treaty. So far, COMESA also has two instruments which aims to facilitate the movement of persons: The Protocol on The Gradual Elimination of Visas and the Protocol on Free Movement of Persons, Services, Investment and Labour.

8.1 Advantages of Regional Integration for Construction and Related Engineering Services

Construction and related engineering services can be enhanced by the progression of the COMESA region towards greater integration. This is because the nature of the sector makes it suitable for integration as a way of removing barriers that limit access to markets. The following are some of the benefits of integration:

a). Movement of Natural Persons

Free movement of people, being one of the key elements to regional integration would enhance trade in construction services as it is a highly transient service requiring services suppliers to move from one jurisdiction to another;

b). Mutual Recognition Arrangements (MRAs)

In relation to the free movement of people is the need for skills and expertise to be recognized and acceptable across the region. Construction services involve the application of standard skills and expertise that would benefit from alignment through adoption mutually agreed standards via MRAs;

c). Market Access

Regional Integration can enhance market access through removal of barriers to trade. Construction and related engineering services would be bolstered by the removal of various barriers that limit market access, especially by smaller construction firms.

d). Economic Development

The ultimate benefit of regional integration is economic development. In COMESA for instance, Member States can complement each other by harnessing areas of their competitive advantage to for regional benefit. Further, Member States can collaborate in facilitation of key development infrastructure that can catalyze growth, not only within their respective jurisdictions, but in the region as a whole.

Regional integration at sectoral level, can enable the construction sector to harmonize their policy frameworks in order for the benefits of trade in construction and related engineering services to be optimized. Furthermore, there still lies an opportunity for COMESA Member States to fully embrace the possibility of advancing regional integration in the region and exploit the potential for open borders that enable free movement of persons and services.

Construction and engineering services would significantly benefit from the integration process as it would eliminate some key barriers to access to markets that mainly lie in the prevailing regulatory environment as highlighted in earlier sections of this report. Due to its transient nature and project focus, the construction sector would be advantaged by integration in that a framework for harmonization of registration criteria, mutual recognition arrangements and free movement of persons could be explored.

Commented [TBN5]: COMESA also has two instruments which aims to facilitate the movement of persons: The Protocol on The Gradual Elimination of Visas and the Protocol on Free Movement of Persons, Services, Investment and Labour. As the African Instruments are extensively discussed maybe the COMESA instruments also deserve a mention.

8.2 Lessons from Regional Economic Communities

The COMESA region can draw beneficial lessons from the experiences and practices in other RECs. This sub-section describes the key lessons for COMESA from a select few RECs.

European Union

The European Union (EU) is the most advanced regional economic community in the world, having achieved significant levels of integration resulting in a customs union, single market and single currency, which most members have since adopted. The EU therefore serves as an ideal example on regional integration and some lessons on how trade in construction and related engineering services can be enhanced. The EU has an established approach specific for construction services and it is one of the priority sectors.

The EU considers construction services as key to the EU economy as it is estimated to contribute approximately 6.1 per cent of EU GDP and provides at least 7.3 per cent employment in the region. The EU has placed construction services as an area of economic significance and made it a priority sector.

The EU passed a services directive whose objective is to exploit the full potential of services markets in Europe by removing legal and administrative barriers to trade. This has led to simplified measures that allow for greater transparency and ease of doing business in the region. The benefits of this directive include: easier establishment, easier provision of cross-border services and simplified procedures and formalities.

The EU Regional Schedule of Commitments in Construction and Related Engineering services is as follows (Table 14):

Table 14: EU Commitment Schedule in construction and related engineering services

Sector or Sub Sector	Limitations on Market Access	Limitations on National Treatment
CONSTRUCTION AND RELATED ENGINEERING SERVICES (CPC 511, CPC 512, CPC 513, CPC 514, CPC 515, CPC 516, CPC 517 and CPC 518)	<p>Mode 1 - EU except in Lithuania: None. Lithuania: Unbound.</p> <p>Mode 2 – EU: None</p> <p>Mode 3 – EU: None</p> <p>Mode 4 - Business Visitors for Establishment Purposes; Intra-Corporate Transfers; Service Sellers : Unbound except as indicated in the horizontal section, and subject to the following limitations: In Bulgaria: Foreign specialists must have experience of at least two years in the field of construction. In Cyprus: Authorization by the competent authorities required for foreign natural persons</p>	<p>Mode 3 - 3) EU: None, except In Cyprus: for construction and related engineering services, specific conditions apply and authorization is required for third country nationals for establishment.</p>

Source: European Commission

In addition, Lithuania has made the following reservations on limitations on national treatment in construction and related engineering services:

Mode 1 - In Lithuania, the right is reserved to adopt or maintain any measure with respect to the provision of construction services, including requiring prior approval of foreign services suppliers by the competent authorities (CPC 51).

With regard to GATS, the EU has made the following commitments (Table 15):

Table 15: EU Commitments in GATS

Sector or Sub Sector	Limitations on Market Access	Limitations on National Treatment
CONSTRUCTION AND RELATED ENGINEERING SERVICES For all Member States except CY, CZ, FI, LV, MT, SK, SI and SE: CPC 511, 512, 513, 514, 516 and 517. FI: CPC 512, 513, 514, 516; LV: CPC 512, 513, 514, 515, 516, 517, 518. CZ, SK, SE: CPC 511, 512, 513, 514, 516 and 517. SI: CPC: 511, 512, 513, 514, 515, 516, 517	All Member States except AT, CY, CZ, EE, FI, HU, LT, LV, MT, PL, SE, SI, SK: Unbound except for 5111 and 5114: None AT: Unbound except for CPC 518: None CY, CZ, HU, MT, LT, LV, PL, SE, SI, SK: Unbound EE, FI: None 2) All Member States except CY, HU, MT: None CY, HU, MT: Unbound 3) All Member States except CY, CZ, EL, HU, IT, MT, PT, SK: None CY, CZ, HU, MT, SK: Unbound EL: Nationality condition for managers of the board of directors of construction companies supplying in the public sector. IT: Exclusive rights are granted for construction, maintenance and management of highways and the airport of Rome. PT: Exclusive rights are granted for maintenance and management of highways. 4) ICT and BV: All Member States except CY, HU, MT: Unbound except as indicated in the horizontal section and subject to the following specific limitations: SI: commercial presence required. EL: Nationality condition for managers of construction companies supplying in the public sector. AT: commercial presence required CY, HU, MT: Unbound CSS: All Member States: Unbound except for NL and FR where: as indicated in the horizontal section and subject to the following specific limitations: NL: University degree and professional qualifications and three years' professional experience in the sector. FR: Unbound except for measures concerning the temporary entry of technicians under the following conditions: - The technician is an employee of a juridical person within the territory of another Member and is transferred to a commercial presence in FR which has a contract with that juridical person. - The work permit is delivered for a period not exceeding six months. - The technician presents a work certificate from the commercial presence in FR and a letter from the juridical person within the territory of another Member demonstrating its agreement to the transfer. - Compliance with an economic needs test is required. - The commercial presence body must pay a tax to the International Migration Office. CSS: for CPC 5111 only: All Member States except BE, DE, DK, UK, SE: Unbound	1) All Member States except AT, CY, CZ, EE, FI, HU, LT, LV, MT, PL, SE, SI, SK: Unbound except for CPC 5111 and 5114: None AT: Unbound except for CPC 518: None CY, CZ, HU, LV, LT, MT, PL, SE, SK: Unbound EE, FI: None SI: Unbound except for CPC 511, 515: None 2) All Member States except CY, HU, MT: None CY, HU, MT: Unbound 3) All Member States except CY, CZ, EE, HU, MT, SK: None CY, CZ, HU, MT, SK: Unbound EE: None except that at least one responsible person (project manager or consultant) must be resident of Estonia. 4) ICT and BV: All Member States except CY, FI, HU, LV, MT, PL: Unbound except as indicated in the horizontal section and subject to the following specific limitations: SI: commercial presence required. FI, LV, PL: None CY, HU, MT: Unbound CSS: All Member States except CY, CZ, HU, LT, LV, MT, PL, SK, SI: Unbound except as indicated in the horizontal section. CY, CZ, HU, LT, MT, PL, SK, SI: Unbound. LV: None

	<p>BE, DK, UK, SE: University degree and professional qualifications and three years' professional experience in the sector.</p> <p>UK: Compliance with an economic need test is required.</p> <p>DE: Unbound except for limited range of services of site investigation work where: university degree and professional qualifications and three years' professional experience in the sector.</p>	
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Source: WTO

Whereas, the EU has liberalized construction and related engineering services within the EU, with minimum restrictions and reservations by a few member states, the picture is different at WTO level. In the GATS, various member states have restrictions especially in mode 4 under limitations to market access.

The EU has further placed importance to the construction sector due to its significance to the regional economy. As such, the European Commission has developed initiatives to made the sector more competitive, resource efficient and sustainable by among other things:

- Assessing the regulatory impact on the construction sector;
- Implementing regulations relating to construction products;
- consolidating the internal market for construction products by developing a common technical language for the performance of construction products; and
- Implementing strategies to improve training, tendering and financing in the construction sector

Other objectives in supporting the construction sector include support to small and medium enterprises due to their potential for job creation; promote competitiveness and constantly monitor trends. Table 16 below, summarizes these objectives.

Table 16: EU support to the construction sector

Support to SMEs	Competitiveness	Monitoring Trends
<p>Reduces regulatory burden and improves market access</p> <p>Improves access to financing</p> <p>An EU country partnership for delivery</p> <p>Supports Entrepreneurship</p> <p>Provides key support, networks and information for SMEs</p>	<p>Financing and digitalisation: especially for energy efficient investments in the renovation of buildings and for research and innovation in a smart, sustainable, and inclusive environment</p> <p>Skills and qualifications: workforce and management training for job creation through up-skilling and apprenticeships to meet demands for new competencies</p> <p>Resource efficiency: focusing on low emission construction, recycling and valorisation of construction, and demolition waste</p> <p>Regulatory framework: emphasis on reducing the administrative burden for enterprises, and particularly SMEs</p> <p>International competition: encouraging the uptake of Eurocodes and promoting the spread of new financial tools and contractual arrangements in non-EU countries.</p>	<p>The EU Established the European Construction Sector Observatory to:</p> <ul style="list-style-type: none"> - monitor market conditions and trends, as well as national/regional strategies and progress towards the EU Priorities for the Sector - encourage knowledge sharing and the replication of good practice - raise awareness on policy measures and initiatives impacting the construction value chain

Source: European Commission

The advancements made by the EU can be lessons for COMESA in enhancing the vision for a common market, including the promotion of the removal of barriers to trade.

From the EU framework a number of aspects can be noted for COMESA Member states to consider in enhancing construction and related engineering services include:

- Removal of regulatory and administrative barriers for construction services providers in the region to enhance market access to construction services suppliers from COMESA Member States;
- Enhancing the capacity and competitiveness of local firms in COMESA Member States
- Establishing a framework for trade in construction and related engineering services specific for the COMESA Region

Association of South East Asian Nations (ASEAN)

The Association of South East Asian Nations (ASEAN) is an economic community of several countries in South East Asia to optimize the economic potential of the region through harmonization.

The ASEAN community recognized the growing importance of trade in services and launched the ASEAN Framework Agreement on Services (AFAS) in 1995. This framework provides guidelines for improvement of market access and equal national treatment of services suppliers in the region. The aim of AFAS is to eliminate restrictions to trade in services among Member States as well as to improve competitiveness of services suppliers in the region. ASEAN also intends to liberalise services trade in order to achieve commitments beyond Member States' commitments under the GATS.

The aims of ASEAN are to achieve regional integration with a single market and product base as well as enhancing competitiveness in the region with equitable economic development. Ultimately, ASEAN intends to fully integrate into the global economy. To achieve this, some specific objectives have been outlined among others, as follows:

- To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations;
- To collaborate more effectively to encourage further growth in the agriculture and industry, and trade sectors.

Services have been identified as a sizeable and continuously expanding component of GDP in ASEAN economies. As of 2018, services sector represented between 38 per cent and 69 per cent of ASEAN Member States' GDP.

So far, the ASEAN has achieved the following:

- Concluded commitments of each ASEAN Member State in various services sectors and subsectors.
- Established an agreement on movement of natural persons in 2012.
- Established mutual recognition arrangement in various professions including engineering, surveying and architectural services

Not all ASEAN States have made commitments in construction and related services under GATS and within the REC, as travel, transport and other business services dominate the region's export and import of services. Construction services account for only 0.7 per cent of exports and 2.4 per cent of imports. Travel, transport and other business services account for a combined total of 87.4 per cent of services exports and 80 per cent of imports.

There are a few lessons to learn for COMESA from the ASEAN example, nonetheless, of significance to construction and related engineering services; is the need for the establishment of an agreement of persons and the mutual recognition arrangement.

The objectives of the agreement on movement of natural persons is to complement the ASEAN Framework Agreement on Services (AFAS); facilitate movement of persons engaged in trade between member states; facilitate streamlined and transparent for temporary entry and stay of persons; and, protect the domestic labour force in member states⁶. This is important to the supply of construction and related engineering services, which relies heavily on movement of persons in execution of projects.

East African Community (EAC)

The East African Community (EAC) is a regional economic community comprising countries in East Africa, some of whom are members of COMESA. The EAC has made progress in establishment of a common market and a customs Union.

The EAC has established a liberal approach towards freedoms of movement across the factors of production and rights of establishment and residence. Freedom of movement covers goods, persons, labour or workers, services and capital.

In addition, the EAC Common Market is anchored on various operational principles of the Community, namely:

- Non-discrimination of nationals of other Partner States on grounds of nationality;
- Equal treatment to nationals of other Partner States;
- Ensure transparency in matters concerning the other Partner States; and
- Share information for the smooth implementation of the Protocol.

The goal of the EAC is to transform into a single market that allows for free movement of goods, persons, services, labour and capital while guaranteeing rights to residence and establishment. To this end, the relevant laws are ongoing in member states.

Meanwhile the EAC already has an established EAC Competition Policy and Law to deter any practice that negatively affects free trade within the region.

The EAC policies and protocols are universal to all sectors. This means that construction services providers are included and are eligible to undertake work in any member country within the region.

The EAC has however, not scheduled commitments in construction and related engineering services. This sector has not been included in the first round of negotiations, which include Business and Professional; Communication; Distribution; Education; Financial; Tourism and travel-related; and Transport services.

The EAC has further introduced the East African Common Market Scorecard aimed at supporting and monitoring the implementation mechanisms of the Common Market; by tracking progress of Partner States in fulfilling their commitments as provided in the regional

⁶ ASEAN, ASEAN Agreement on Movement of Natural Persons, 2012

Protocol; assessing made by the Partner States; keeping track of progress in the elimination of barriers to trade; and recommending reform measures.

The scorecard is a very progressive tool for COMESA and Member States to adopt. Most African states, including COMESA Member States have not mainstreamed data collection and information systems in their governance and operations, hence there is lack of information to use in design of policies and in development co-operation initiatives. For trade negotiations, like all typical negotiations, to be effective, information is a key element in determining value for parties concerned.

A scorecard can be established in the COMESA Region to monitor the regulatory regime in relation to commitments made in construction and related engineering services as well as other services. This can also be used to track general reforms that COMESA Member States undertake in response to regional agreements.

8.3 Summary of Key Lessons for COMESA from Other RECs

COMESA can draw a number of lessons from the examples of best practice at WTO, in the EU, ASEAN and EAC, which can be use to explore the enhancement of Construction and Related Engineering Services Trade. These include:

- Enhancing competitiveness of construction services suppliers in the region through provision of business support services, policies that enhance local business growth and transformation and enhancing technical capacity to perform construction services;
- Instituting Mutual Recognition Arrangements for skills and expertise;
- Enabling the free movement of people;
- Establish tools for monitoring and measuring Member States' progression towards liberalization and integration;

With a rich backdrop of best practice, COMESA can adopt some approaches or even improve on them to strengthen trade in general but also particularly address the unique aspects relevant to construction and related engineering services trade.

9.0 Lessons from the World Trade Organisation (WTO)

The COMESA Region can benefit from experience and practice at the WTO, as seen in the exposition in the foregoing section on learning from other RECs. The lessons drawn from best practice and initiatives in various regions can enhance the advancements of the objectives of COMESA as outlined in the treaty, but can also specifically assist in shaping the outcomes of negotiations in construction and related engineering services trade. Below are some of the highlights drawn from WTO that maybe useful for COMESA Member States to consider.

The WTO is the foremost global organization for promotion of trade among nations. Agreements and Commitments made at the WTO supersede other regional agreements. The WTO is the custodian of the General Agreement on Trade in Services that provides the framework for trade in services globally.

Whereas the WTO is the ideal reference for best practice in trade, it also provides resources that are able to guide member states and regional bodies on matters pertinent to their trade

issues. For purposes of this study, a highlight on issues that have been proposed by member states may provide a guide for consideration at regional level, in this case in COMESA.

Notwithstanding the fact that the WTO is the overall authority on trade in services, a number of issues have been raised by member states for consideration in services negotiations and for the construction services sector in particular

For the construction sector, member states identified the need to eliminate the following barriers as a key objective to negotiations in construction and related engineering services:

- Foreign equity limitations;
- Joint venture and joint operation requirements;
- Discriminatory licensing or registration procedures;
- Restrictions on the types of projects that can be undertaken by foreign service suppliers; and
- Restrictions on the movement of natural persons.

In addition, a collective request was made for commitments under Mode 3 (a foreign company setting up subsidiaries to provide services in another country), to address restrictions such as foreign equity limitation, restriction on the types of commercial presence, discriminatory procedures, and restrictions on the types of projects for foreign services suppliers⁷. General issues on trade in services that members proposed for consideration are included in Table 17.

Table 17: WTO Member issues in trade in services

Reference	Issue
Mode 1	commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members removal of existing requirements of commercial presence
Mode 2	commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members commitments on mode 2 where commitments on mode 1 exist
Mode 3	commitments on enhanced levels of foreign equity participation removal or substantial reduction of economic needs tests commitments allowing greater flexibility on the types of legal entity permitted
Mode 4	new or improved commitments on the categories of Contractual Services Suppliers, Independent Professionals and Others, de-linked from commercial presence, to reflect <i>inter alia</i> : removal or substantial reduction of economic needs tests indication of prescribed duration of stay and possibility of renewal, if any new or improved commitments on the categories of Intra-corporate Transferees and Business Visitors, to reflect <i>inter alia</i> : removal or substantial reduction of economic needs tests indication of prescribed duration of stay and possibility of renewal, if any
MFN Exemptions	removal or substantial reduction of exemptions from most-favoured-nation (MFN) treatment clarification of remaining MFN exemptions in terms of scope of application and duration
Scheduling of Commitments	ensuring clarity, certainty, comparability and coherence in the scheduling and classification of commitments through adherence to, <i>inter alia</i> , the Scheduling

⁷ WTO, Council on Services Special Session, 2006

Reference	Issue
	Guidelines pursuant to the Decision of the Council for Trade in Services adopted on 23 March 2001

Source: WTO

The above issues highlight the need for COMESA Member States to outline some common aspects of interest that affect negotiations in construction and related engineering services. The aim would be to reach consensus on some of these aspects prior to or during negotiation sessions.

10.0 Conclusion and Recommendations

10.1 Conclusion

The Construction Sector in particular, has specific issues of note as has been identified in this report, in particular regarding the regulations, and state of competitiveness that impact significantly on construction services suppliers and construction services trade; which need to be addressed to facilitate liberalization of the sector in the on-going trade in services negotiations.

Construction and engineering services trade has the potential to contribute significantly to trade in COMESA. Given that construction services suppliers have access to a market estimated to be no less than \$300 million in various regions of Africa where COMESA Member States are domiciled, there is need to harness the sector for obtaining a significant share of this market.

However, in order to fully realize the benefits of trade in construction and related engineering services, there is need to address underlying issues affecting the performance of the sector such as improving the competitiveness of construction firms; alignment of the construction policy and regulation to trade objectives; optimize the benefits of liberalization; and take progressive steps towards regional integration.

The on-going negotiations in construction and related engineering services in COMESA need to benefit local services suppliers in Member States; as such, every effort and opportunity is necessary to ensuring this. Member States need to critically assess how they can enable effective participation of their local firms in trade in construction and related engineering services; what actions and decisions can be taken at national level; and how they can tap into regional platforms.

Trade negotiations and liberalization in construction and related engineering services need to be approached with a purpose to take full advantage of the opportunity and benefits while mitigating challenges and downside risks.

10.2 Recommendations

From the foregoing, and the issues highlighted from consultations undertaken with Member States, this study makes the following recommendations:

- i. **Domestic policy and regulatory reforms:** Towards the removal of policy and regulatory barriers, COMESA Member States should consider reviewing and where necessary, reforming their domestic policy and regulations affecting the

construction services sector. To reliably inform the policy and regulatory reforms, each Member State must invest in and initiate sector-specific analysis of the performance, successes, challenges, constraints and risks of the construction and related engineering services sector and of (export and import) trade in construction and related engineering services. This should be sequenced to take place rapidly prior to the negotiations and should include a substantive and inclusive key national stakeholder identification and consultation process. Potential regulatory issues for consideration in negotiations and related barriers for member states to consider for elimination are mainly anchored in modes 3 and 4 of supply of construction and related engineering services as follows:

- a. **Restrictions in the Presence of Natural Persons:** In addition to MRAs it would be important for COMESA Member States to consider approaches and options for eliminating barriers in Mode 4. This is because construction projects are transitory in nature, thus require service providers to move from one location to another as opportunities unfold. Some projects, especially transport infrastructure, may span from one jurisdiction or country to another, thus requiring additional layers of compliance.

The scope and nature of construction and related engineering services includes the movement of individuals with skills and for various purposes relevant to delivery of the service. To this end, this mode of supply is a significant element in construction and related engineering services as it is also a component of the other modes of supply. The presence of natural persons is mainly affected by immigration requirements in the target market. These normally prescribe the conditions for temporary residence, number of staff allowed in firms, specific staff positions and the type of permits allowed. Member States need to consider the establishment of a framework for free movement of natural persons.

- b. **Conditions for Establishment:** The conditions for establishment in some services commitments include joint-venture requirements, local staff component, minimum shareholding and participation limited to projects of a prescribed minimum value. Member States need to agree on how this can be applicable and advantageous for services suppliers in the COMESA Region compared to other international services providers.

- ii. **Coherence and consistency in domestic regulation and policy:** This process entails constant monitoring of regulatory changes and their impact on construction and related services trade as well as ensuring other sectoral agencies are sensitized on the member states obligations and commitments in construction and related engineering services.

In addition, considering that construction and related engineering services have a multi-sectoral scope in that the establishment of business operations and implementation of projects requires the involvement of different regulatory and implementing agencies, Member States should consider establishing Inter-Agency Coordination Mechanisms (IACM) to coordinate both domestic industrial organization issues around the construction and related engineering services sector and construction and related engineering services trade, including the services trade negotiation.

Furthermore, there is need to keep track of the domestication of regional agreements, particularly those of the COMESA Region so as to ensure that domestic policy and regulations are aligned accordingly.

iii. **Facilitation of Capacity Building and Support:** Member States in COMESA recognize the need for additional support to their efforts by the COMESA Secretariat or other expert institutions. Given the specialized framework of trade in services, there is an apparent need for capacity building for both the public sector as well as service providers. It is recommended that a continuous process of capacity building and sensitization is established. This will ensure that the principles subscribed to by Member States are constantly kept in the fore; the knowledge of trade in services is disseminated to all stakeholders; and that ultimately, issues and consideration for trade in services can be streamlined in policy making and other governance systems of Member States.

a. **Trade in services training and skills development:** To gain access to sound skills and adequate information as a basis for establishing negotiating positions, and making offers and requests in construction services, Member States should be encouraged to invest in trade in services training and skills development for key public sector officials and private sector representatives, including exchange programmes at the WTO and with other RECs.

b. **Construction and Related Engineering Trade Promotion:** There is need for Member States to sensitize construction services providers regarding the opportunity in the region for trade in this sector. Private sector stakeholders, especially, do not seem to appreciate the nuances of trade in services and as they relate to the sector. Whilst some firms have inadvertently participated in trade outside the scope of the GATS or Regional Trade Agreements (RTAs), there remains a gap in the knowledge of available opportunities within the relevant trade agreements.

iv. **Increase Competitiveness:** Whilst the objectives of liberalizing construction and services is sound, there is need to address the impact this has on domestic firms which are mostly small and medium sized and most do not have capacity to provide their services internationally. Policy measures on their own will not enhance construction and related engineering services trade without improving the competitiveness of the service providers in the COMESA region. As has been highlighted in the preceding sections, the construction industry is dominated by small and medium enterprises who face various limitations especially those in developing and least developed countries; is therefore crucial that the benefits of liberalization still accrue to these smaller firms. To this end, it would be necessary to ensure that the negotiations result in access to markets for this segment of construction services providers by implementing measures that enable access to markets for this segment; and enhance capacity for them to compete effectively. Some measures that could be considered include:

- Establishing procurement frameworks that allow for small and medium construction services providers from COMESA Member States to participate in smaller projects in the region;

- Including construction firms from COMESA Member States in affirmative action policies and expanding the scope of local firms to include those from the COMESA region;
- Promoting joint ventures among firms from the COMESA Region and sub-contracting to COMESA firms by large international firms;
- Providing business development services (finance, lease of equipment, technical support etc) to firms supplying services in the region.

v. Clarity on Mode 1 of Supply of Construction and Related Engineering Services:

There is need for clarity regarding the scope of Mode 1 as the interpretation by various states on the applicability varies. Some schools of thought indicate that supply of services in this mode can be undertaken for some sub-sectors especially those relating to pre-erection works, which in the most part include professional services. COMESA Member States need to agree which specific elements of this mode can be considered in construction and related engineering services.

Commented [TBN6]: The subject of what needs to be clarified is not specified both in the discussion and recommendation. (Mode 1)

Regional Facilitation

In order to fully realise the objectives of COMESA's integration goals, there is need to support the trade agenda in a more collective fashion through various approaches such as:

- vi. Mutual Recognition Arrangements (MRAs):** The construction sector, due to its broad scope, attracts a wide range of professions and skills. Whereas expertise such as architecture and engineering are provided for under professional services, there is still need for regulatory and professional associations from Member States to consider establishment of a harmonized set of standards for professions and skills in construction and related engineering services. As noted from the ASEAN example in the previous section, this would be important in addressing the limitations that relate with mode 4, which is a key element in the provision of construction services.
- vii. Standard Registration and Qualification Criteria:** From the registration criteria of different Member States, it is observed that construction services suppliers are subject to varying sets of criteria for qualification to supply services. As such, it would be important to explore the harmonization of these criteria by relevant regulatory agencies in the region.
- viii. Tools for Monitoring and Tracking Commitments:** It is important that standard mechanisms for monitoring regulation in the construction services sector, such as the EAC scorecard, are developed through facilitation by the COMESA Secretariat for Member States to periodically provide information that would enable monitoring of the levels of liberalization and compliance with commitments.
- ix. Disclosure of Policy and Regulatory Information:** Transparency in policy and regulatory information impacting on the supply of construction and related engineering services would enhance the on-going negotiations as COMESA Member States could refer to these in framing their requests, offers and commitments. This would also strengthen and enrich the negotiations, because it would allow member states to enquire on or address specific issues. It is therefore proposed that Member States continuously submit all relevant policy and regulatory documentation as well

as updates to the COMESA Secretariat for compilation and access by other Member States on a designated portal.

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11.0 Annexures

Annexure I: COMESA Member States Membership to other RECs in Africa

COMESA Member State	Arab Maghreb Union (AMU)	Community for Sahel Saharan States (CEN-SAD)	East African Community (EAC)	Economic Community of Central African States (ECCAS)	Economic Community of West African States (ECOWAS)	Inter Governmental Authority on Development (IGAD)	Southern African Development Community
Burundi				•			
Comoros		•					•
D. R. Congo			•	•			•
Djibouti		•				•	
Egypt		•					
Eritrea		•				•	
Eswatini							
Ethiopia						•	
Kenya		•	•			•	
Libya							
Madagascar							•
Malawi							•
Mauritius							•
Rwanda			•	•			
Seychelles							•
Somalia		•				•	
Sudan		•				•	
Tunisia	•	•					
Uganda			•			•	
Zambia							•
Zimbabwe							•

Annexure II: COMESA Member States Horizontal Commitments in GATS and SADC

Member State	Limitations on Market Access	Limitations on National Treatment
Burundi	<p>GATS</p> <p>Unbound, except for medical specialists, specialized senior management and managers. "Medical specialists", "managers" or "specialized senior management" may be taken to include persons who meet the following requirements:</p> <ul style="list-style-type: none"> - they have specialized, and not general, knowledge, of the profession; - they engage in it regularly and exclusively; - they have studied beyond a general level, as evidenced by diplomas. 	<p>Unbound, except for specialists, specialized senior management and managers.</p>
D. R. Congo	<p>GATS</p> <p>(4) Unbound, except for measures affecting the entry and temporary stay, for a period of one year, which may be extended, without requirement of the economic need test, of natural persons in the following categories:</p> <ul style="list-style-type: none"> - senior executives - specialists who possess knowledge essential for the provision of the service concerned 	<p>(4) Unbound, except for measures affecting the entry and temporary stay, for a period of one year, which may be extended, without requirement of the economic need test, of natural persons in the following categories:</p> <ul style="list-style-type: none"> - senior executives - specialists who possess knowledge essential for the provision of the service concerned
	<p>SADC</p> <p>4) Unbound, except for measures affecting entry and temporary stay for natural persons mentioned in the following categories, is subject to obtaining a work permit for a period of two-year renewable:</p> <p>Business visitors: People visiting the DRC temporarily for:</p> <ul style="list-style-type: none"> Attending a business meeting; Marketing a service; Negotiating or entering into agreements for the sale of a service or for the purpose of setting up a commercial presence for a corporation. <p>Contractual services suppliers: Individuals employed by a corporation that has no establishment in the DRC and has entered into a bona fide contract to provide the service to an end user in the DRC and which requires the presence on a temporary basis of its employees in DRC to meet the terms of its service supply contract.</p> <p>Employees of foreign service providers: Specific categories of workers listed below who are hired temporarily by a service provider with a commercial presence in the DRC in the context of providing a service in the DRC:</p> <p>Managers: People who run a branch or one or more departments as leader or supervisor or control the work of other members of the custodial staff, professionals or managers and have the powers to exercise discretion about daily operations.</p> <p>Executives: People who are in senior positions within a corporation or a branch, and especially that direct management, have wide powers of decision-making and are either members of the board or receiving guidelines from the board of directors or the general body of shareholders.</p> <p>Specialists: People who have high qualifications and knowledge at an advanced level appropriate for the activities, research, equipment, techniques or management of the organization and may include persons who are members of accredited professional bodies.</p>	<p>4) Unbound, except for measures concerning the categories of natural persons mentioned in the Market Access column.</p>

Member State	Limitations on Market Access	Limitations on National Treatment
Egypt	<p>GATS</p> <p>4) The entry and temporary stay of natural persons</p> <p>According to the labour code (Law No. 137/1981) and its executive regulations, the number of foreign personnel necessary to the supply of services in any entity, regardless of number of its branches, shall not exceed 10 percent of the total number of personnel employed therein, unless otherwise specified in a sectoral entry of this schedule.</p>	<p>3) Acquisition of land</p> <p>Authorization is required for the acquisition of land and/or real estate property. Applications in this respect are considered on the basis of the evaluation of the specific projects for which the acquisition is requested and in accordance with the national policy objectives.</p> <p>Acquisition of land and/or real estate property in free zone areas is unbound.</p> <p>4) None</p>
Eswatini	<p>SADC</p> <p>4) Unbound, except for measures affecting the entry and temporary stay of natural persons in the following categories:</p> <p>Intra-corporate Transferees: (ICT) Natural persons sent from the headquarters in the home country to temporarily work in a subsidiary in Eswatini. The natural persons must belong to one of the following categories:</p> <p>Executive: a natural person working within an organisation who primarily directs the management and policies of a service supplier, exercises wide decision-making and who receives only general supervision from the board of directors or shareholders of the business or their equivalent.</p> <p>Manager: a natural person working in a senior position within an organisation, who primarily direct the organization, or a department or subdivision of the organization, supervise and control the work of other supervisory, professional or managerial employees; has the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions and exercise discretionary authority over day-day operations at a senior level.</p> <p>Specialist: a natural person working within a juridical person who possesses specialized or technical knowledge/skills essential to the commercial presence's production, research equipment, techniques, processes, procedures or management. Access will only be allowed if the knowledge/skill is not available in Eswatini.</p> <p>For executives and managers, each company is allowed to bring a maximum number of 2 employees into the Kingdom of Eswatini, depending on the size/type⁸ of the company. ICTs must have at least 2 years' prior employment in their home country. Intra-cooperate Transferees will be allowed to stay for a maximum period of up to 2 years.</p> <p>Business Visitors: Personnel employed by a service company abroad that enters Eswatini:</p> <ul style="list-style-type: none"> to conduct business meetings; set up an establishment; negotiate the sale of services of that business or enter into agreements to sell services for that business; install machinery or provide after-sale services of machinery under the conditions of the purchase of the machinery. <p>Access is subject to the condition that representatives of such services suppliers or employees of such SADC juridical persons:</p> <ul style="list-style-type: none"> Cannot be engaged in the direct provision of services to the general public or in supplying services themselves will not receive any remuneration from a source located within Eswatini <p>Entry and stay will be granted for up to 90 days in every 365 days.</p>	<p>3) Foreign subsidiaries employing ICTs are required to train one Swazi citizen per ICT during the duration of the posting in Eswatini.</p> <p>4) Unbound except as for measures concerning the categories of natural persons referred to in the market access column.</p>

⁸ The size/type of the company is as defined in sectoral policies and/or legislations.

Member State	Limitations on Market Access	Limitations on National Treatment
	<p>Contractual Services Suppliers: Contractual service suppliers are employees of juridical persons with no commercial presence in Eswatini, who have obtained a service contract in Eswatini requiring the presence of their employees in order to fulfill the contract.</p> <p>Access shall be available under this category only in the specific service sector in which a contract has been entered into and employees must have appropriate expertise, educational and professional qualifications relevant to the services to be provided.</p> <p>Entry and stay of such persons will be granted up to thirty (30) days, renewable to no more than ninety (90) days in every 365 days.</p>	
Madagascar	<p>SADC</p> <p>4) Unbound, except for measures concerning the entry and stay for a renewable period of up to one year of natural persons who fall into the following category: Persons transferred within a company: Only for executives and managers defined as: corporate officers or directors: any person involved in decision-making, management or administration, authorized to act in the name and on behalf of a company; or managers (only for a limited liability company): any person empowered to make decisions on behalf of the company.</p>	<p>3) Within three months of the registration of a company, at least one of its corporate officers must be resident in Madagascar, whether of Malagasy nationality or a foreigner holding a resident visa or a receipt of application for a resident visa.</p> <p>Foreign natural and legal persons cannot directly access land ownership. However, they may freely and without prior authorization take out an emphyteutic lease⁹, for a maximum duration of ninety-nine years.</p> <p>4) Unbound, except for measures concerning the category of natural persons mentioned in the market access column.</p>
Malawi	<p>GATS</p> <p>(4) Unbound except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment. The employment of such persons shall be agreed upon by the contracting parties and approved by the Ministry of Home Affairs.</p>	<p>With permission from the Reserve Bank of Malawi, a foreign-controlled company can obtain loans or overdrafts of up to one third of the value of its paid up capital</p> <p>Unbound except for measures concerning the categories of persons referred to in the market access column.</p>
	<p>SADC</p> <p>4) Unbound except for measures concerning the entry and temporary stay for the following categories of natural persons as defined in the annex on Movement of Natural Persons:</p>	<p>4) Unbound except for measures concerning the categories of persons referred to in the market access column.</p>

⁹This is a long-term lease of at least 18 and maximum 99 years.

Member State	Limitations on Market Access	Limitations on National Treatment
	<p>Intra-corporate Transferees: Executives, managers and specialists who have worked for the same juridical person for 2 years immediately prior to the transfer to the commercial presence in Malawi. Their entry and stay shall be for a period of up to 2 years.</p> <p>Business Visitors: Entry allowed for up to 90 days in a calendar year.</p> <p>Contractual service suppliers (CSS): Entry and stay shall be for a period of up to 2 years.</p> <p>Independent professionals : Entry and stay shall be for a period of up to 5 years</p>	
Mauritius	<p>SADC</p> <p>3) Foreign service suppliers need to incorporate/register, in Mauritius.</p> <p>4) Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories:</p> <p>Business Visitors: Persons who visit Mauritius temporarily for the purposes specified in (i) – (iv) below:</p> <p>(i) For the sale of services or entering into agreements for such sales for that services supplier (Service Seller) and/or</p> <p>(ii) Employees of a juridical person for the purpose of setting up a commercial presence of that juridical person in Mauritius</p> <p>(iii) Persons participating in business meetings</p> <p>(iv) Persons engaged in installing machinery or providing after-sale services of machinery under the conditions of the purchase of the machinery.</p> <p>Access is subject to the condition that representatives of such services suppliers or employees of such juridical persons: will not be engaged in making direct sales to the general public or in supplying services themselves, and will not receive any remuneration from a source located within Mauritius.</p> <p>Entry for persons in this category shall be for a period of not more than 90 days in any 365-day period.</p> <p>Intra-Corporate Transferees: Specific categories of employees listed below who are hired temporarily by a service supplier with a commercial presence in Mauritius in the context of provision of a service in Mauritius.</p> <p>Managers: Persons who direct a branch office or one or more departments as their head, or supervise or control the work of other supervisory, professional or managerial personnel and have the authority to appoint or remove the personnel and powers to exercise discretionary authority over day-to-day operations.</p> <p>Executives: Persons who are in senior positions within a juridical person or a branch, and who primarily direct the management, have wide decision-making powers and are either members of the board of directors or receive directions from the board or the general body of shareholders.</p> <p>Specialists are: Persons who possess high qualifications and knowledge at an advanced level relevant to the organization's activities or of the organization's research, equipment, techniques or management and may include persons who are members of accredited professional bodies.</p> <p>Contractual Service Suppliers– natural persons employed by a SADC juridical person who: travel to Mauritius temporarily for short periods of stay of up to one year in order to perform a service pursuant to a contract between their employer and a client(s) located in Mauritius where the employer does not have an affiliate office and where remuneration must be paid solely to the employer.</p> <p>travel to Mauritius temporarily for short periods of stay of up to one year in order to fulfil qualification and licensing requirements where presence in Mauritius is an essential condition for the fulfilment of these requirements.</p> <p>Access shall be available under this category only in the specific service sector in which contract has been entered into and employees should have appropriate educational and professional qualifications relevant to the services to be provided.</p> <p>Independent professionals: Natural persons who travel to Mauritius temporarily for short periods of stay up to nine months with permission for extending for a maximum of three months in order to perform a service pursuant to a contract(s) between them and a client(s) located in Mauritius for which he or she possesses the necessary academic credentials and</p>	<p>4) Unbound, except for measures concerning the entry and temporary stay of natural persons referred to in the market access column.</p> <p>For intra-corporate transferees, the employer may be required to appoint a suitable Mauritian counterpart to be trained by the foreign natural person during the posting in Mauritius.</p>

Member State	Limitations on Market Access	Limitations on National Treatment
	<p>qualifications and has obtained, wherever necessary, registration with the professional body and remuneration is to be paid solely to the natural person.</p> <p>Access shall be available under this category only in the specific service sector in which contract has been entered into. For categories of persons in (b), (c), (d) above, they may apply for an Occupation Permit to work and reside in Mauritius for a minimum of 3 months and a maximum of 3 years, which may be renewable. If they are holder of a Work Permit and Residence Permit, they may work and reside in Mauritius for a maximum of 5 years, which may be renewable</p>	
<p>Seychelles CPC 512, 513, 51110, 5115, 5180</p>	<p>GATS (4) Unbound, except measures relating to entry and temporary stay of natural persons who fall in one of the following categories: (a) Business Visitors: Persons not based in Seychelles who are representatives of business carrying on activities in WTO Member States and who are seeking temporary entry into Seychelles for the purpose of: (i) Negotiating for the sale of the services of that business; (ii) Entering into agreements to sell services for that business; (iii) Participating in business meetings or preparing for the establishment of a commercial presence, where those representatives will not be engaged in making direct sales to the general public; (iv) Conducting market research in relation to a service or services rendered by juridical persons not based in Seychelles; (v) Represents a foreign shareholder(s) of a company based in Seychelles for the duration of the Annual General Meeting (AGM). Entry and stay of such persons shall be for a period of no more than 90 days. (b) Intra-corporate transferees (ICT): shall mean managers, executives and specialists, as defined hereunder, of a foreign enterprise, which has established a commercial presence in the territory of Seychelles, being transferred temporarily to that commercial presence and who have been previously employed by the foreign enterprise for at least one year. Managers: A person within an organization who primarily: (i) Directs the organization, or a department or sub-division of the organization. (ii) Supervises and controls the work of other supervisory, professional or managerial employees. (iii) Has the authority to hire and fire or recommend hiring, professional or managerial employees. (iv) Exercises discretionary authority over day to day operations. Executives: Natural persons within the organization who primarily direct the management of the organization or a major component or function of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of a service or services of the organisation. Specialists: Natural persons in the organization who possess knowledge at an advanced level of expertise and a proprietary knowledge of the entity's products, services, operations or management techniques. This knowledge should reflect the required academic credentials and/or professional qualifications for/when performing work within the scope of a particular profession. Entry and stay shall be for a period of two years, which may be renewed. (c) Contractual services suppliers: Contractual service suppliers are employees of juridical persons with no commercial presence in Seychelles, who have obtained a service contract in Seychelles requiring the presence of their employees in order to fulfil the contract. (e) Installers and maintainers Qualified specialists supplying installation or maintenance services for industrial machinery or industrial equipment. The supply of that service has to occur on a fee or contractual basis (installation/ maintenance contract) between the builder of the machinery or equipment and the owner of that machinery or equipment, both being juridical persons. Temporary</p>	<p>(1), (2), (3), (4) subsidies is unbound. (3) Foreign services suppliers may lease/rent non-movable property for up to two years without requiring sanction from government. Two - yearly extensions beyond that also do not require government sanctions. Foreign service suppliers may also lease/rent non movable property for longer terms, up to 99 years, subject to sanction from the government. Such sanction shall be granted unless the applicant is involved in money laundering, financing of terrorism, has been convicted of a serious crime, has links to organized crime or terrorist organizations; Or the use of land is not in line with the Land Use Plan of the particular area. Foreigners may also acquire freehold land held in private ownership in inner island¹, subject to government sanction. (4) Unbound except for measures concerning the categories of natural persons referred to in the Market Access.</p>

Member State	Limitations on Market Access	Limitations on National Treatment
	<p>entry is granted for periods more than 90 days.</p> <p>SADC</p> <p>4) Unbound, except measures relating to entry and temporary stay of natural persons who fall in one of the following categories:</p> <p>Business Visitors: Persons not based in Seychelles who are representatives of business carrying on activities in SADC Member States and who are seeking temporary entry into Seychelles for the purpose of:</p> <ul style="list-style-type: none"> Negotiating for the sale of the services of that business; Entering into agreements to sell services for that business; Participating in business meetings or preparing for the establishment of a commercial presence, where those representatives will not be engaged in making direct sales to the general public; Conducting market research in relation to a service or services rendered by juridical persons not based in Seychelles; Represents a foreign shareholder(s) of a company based in Seychelles for the duration of the Annual General Meeting (AGM). <p>Entry and stay of such persons shall be for a period no more than 90 days.</p> <p>Intra-corporate transferees (ICT): managers, executives and specialists, as defined hereunder, of SADC service supplier, which has established a commercial presence in the territory of Seychelles, temporarily moving as inter-corporate transferees to a commercial presence and who has been previously employed by SADC service supplier for at least one year.</p> <p>Managers: Persons within an organization who primarily:</p> <ul style="list-style-type: none"> Direct the organization, or a department or sub- division of the organization. Supervise and control the work of other supervisory, professional or managerial employees. Has the authority to hire and fire or recommend hiring, professional or managerial employees. Exercise discretionary authority over day to day operations. <p>Executives: Natural persons within the organization who primarily direct the management of the organization or a major component or function of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business.</p> <p>Executives would not directly perform tasks related to the actual provision of a service or services of the organisation.</p> <p>Specialists: Natural persons in the organization who possess knowledge at an advanced level of expertise and a proprietary knowledge of the entity's products, services, operations or management techniques. This knowledge should reflect the required academic credentials and professional qualifications for performing work within the scope of a particular profession.</p> <p>Entry and stay shall be for a period of two years which may be renewed</p> <p>Contractual services suppliers: Contractual service suppliers are employees of juridical persons with no commercial presence in Seychelles, which have obtained a service contract in Seychelles requiring the presence of the employees in order to fulfill the contract.</p> <p>Entry and stay of such persons shall be for a period no more than 3years consecutive contracts of 2years duration each, that is, a maximum of 6years. Extension beyond that duration will only be considered in exceptional circumstance and with valid justification.</p> <p>Independent Professionals: shall mean natural persons who are self-employed and based in the territory of another Member State of SADC and who supply services as part of a service contract with a juridical person in Seychelles. For the following sectors and sub-sectors entry and stay shall be for a period no morethan180 days:</p> <p>Bankingandotherfinancialservices(excludinginsuranceservices)(CPC8111-81119,8112,8113,81199,8131-8133)</p> <p>Tour Operator services (CPC 7471)</p>	<p>(1), (2), (3), (4) subsidies are unbound.</p> <p>(3) Leasing of land to foreign enterprises and any extensions thereof requires Government approval.</p> <p>Unbound for land acquisitions.</p> <p>(4) Unbound except for measures concerning the categories of natural persons referred to in the market access.</p>

Member State	Limitations on Market Access	Limitations on National Treatment
	<p>Hotels and restaurants (incl. catering) (CPC641 -643)</p> <p>Installers and maintainers: Qualified specialists supplying installation or maintenance services for industrial machinery or industrial equipment. The supply of that service has to occur on a fee or contractual basis (installation/maintenance contract) between the builder of the machinery or equipment and the owner of that machinery or equipment, both being juridical persons.</p> <p>Temporary entry is granted for periods of stay of no more than 90 days.</p>	
Zambia	<p>GATS</p> <p>4) Unbound except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment. The employment of such persons shall be agreed upon by the contracting parties and approved by the Ministry of Home Affairs.</p> <p>Enterprises must also provide for training in higher skills for Zambians to enable them to assume specialized roles.</p>	<p>3) With permission from the Bank of Zambia, a foreign-controlled company can obtain loans or overdrafts of up to one third of the value of its paid up capital</p> <p>4) Unbound except for measures concerning the categories of persons referred to in the market access column</p>
	<p>SADC</p> <p>(4) Unbound, except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment as follows:</p> <p>Business Visitor- natural person coming to Zambia to transact business during the person's stay in Zambia, such as attending meetings, conferences, arranging of deals and the signing of contracts and includes:</p> <p>A "foreign natural person", who is paid by an employer abroad, who comes to Zambia, for a short period, to work, install, erect, repair or service foreign-made machinery or equipment;</p> <p>a person who comes to Zambia to advise on the development of new computer systems or information technology; or the provision of any service consisting of advice, training or learning by observation or in a classroom</p> <p>Business Visitors are entitled to a maximum period of stay of 30 days in any given period of 12 months.</p> <p>Intra-corporate Transferee- A sufficiently qualified natural person who is an employee of a SADC juridical person that provide services in Zambia through a commercial presence. These include:</p> <p>Executive: a natural person working within a juridical person who primarily directs the management and policies of a service supplier, exercises wide decision-making and who receives only general supervision from the board of directors or shareholders.</p> <p>Manager: a natural person working within a juridical person who supervises or controls the work of other employees.</p> <p>Specialist: a natural person working within a juridical person who possesses specialized or technical knowledge essential to the commercial presence's production, research equipment, techniques, processes, procedures or management.</p> <p>Intra-corporate Transferees should apply for Employment Permits which may be issued up to two (2) years and may be extended for periods of two (2) years. They may also be required to possess practicing certificates from the Zambian National Professional Regulatory bodies where applicable.</p> <p>The employment of such persons shall be agreed upon by the contracting parties and approved by the Government of Zambia</p> <p>Contractual Service Supplier - a natural person employed by a corporation which has no commercial presence in Zambia and has concluded a bona fide contract to supply services with a final consumer in Zambia requiring the presence on a temporary basis of its employees in Zambia for the purpose of fulfilling the contract to provide services.</p> <p>Contractual Service Suppliers are entitled to a maximum period of stay of 30 days in any given period of 12 months.</p>	<p>(4) Unbound, except for measures concerning the categories of persons referred to in the market access column</p>

Member State	Limitations on Market Access	Limitations on National Treatment
	<p>Independent Professionals -natural persons engaged in the supply of a service and established as self-employed in their Country and have no commercial presence Zambia and who have concluded a bona fide contract to supply services with a final consumer in Zambia, requiring their presence on a temporary basis in Zambia for the purpose of fulfilling the contract to provide services.</p> <p>Independent Professionals are entitled to a maximum period of stay of 30 days in any given period of 12 months.</p>	
Zimbabwe	<p>3) The following limitations apply to foreign investors who seek to acquire shares in companies listed on the Zimbabwe Stock Exchange. The purchase of shares is limited up to 49 percent per counter of the listed issued share capital; this limit is in addition to any existing foreign holding in a company. A single investor is limited to a maximum of 15 percent of the shares on offer.</p> <p>4) Unbound, except for measures concerning the entry and temporary stay of the following categories of persons as defined in the Annex on Movement of Persons (Mode 4):</p> <p>(a) Intra-corporate Transferees (ICTs): Executives and Managers and Specialists, with at least one (1) year prior employment with a SADC juridical person immediately preceding the date of application for admission or transfer to Zimbabwe, Period of stay is limited to a 2-year Temporary Employment Permit, renewable for another 2 years.</p> <p>b) Business Visitors: Entry and stay is allowed for up to 90 days in 365 days but each visit is not to exceed 30 days.</p> <p>(c) Independent professionals: Temporary employment permits to be applied for prior to entry into Zimbabwe. Period of stay is subject to the duration of contract up to a maximum of 180 days. The temporary employment permit is subject to renewal after 180 days</p> <p>(d) Contractual services suppliers: Temporary employment permit is to be applied for prior to entry into Zimbabwe. Period of stay is subject to the duration of contract up to a maximum of 180 days. The temporary employment permit is subject to renewal after 180 days.</p>	<p>4) (a) Executives, Managers, and business visitors: None</p> <p>(b) Specialists: foreign commercial presence required to train and transfer specialist knowledge and skills to a Zimbabwean citizen.</p>

Annexure III: Categorisation and Composition of Construction Firms in Rwanda

Segment	Category							
Building	A > 2 bn Rw Francs	B 1.5 – 2 bn Rw Francs	C 800mil – 1.5bn Rw Francs	D 300 – 800 mil Rw F	E 100 – 300 mil Francs	F < 100 mil RW F		
	28	5	28	117	69	3327		
Roads and Bridges	A1 >2 bn Rw Francs	A2 (ALL roads Except Asphalt Roads) >2bn Rw Francs	B1 1.5 0- 2 bn	B2 (- Asphalt Roads) 1.5 – 2 bn	C 800 mil – 1.5 bn Rw Francs	D 300 – 800 mil Rw Francs	E 100 – 300 mil Rw Francs	F <100 mil Rw Francs
	17	1	1	8	20	38	22	2478
Dams	A > 1.5 bn Rw Francs	B 1.0 - 1.5 bn Rw Francs	C 500 mil – 1.0bn Rw Francs	D 200 – 500 mil Rw F	E < 200 mil Francs			
	6	2	1	2	1824			
Marshland Development and Hillside Irrigations	A > 2 bn Rw Francs	B 1.5 – 2 bn Rw Francs	C 800mil – 1.5bn Rw Francs	D 300 – 800 mil Rw F	E 100 – 300 mil Francs	F < 100 mil RW F		
	5	0	7	12	7	1945		
Drinking water Supply	A > 2 bn Rw Francs	B 1.5 – 2 bn Rw Francs	C 800mil – 1.5bn Rw Francs	D 300 – 800 mil Rw F	E 100 – 300 mil Francs	F < 100 mil RW F		
	10	0	17	29	29	2599		

Annexure IV: Categorisation and Composition of Construction Firms in Zambia

CLASSIFICATION AND CATEGORISATION 2022								
GRADE	Nationality	B	C	E	M	ME	R	TOTALS
1	Zambian	29	15	6	4	2	28	84
	Foreign	60	40	24	28	6	35	193
		89	55	30	32	8	63	277
2	Zambian	27	17	17	8	2	30	101
	Foreign	28	12	12	15	3	11	81
		55	29	29	23	5	41	182
3	Zambian	79	49	28	6	3	84	249
4	Zambian	334	122	82	23	10	224	795
5	Zambian	1030	127	212	73	42	1339	2823
6	Zambian	3273	1026	508	597	203	2507	8114
TOTALS		4,860	1,408	889	754	271	4,258	12,440

Annexure V: Contractor Registration Fees

A.V.1 Zambia (source NCC)

GUIDELINES FOR VARIOUS CLASSIFICATIONS

CLASSIFICATION GRADE >	1	2	3	4	5	6	A	B
1 Shareholder construction related qualification	1 No.	1 No.	1 No.	1 No.	1 No.	1 No.	1 No.	1 No.
2 Professional Staff - Reg. Eng. / QS / Arch. (CVs to be included)	4 No.	3 No.	2 No.	-	-	-	3 No.	-
3 Technical Staff - Technicians (Construction related qualification, Craft Certificates / Trade Test)	5 No.	4 No.	3 No.	2 No.	1 No.		4 No.	1 No.
4 Accounting Personnel (Higher qualification)	1 No.	1 No.	1 No.		-	-	1 No.	-
5 Accounting Personnel (Basic qualification)				1 No.	-	-	1 No.	1 No.
6 Audited Accounts to IAS in English	Yes	Yes	Yes	-	-	-	Yes	-
7 Financial Statements Certified by ZICA Member	-	-	-	Yes	-	-	-	-
8 Limitation on Contract Value to be Tendered - Category B	>K55m	>K25m-K55m	>K13m-K25m	>K9m-K13m	>K4m-K9m	>K0.0m-K4.0m		
9 Limitation on Contract Value to be Tendered - Category C	>K60m	>K30-K60m	>K20m-K30m	>K13m-K20m	>K4-K13m	>K0.0m-K4.0m		
10 Limitation on Contract Value to be Tendered - Category R	>K150m	>K60m-K150m	>K30m-K60m	>K20m-K30m	>K6m-K20m	>K0.0m-K6.0m		
11 Limitation on Contract Value to be Tendered – Mining Services	>K150m	>K35m-K150m	>K20m-K35m	>K13m-K20m	>K4m-K13m	>K0.0m-K4.0m		
12 Limitation on Contract Value to be Tendered - Category E	>K150m	>K40m-K150m	>K20m-K40m	>K13m-K20m	>K6m-K13m	>K0.0m-K6.0m		
13 Limitation on Contract Value to be Tendered - Category ME	>K150m	>K40m-K150m	>K20m-K40m	>K13m-K20m	>K6m-K13m	>K0.0m-K6.0m		
14 Limitation on Contract Value to be Tendered - Category S	-	-	-	-	-	-	>K10.m	>K0.0m-K10m

Within Africa	1	2
Annual registration fee to be paid	K187,500.00	K140,625.00
Verification Fees	K50,600.00	K50,600.00
TOTAL	K238,100	K191,225

Express Registration fee	K375,000.00	K281,250.00
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Outside Africa	1	2
Annual registration fee to be paid	K187,500.00	K140,625.00
Verification Fees	K83,600.00	K83,600.00
TOTAL	K271,100	K224,225

Express registration fee	K375,000.00	K281,250.00
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5.2 FEE STRUCTURE FOR ZAMBIAN CONTRACTORS

	1	2	3	4	5	6
Application and Processing fee	K450.00	K275.00	K225.00	K165.00	K110.00	K55.00
Annual registration fee	K17,050.00	K12,800.00	K8,525.00	K2,060.00	K1,040.00	K695.00
Total Fees to be paid	K17,500.00	K13,075.00	K8,750.00	K2,225.00	K1,150.00	K750.00

Total Express registration fee	K34,550.00	K25,875.00	K17,275.00	K4,285.00	K2,190.00	K1,445.00
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5.3 FEE STRUCTURE FOR FOREIGN SPECIALIST CONTRACTORS

Within Africa	A	Outside Africa	A
Annual registration fee to be paid	K187,500.00	Annual registration fee to be paid	K187,500.00
Verification Fees	K50,600.00	Verification Fees	K50,600.00
TOTAL	K191, 225.00	TOTAL	K238,100.00

Express Registration fee	K281,250.00	Express Registration fee	K375,000.00
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5.4 FEE STRUCTURE FOR ZAMBIAN SPECIALIST CONTRACTORS

A	B	
Annual registration fee to be paid	K8, 525.00	K2, 100.00
TOTAL	K8,525.00	K2,100.00

Express Registration fee	K17,050.00	K4,200.00
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A.V.2 Eswatini (source www.cic.co.sz)**General Building Works Contractors (B)**

10 Maximum Aggregate Value of Contracts (E) Administration Fees (E) Registration Fees (E) Subscription/Annual, Renewal Fees (E)

Category	Maximum Aggregate Value of Contracts (E)	Administration Fees (E)	Registration Fees (E)	Subscription/Annual, Renewal Fees (E)
BF	Foreign Firms	1,500	30,000	30,000
B1	No Limit	750	11,500	11,500
B2	25 Million	650	7,700	7,700
B3	10 Million	450	3,900	3,900
B4	5 Million	450	2,300	2,300
B5	2 Million	450	1,600	1,600
B6	0.5 Million	450	800	800

NOTE: oreign Contractors may only tender for contracts above E120 million or only where a specialized skill is involved.

General Civil Works Contractors (C)

Category Maximum Aggregate Value of Contracts (E) Administration Fees (E) Registration Fees (E) Subscription/Annual, Renewal Fees (E)

Category	Maximum Aggregate Value of Contracts (E)	Administration Fees (E)	Registration Fees (E)	Subscription/Annual, Renewal Fees (E)
CF	Foreign Firms	3,000	60,000	60,000
C1	No Limit	1,500	23,000	23,000
C2	50 Million	1,300	15,300	15,300
C3	30 Million	900	7,700	7,700
C4	15 Million	900	4,600	4,600
C5	5 Million	900	3,100	3,100
C6	1 Million	900	1,600	1,600

NOTE:: Foreign Contractors may only tender for contracts above E200 million or only where a specialized skill is involved

A.V.3 Kenya (source www.nca.go.ke)



SCHEDULE OF FEES

APPLICATION

S/NO	TYPE OF APPLICATION	KENYAN CONTRACTORS (KShs.)	FOREIGN CONTRACTORS (US\$)
1.	New application	5,000.00	500 *
2.	Up-grading class of Contractors	5,000.00	500 *
3.	Appeals	5,000.00	500 *
Charges for Non-Registered Contractors		300,000.00	7,500 *
Skilled Construction Workers and Construction Site Supervisors			
1.	Skilled Construction Workers	1,000	
2.	Construction Site Supervisors	2,000	

ANNUAL REGISTRATION FEES

S/NO	TYPE OF APPLICATION	KENYAN CONTRACTORS (KShs.)	FOREIGN CONTRACTORS (US\$)
REGISTRATION			
Category			
1.	NCA1	300,000.00	2,500 *
2.	NCA2	75,000.00	
3.	NCA3	50,000.00	
4.	NCA4	25,000.00	
5.	NCA5	20,000.00	
6.	NCA6	15,000.00	
7.	NCA7	10,000.00	
8.	NCA8	5,000.00	

ANNUAL LICENCE FEES

ANNUAL RENEWAL FEES			
Category			
1.	NCA1	30,000.00	1,500 *
2.	NCA2	25,000.00	
3.	NCA3	20,000.00	
4.	NCA4	15,000.00	
5.	NCA5	12,000.00	
6.	NCA6	10,000.00	
7.	NCA7	5,000.00	
8.	NCA8	2,500.00	

CHARGES OF DEFAULTERS OF RENEWAL			
Category			
1.	NCA1	90,000.00	4,500 *
2.	NCA2	75,000.00	
3.	NCA3	60,000.00	
4.	NCA4	45,000.00	
5.	NCA5	36,000.00	
6.	NCA6	30,000.00	
7.	NCA7	15,000.00	
8.	NCA8	10,000.00	

Annexure VI: Public Sector Questionnaire and Stakeholder Responses

Questions for Relevant Government Ministries and Agencies in COMESA Member States

‘Construction and related engineering services includes construction work for buildings and civil engineering, installation and assembly work, building completion and finishing work.’

1. Legal and Regulatory System
 - 1.1. What laws govern the Construction sector in your country?
 - 1.2. Do you have a construction industry policy?
 - 1.3. Do you have procurement laws and guidelines that govern international bidding for foreign firms in the construction sector?
 - 1.4. What regulations or laws govern the establishment of a business/company owned by non-citizens of your country?
 - 1.5. What immigrations laws and regulations are applicable to individuals wishing to work in your country in the construction and related engineering services sector?
 - 1.6. If yes to any of the above, kindly provide the relevant copies of the laws, regulations and policies
 - 1.7. If none of the above, kindly explain how the construction sector is regulated in your country
2. Commitments under WTO and RECs
 - 2.1. What is the status of your nation’s commitments in Construction and Related Engineering Services:
 - 2.1.1. Under WTO
 - 2.1.2. In COMESA
 - 2.1.3. In other RECS
3. Trade Negotiations in Construction and Related Engineering Services
 - 3.1. What are your nation’s objectives for negotiations in Construction and Related Engineering Services?
 - 3.2. What challenges have you faced in the negotiation process?
 - 3.3. What do you recommend to be done to improve the negotiations process?
4. Opportunities in Construction and related Engineering Services
 - 4.1. What opportunities are available in the sector for firms in the COMESA region?
 - 4.2. What is the size of the construction industry in your country in terms of:
 - 4.2.1. Size of the market in US Dollar Terms (ie total annual value of construction or infrastructure projects)
 - 4.2.2. Number of contractors or firms (local and foreign in your country)
 - 4.2.3. Contribution of sector to GDP
5. Facilitation from COMESA Secretariat
 - 5.1. Has your country benefited in any way from support from the COMESA Secretariat during the negotiation process?
 - 5.2. If yes, to 4.1, what additional support would you recommend
 - 5.3. If No, then what kind of support would you suggest the Secretariat provides to member states?

Public Sector Responses

Ref	Issue	Response
1.0	Legal and Regulatory System	
	Laws	All member states have laws: some, one main law and others have multiple laws
	Policy	Some member states do not have a specific policy or strategy on construction. In some member states policy provisions are provided for in general industrial and economic policies
	Procurement Regulations	Exist in all responding member states
	Foreign Firms Establishment	Most countries have provided for establishment of foreign firms through Investment Laws and other company registration laws. Some me
	Immigration Laws and Regulations	Exist in all respondent member states
2.0	Commitment under WTO and RECs	
	WTO	6 out of 21 COMESA Member States have made commitments in GATS (Burundi, Democratic Republic of Congo, Egypt, Malawi, Seychelles and Zambia)
	COMESA	Member states have submitted draft offers
	Other (RTAs) in Africa	SADC All SADC Member States in COMESA with the exception of Comoros have made commitments in construction and related engineering services EAC Commitments in Construction and related engineering services have not been made yet
3.0	Negotiations in Construction and Related Engineering Services	
	Objectives	Lifting the main restrictions on market access and national treatment affecting the supply of services Commitment in the sector to ensure that companies in the region benefit from preferences Promoting and revitalizing the sector so that it meets the standards required at the regional level Attracting foreign investment to enable the sector benefit from transfer of technology and know-how Complying with the provisions of regional and international trade rules To obtain services at the most competitive price. Increasing exports and attracting foreign investments to create an environment that attracts foreign direct investments and expertise. To seek market access commitments in the sector from other COMESA states to enhance value chains
	Challenges in negotiations	- Low technical capacity, especially in the mastery of the COMESA guidelines. - Low financial capacity in information gathering and preparation of negotiations - Outdated or missing national sector laws as well as guidelines and negotiation provisions - Engagement of sector experts

Ref	Issue	Response
		- Identifying the regulations in the countries involved in the negotiations. makes it difficult to negotiate effectively in terms of identifying suitable markets for exports of the service
	Recommendations	- Support in strengthening the legal and regulatory framework for the service sector, especially the construction and related engineering sector - Capacity building on service sector negotiations - Scheduling dedicated negotiation sessions by sector - Further studies of the regulations in the sector of the different COMESA states - Members notifying all of their regulations
4.0	Opportunities	
	Opportunities in Construction and Related Engineering Services in COMESA	- Lack of capacity of domestic firms to compete with those in the region - Some member states have firms capable of performing huge projects although these are few in some jurisdictions - Bidding opportunities for public contracts are posted on the government procurement portal and are available to foreign bidders. - Project opportunities for tourism, housing, commerce and social amenities
5.0	Size of Construction Sector	
	Market size (US\$)	Mauritius - (approx. \$ 4.31 billion) in infrastructure projects over the next five years. Seychelles - US\$ 75 million Madagascar – US\$ 601. 062 billion in 2019
	No. of Contractors	Comoros – 258 firms Egypt – 39, 596 firms Madagascar - 145 firms in 2019 Mauritius - There are currently 1243 local and 67 foreign contractors Rwanda – 12,654 firms Seychelles - 1,155 firms Zambia - 10,245 firms
	Contribution of sector to GDP	Comoros - 1.6% in 2011, 1.5% in 2016 Mauritius – 4.4 % Seychelles - 7.5%
6.0	Facilitation from COMESA Secretariat	
	Have member states benefited from Secretariat	Like all other COMESA Member States, Mauritius has benefitted from workshops and trainings that were organized by the COMESA Secretariat. through different capacity building programs for negotiators and sector regulators and private sector Some member states were not aware
	If Yes, Recommended Additional Support	Further capacity building and studies that will aid in the mapping of regulatory framework and legislations of member states.

Ref	Issue	Response
	If No, what support is suggested	<p>The COMESA could examine ways to effectively enhance regional integration for construction services, especially with regard to bidding for Government contracts. The COMESA could also establish a framework to provide specific and well-defined preferences for regional service providers (In the construction and related services) so that Member States attempt to find service providers from the region before looking for 3rd party providers.</p> <p>Rules on Movement of professionals/business persons in the construction sector could also be examined to identify bottlenecks and obstacles that regional providers are facing.</p> <p>In addition, it may be interesting to set up a mechanism to facilitate the sharing of market opportunities to COMESA member states and businesses. A virtual solution for regional service providers to look for available bidding opportunities (in several languages) may encourage service providers to bid for contracts in the region.</p> <p>A study of regulatory barriers and conditions in Member States needs to be undertaken in view of standardizing certain key entry requirements. Members could also agree on a mutual recognition agreement for professionals practicing in the sector (such as for engineers, architects, etc).</p> <p>The Secretariat could also work closely with the World Bank to identify possible infrastructure improvement for regional integration and to bring a development dimension to the sector.</p> <p>The Secretariat could also advise Governments and/or private companies to improve access to finance.</p>

Annexure VII: Private Sector Questionnaire and Stakeholder Responses

Questions for Construction, Trade or Business Association(s) in COMESA Member States

‘Construction and related engineering services includes construction work for buildings and civil engineering, installation and assembly work, building completion and finishing work.’

1. Construction and Engineering Services
 - 1.1. What is the state of the Construction sector in your country?
 - 1.1.1. The number of construction firms
 - 1.1.2. The capacity of construction firms
 - 1.1.3. What are the main areas of construction work available in your country
 - 1.1.4. Do your construction firms have capacity to establish operations in other countries of COMESA
2. Opportunities in Construction and related Services
 - 2.1. What opportunities are there for constructions services providers in your country?
 - 2.2. Do any construction and related engineering firms in your country provide services in other COMESA countries?
 - 2.3. If yes, kindly state which Countries?
 - 2.4. If no, what do you think is the reason for this?
 - 2.5. What do you think should be done to enable access to construction markets in the COMESA region?
3. Legal and Regulatory System
 - 3.1. What is the impact of the laws and regulations governing the Construction and Related Engineering Services on the construction firms in your country?
 - 3.2. Does the regulatory and policy framework in your sector support export of your services to other countries in COMESA and beyond?
 - 3.3. Do your country policies allow for foreign firms to participate in local projects?
 - 3.4. Are local firms able to compete with foreign owned firms?

Private Sector Responses

Ref	Issue	Response
1.0	Construction and Related Engineering Services	
	Capacity of Firms	<p>Low</p> <p>Construction companies have a good competitive capacity, but the major challenge is unfair competition in the sector. As a result, many companies are incorporated and disappear within no time. In addition, the awarding of contracts does not follow the procedure as stipulated in the Procurement Act. Sometimes the Government itself does not promote a conducive climate of competitiveness in the sector; there is too much corruption involved in the award of public contracts. Capacities differ in accordance to the firm's classification, type of work, financial capital, and volume of annual work</p> <p>The number of construction firms is not very high and their capacities are quite varied depending on their potentials for undertaking works of different values and complexities.</p>
	Areas of Construction Work	<ul style="list-style-type: none"> - Construction - Public works - Architecture - Topography - Civil engineering - Earthworks - Crushing - Areas linked to social life, but particularly: health, education, sports, culture, roads, bridges and pavements, telecommunications, mining and housing. - All types of projects - The construction sector has mainly works related to public infrastructure which are public projects and the other main and substantial projects are related to tourism and villas for attracting foreigners under the various schemes by Government. - Residential and commercial buildings
	Capacity to establish in other countries	<p>Domestic companies do not have the technical and physical capacity to operate abroad</p> <p>Construction firms established in Mauritius are quite open for ventures outside Mauritius as long as there is the security of payments from the Promoters in other countries.</p> <p>Setting up a construction firm in the African Region is not that complex but requires the basics in construction equipment and qualified and skilled personnel.</p>
2.0	Opportunities in Construction and Related Engineering Services	
	Domestic Opportunities	<p>New cities.</p> <p>Assorted Infrastructure</p> <p>Some member states have a number of opportunities in the sector but given the relatively small project values, the same is not very attractive for foreign firms. This will imply that medium and small firms have better prospects presently.</p> <p>Setting up new firms with all relevant equipment and personnel may prove to be quite demanding in terms of capital budgets.</p>
	Any Firms with projects in the region?	- Yes

	If no, why	Limited technical and bidding capacity Very few construction firms are providing services elsewhere considering the mobilization costs and other logistics.
	Recommendations for market access	Support in strengthening the operational capacity of the national private construction sector Technology transfer and technical support to national companies is one of the other solutions Drastically reduce the administrative bureaucracy and have more flexible conditions of access to the various public and private markets. In addition, COMESA Member States should consider creating a Bank to assist contractors to obtain funds with very low interest rates to make their companies competitive. Reduce guarantee fees for contracts. A platform is required to be set up for providing the necessary logistics and advice to firms opting for ventures in the COMESA countries. The same shall provide information to potential construction firms exploring the venture More visibility of international tenders from other COMESA member states, to enable local construction firms to have an opportunity to participate More transparent regulations of member states
3.0	Legal and Regulatory System	
	Impact of laws and regulations on CRES	Outdated laws and regulations that do not adapt to the current context For Construction firms the existing laws and regulations are quite clear but normally do not hinder any foreign firm to operate Only specific Contractor Classes fully open for foreign firms.
	Do domestic laws and regulations support CRES export	Absence of an updated legal framework and export support in some member states Some member states have supportive regulatory framework for exporting services but the important factor is the country receiving the services and the legislations governing services in the construction industry
	Do domestic policies allow foreign participation	Foreign companies in the construction and related services sector are already active at the national level, favoured by national policies. Sometimes with a blatant bias towards local companies In some member states, foreign firms are allowed to participate in local projects
	Can local firms compete with foreign firms	Domestic firms are unable in terms of size, competitiveness and technology to compete with foreign firms; As long as this competition is fair, in compliance with the laws, regulations and application orders governing the sector; Local firms compete with foreign firms with difficulty as the foreign firms normally come with cheaper labour component rendering them more competitive.
4.0	COMESA Negotiations in CRES	
	Awareness by private sector	Aware of on-going trade negotiations in the sector but not the details thereon except in the case of consultancy services.
	Knowledge and understanding of process and objectives of negotiations	Yes
	Private sector and input	Some member states delegates did participate in the negotiations and their contributions were crucial

	participation in negotiations	
	Key issues to be considered in negotiations	Issues to do with national treatment of new and fragile construction and related services firms from some member countries in a transitional period of implementation of commitments. The negotiations should be fair to both parties in order to achieve success in the negotiations and should reflect the input of each party in the proposed exchange
5.0	Any Other Comments	
		The construction and related services sector is still new and fragile. We recommend flexibility in negotiations and a transitional period during the application of regional and international rules and guidelines. There has to be a direct communication line/email address to attend to queries from all contracting firms seeking information on any COMESA countries. The normal slow line of communication should be avoided in order encourage firms to explore avenues for construction projects elsewhere. A desk officer to attend promptly to queries from firms would really be welcome.

Annexure VIII: Member States' Participation in Stakeholder Engagement

Member State	Questionnaire	Government Consultation	Private Consultation	Sector Consultation
Burundi				
Comoros	•	•	•	
DRC	•			
Djibouti				
Egypt				
Eritrea				
Eswatini		•	•	
Ethiopia				
Kenya	Supporting Documents only	•	•	
Libya				
Madagascar		•	•	
Malawi	Supporting Documents only			
Mauritius	•	•	•	
Rwanda		•	•	
Seychelles	•	•	•	
Somalia				
Sudan				
Tunisia	•	•	•	
Uganda				
Zambia				
Zimbabwe	•	•	•	