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EAST AFRICAN COMMUNITY COMMON MARKET PROTOCOL ON FREE MOVEMENT OF LABOUR IN BURUNDI: PROSPECTS AND CHALLENGES

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ABSTRACT

The five EAC countries as a way of moving forward with integration process, jointly established a Common Market which would provide for free movement of factors of production such as people, goods, services, money, labour, right of establishment and right to residence of the EAC citizens within EAC member states. This will be in addition to free movement of goods under the Custom Union. The protocol on the establishment of EAC Common Market entered into force on 1st July 2010, following ratification by all the five partner states and this protocol was signed by Heads of States on 20th November 2009, coinciding with 10th anniversary celebrations of the revived Community. The objectives of this paper are therefore to trace the evolution of East African Community Common Market Protocol, to examine the provisions on free movement of labour in East African Community, legal provisions on Common Market Protocol, prospects and challenges of Common Market Protocol on the free movement of labour in Burundi. The writers relied on published and unpublished materials like Treaty for the Establishment of East African Community 1999, Protocol on the Establishment of the East African Community Common Market 2009, Protocol on the Establishment of East African Community Custom Union 1999, text books and articles in journals. Others are Newspapers and Internet materials. The writers recommended that for effective free movement of labour in Burundi, there is need for elimination/adjustment of domestic laws to fit in EAC-CMP, there is need for increase on infrastructure investment in order to reduce the cost of doing business and facilitate efficiency in production, transportation and delivery of goods and services to the people of East Africa, need for promotion of joint border regular meetings and Sensitisation of Burundians about Common Market Protocol.

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1. INTRODUCTION

The East African Community has a long history which can be traced back during and after the colonial period in East Africa (Gordon, 2011). The regional integration in East Africa is not a new issue due to the fact that it dates back to the end of the 19th century by the construction of the Ugandan Railway from the coastal town of Mombasa to Fort Florence on the shores of Lake Victoria (UNECA, 2013). It was in 1917 when a Custom Union was established between Uganda and Kenya in which Tanganyika (now Tanzania) joined later in 1919. The cooperation arrangements culminated into the formation of the East African High Commission in 1948 which lasted until the independence of Tanzania in 1961. Henceforth, the High Commission was superseded by the East African Common Services Organization and later the East African Community in 1967 (UNECA, 2013). The former East African Community however collapsed just after ten years of its existence in 1977 on account of inequitable distribution of costs and benefits among the partner states in the sense that, there was skewed beneficiation in favor of one particular country led to interstate imbalances of trade (De Melo et al., 2011). Secondly, there emerged ideological differences which led to the three countries adopted different politico-economic models whereby Kenya preferred a socialist model (De Melo et al., 2011). Furthermore, following Idi Amin's military coup in Uganda in 1971, personality clashes ensued and as such, the East African Authority constituted by the three Heads of States could not meet to discuss and resolve emerging issues. Despite the historical setback, the spirit of cooperation among the three East African States namely: Kenya, Uganda and Tanzania was rekindled in the mid of 1990s through a Cooperation Agreement which was later upgraded into a Treaty for the Establishment of East African Community in 1999 and came into force in 2000, following ratification by the partner states (EACCMIP, 2011). However, EAC membership expanded to five partner states when Rwanda and Burundi joined in 2008 after signing the Treaty of accession by both countries to the Community (EACCMIP, 2011). Under the revived East African Community (EAC) of 1999, the Custom Union was launched in 2005 and was supposed to take full effect by 2010 (EACCMIP, 2011).

This has however not happened due to several challenges encountered but the partner states agreed to go ahead in fulfilling their obligations deriving from Custom Union Protocol concurrently with the ones of Common Market (EACCMIP, 2011). The Custom Union was expected to be achieved in 2010 and the next step in the integration process envisaged by EAC was the creation of a Common Market in order to create a single internal market among the partner states. On the same regard, the five EAC countries as a way of moving forward with integration process, jointly established a Common Market which would provide for free movement of factors of production such as people, goods, services, money, labour, right of establishment and right to residence of the EAC citizens within EAC member states among other things; and this will be in addition to the free movement of goods under the Custom Union (Odhiambo, 2011). The protocol on the establishment of EAC Common Market entered into force on 1st July 2010, following ratification by all the

five partner States (Gastorn 2017) and this protocol was signed by Heads of States on 20th November 2009, coinciding with 10th anniversary celebrations of the revived Community (Mwapachu 2010).

Even though, the Treaty does not exhaustively define the term Common Market but it refers to situation where obstacles to the free movement of the most important sectors of the economy have been removed (Kanyangoga, 2010). The establishment of the EAC Common Market is in line with the provisions of EAC treaty and provides four freedoms namely: free movement of goods, labour, services and capital, which will significantly boost trade and investments and make the regional more productive and prosperous (Kanyangoga, 2010). It is also in line with the Africa Union integration framework (Sanni and Celik, 2021).

Essentially, Common Market or internal market which includes the common policies in certain areas such as competition in agriculture as currently referred to in European Union is about the absence of internal barriers but not absence of control and management. It is therefore an arrangement that integrates the markets of factors of production from individual Partner State into one single market (Gaston et al., 2011). This means that, the Common Market involves the integration or amalgamation of all three markets which are goods markets, labour markets and capital markets (EAC 1999). The thrust of this paper are therefore to trace the evolution of East African Community Common Market Protocol, to examine the provisions on free movement of labour in East African Community, legal provisions on Common Market Protocol, prospects and challenges of Common Market Protocol on the free movement of labour in Burundi.

2. UNDERSTANDING PROVISIONS ON FREE MOVEMENT OF LABOUR IN EAC

Cross-border labour mobility peaked during the late nineteenth century but started a downward trend at the beginning of the great depression and World War II due to economic constraints. Contrary to the present-day international migration, the cross-border movement of people during the mercantile period (between 1500 and 1800) and industrial period (between 1800 and 1910) was not due to economic backwardness and underdevelopment of the sending countries. As an illustration, the Great Britain, which was the first country to industrialize and the most advanced nation at the beginning of the twentieth century was the largest sending nation Devan et al., 2013).

During the autarky and economic nationalism that began in 1910, various barriers were erected against trade, investment and migration. As a result, the cross-border movement of labour and capital was thwarted. Majority of the migrants at this time consisted of refugees and displaced persons who made no positive contributions to economic growth and development. On the other hand, the post industrialization period which began in the 1960s witnessed a new pattern of migration (Longhi, 2011). Workers from low-income countries began migrating to high-income countries with majority of the laborer's coming from Latin American, African and Asian continents (Longhi, 2011). In addition, the oil-rich countries of the Persian Gulf saw an influx of

immigrants as did countries in East Asia such as Japan, Hong Kong, China, the Republic of Korea, Malaysia, Singapore, Taiwan, and Thailand (Longhi, 2011).

Presently, the magnitude and pattern of labour migration has less to do with population pressures. Unlike in the 1960s and 1970s when migration was mostly a one-way traffic from low-income and poor countries to well-to-do nations, today a good number of migrants originate from countries with impressive economic growth rates and declining fertility rates. As the World Bank's World Development Report states, "emigration today is the outcome of less desperation and more of integration (Longhi, 2011)."

Article 10 (1) states that, *"The Partner States hereby guarantee the free movement of workers, who are citizens of the other Partner States, within their territories (EAC 2009)."* This provision entitles a worker to apply for employment and accept offers of employment actually made in other partner states. Such workers can move freely within the territories of partner states for the purpose of employment, conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions *(EAC, 2009)*. It also guarantees the worker to enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host partner state as well as enjoy the rights and benefits of social security as accorded to the workers of the host partner state. The provision also requires the partner states to ensure that workers do not face discrimination in employment, remuneration and other conditions of work based on their nationality *(EAC, 2009)*.

Workers should actually use their academic and professional qualifications obtained in their home country to apply for employment in other partner states without having to undergo other examinations or proficiency tests in the host country. In this regard, partner states undertook in Article 11 that they shall recognize such academic and professional qualifications granted by other partner states *(EAC, 2009)*. In this context, the partner states were to progressively harmonize their curricula, examinations standards, certification and accreditation of educational and training institutions to facilitate recognition of academic qualifications *(EAC, 2009)*.

In addition, facilitation of free movement of workers requires harmonization of labour policies, national laws and programmers of each of the partner states as well as a review and harmonisation of national social security policies, laws and systems so as to offer social security to self-employed persons who are nationals of other partner states.

Burundi had committed to allow different categories of workers with immediate effect in 2010 (Burundi, 2012). However, one would expect that two years into that commitment, the country has eliminated any prohibitive legislation that existed prior to the CMP and complementary policies instituted. That is why the commitment

in Article 12 extends to review and harmonisation of national social security policies, laws and systems in the region (Burundi, 2012).

CMP states that, the partner states should undertake to harmonise their labour policies, national laws and programs to facilitate free movement of labour within the Community (Burundi, 2012). The partner states should undertake to review and harmonise their national social security policies, laws and systems to provide for social security for self-employed persons who are citizens of other partner states (Burundi, 2012); and the implementation of this Article shall be in accordance with directives and regulations issued by the Council (Burundi, 2012). Article 39 of the Protocol obliges the partner states to coordinate and harmonise their social policies so as to promote and protect decent work and improve standards of living of the citizens (Burundi, 2012).

As part of the framework for cooperation, the partner states committed in Article 5 of CMP to ease cross-border movement of persons and eventually adopt an integrated border management system (EAC-CMP, 2009). They also committed to remove restrictions on the movement of labour, harmonise labour policies, programmes, legislations, social services, provide for social security benefits and establish common standards and measures for association of workers and employers (Surden, 2018). The partner states are also expected to establish employment promotion centers and eventually adopt a common employment policy. Lastly, the partner states were to facilitate the right of residence of the citizens of the EAC (Surden, 2018).

3. Legal Provisions on the Common Market Protocol

The Protocol on the Establishment of the East African Community (EAC) Common Market entered into force on 1st July, 2010 following ratification by all the five partner states (Gastorn 2017). The establishment of the East African Community Common Market is in line with the provisions of the EAC Treaty. It provides for "Four Freedoms," namely, free movement of goods; labour; services; and capital which will significantly boost trades and investments and make the region more productive and prosperous (EAC, 2018).

The Common Market represents the second stage of the regional integration process (as defined by the Treaty for the Establishment of the East African Community) following the Custom Union which became fully fledged in January 2010 (EAC, 2018). The Common Market Protocol is a significant step towards the achievement of the next milestones in the integration processes namely, Monetary Union and the EAC Political Federation (EAC, 2018). The legal Provisions of the Common Market Protocol are discussed below:

3.1. Legal Objectives of the Common Market Protocol

As far as the objectives are concerned, the overall objective of the Common Market is to widen and deepen cooperation among the partners in the economic and social fields for the benefit of the partner states (EAC, 1999). Alongside to the overall objective, the specific objectives of the EAC Common Market are (EAC, 1999):

i. to accelerate economic growth and development of partner states through the attainment of the movement of goods, persons and labour;

ii. to guarantee the rights of establishment and residence and free movement of capital and services;

iii. to strengthen, coordinate and regulate the economic and trade relations among the partner states in order to promote accelerated, harmonious and balanced development within the community;

iv. to sustain the expansion and integration of economic activities within the Community, the benefit of which shall be equitably distributed among the partner states;

v. to promote common understanding and cooperation among nationals of the partner states for their economic and social development; and

vi. to enhance research and technological advancement in order to accelerate economic and social development (EAC, 1999).

Therefore, the free play of market forces within the market is expected to increase economic efficiency, widen the consumers' choice and enhance the community's competitiveness in the world market (EAC, 1999). In order to realise the objectives of EAC Common Market, the partners states undertake to cooperate to integrate and harmonise their policies in areas provided for in the protocol and in such other areas that the council may determine fit (EAC, 1999). In fact, this paper has discussed the background of EAC and particularly the origin of the EAC Common Market. It is expected that transiting into a common market should be relatively easier, that most of the required institutions are already in place, but the challenge has always been one of strengthening these institutions to ensure that they can support an effective Common Market.

3.2 Legal Principles of the Protocol

The Common Market shall be guided by the fundamental and operational principles of the Community as enshrined in Articles 6 and 7 of the Treaty (EAC, 2009). In addition to this, Article 6 of EAC deals with free movement of goods where it provides that, free movement of goods among the partner states shall be governed by the Customs Law of the Community as specified in Article 39 of the Protocol on the Establishment of the East African Community Customs Union (EAC, 2009).[1] Similarly, Article 7 of EAC provides for free movement of persons and labour in the community where it states that, the partner states

hereby guarantee the free movement of persons who are citizens of the other partner states within their territories (EAC, 2009). Also, in accordance with paragraph 1, each partner state shall ensure non-discrimination of the citizens of the other partner states based on their nationalities(EAC, 2009). This is because when citizens can freely move, they have higher chance of participating in different duties and labour activities.

Further on the Principles of the common market, Article 3 sections 2 provides that, Without prejudice to paragraph 1, the partner states undertake to:

i) observe the principle of non-discrimination of nationals of other partner states on grounds of nationality;

ii) accord treatment to nationals of other partner states, not less favourable than the treatment accorded to third parties;

iii) ensure transparency in matters concerning other partner states; and

iv) share information for the implementation of this Protocol (EAC, 2009).

Therefore, if these principles are honoured by the member states, then free movement of the labour and other factors of productions within the EAC would be experienced at a greater extent.

3.3. Legal Rights and Freedoms of the East African Community Common Market

A Common Market is made up of partner states of a regional bloc which operates a single market for goods, services, labour and capital, common taxes and common trade laws. The Common Market supplements and integrates the Customs Union and is a process in itself as the implementation goes on. This section highlights the various freedoms and different rights that are enshrined under the Protocol for Establishment of EAC Common Market.

3.4. Free Movement of Goods

Free movement of goods implies elimination of internal tariffs, application of common external tariffs, application of uniform rules of origin, elimination of non-tariffs barriers and the application of common external trade policy (EAC, 2009). This means that, goods manufactured within the bloc shall be totally free from tariffs within the member states and those states shall apply an identical tariffs for products imported outside the integration bloc. In terms of implementing the free movement of goods among partner states, the EAC Common Market Protocol provides that it shall be governed by the customs law of the Community together with the East African Community Protocol on standardisation, quality assurance, metrology and testing (EAC,

1999). The East African Community Protocol on standardisation, quality assurance, metrology and testing entered into force on 15th, January 2001, the same date it was signed in Arusha, Tanzania (EAC, 1999).

3.5. Free Movement of Persons and Labour

In accordance with the Protocol for the Establishment of EAC Common Market, free movement of persons confers right to citizens of EAC partner states to enter into a territory of other partner states without a visa, to stay in the territory of other partner states and exit the territory of the partner state without restrictions (EAC, 2009). Each partner state in accordance with international law, shall

guarantee the protection of citizens of other partner states while in their territories (EAC, 2009). However; in doing this, free movement of persons shall not exempt prosecution or extradition of a national of a partner state who commits crime in another partner state (EAC, 2009). Also, the implementation of this Article 7 shall therefore be in accordance with the East African Community Common Market (free movement of persons and labour) Regulations, specified in Annex I of the Protocol (EAC, 2009).

3.6. Free Movement of Capital

Free movement of capital occurs when the partner states agreed among themselves to remove restriction among the partner states on the movement of capital belonging to the partner resident in the community, remove any discrimination based on nationality or on place of residence of the persons or the capital is invested, remove any restriction and not to introduce any new restriction on the movement of capital, payments and transfers or apply more restrictions or regulations, remove restrictions relating to current payments connected with the movement of goods, persons and services or capital among partner states in accordance with the provisions of Common Market Protocol. In other words, free movement of capital requires the absence of restriction hindering free movement of finances from one country to another or to all members of the community. It is important to mention here that free movement of capital depends on one way or another to the implementation of other rights such as the right of establishment, residence and free movement of services as enshrined in the same protocol (Nsengiyumva, 2011).

3.7. Free Movement of Workers

There is free movement of workers in situation where the citizens of EAC have the right to apply for employment and accepting employment. This actually enables them to move freely within the territories of partner states. The partner states hereby guarantee free movement of workers who are citizens of the other partner states within their territories (EAC, 2009). The partner states should also ensure non-discrimination of the workers of the other partner states based on their nationalities in relation to employment, remuneration and other conditions of work and employment (EAC, 2009).

For the purpose of Article 10 of EACCMP, free movement of workers should entitle a worker to:

(a) apply for employment and accept offers of employment actually made; (b) move freely within the territories of the partner states for the purpose of employment; (c) conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions without any discrimination; (d) stay in the territory of a partner state for the purpose of employment in accordance with the national laws and administrative procedures governing the employment of workers of that partner state; (e) enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host partner state; and (f) enjoy rights and benefits of social security as accorded to the workers of the host partner state (EAC, 2009). All these are aimed at ensuring that workers enjoy freedom of association and collective bargaining for better working conditions in accordance with national laws of the host partner state and the right to be accompanied by a spouse, children and dependents (EAC, 2009).

This means that, for the purpose of the work, a person from one partner state shall stay in another together with his or her family and other persons depending on the worker freely as long as he or she respects the domestic laws of the host country (Gastorn, 2011). In terms of the scope, apart from the power conferred to the Council which may if it deems necessary, issue directives and make regulations on social security benefits in regard of exception to the general provision, the provisions of EAC Common Market Protocol do not apply to the employment in the public services unless the national laws and regulations of the host partner state so permits (EAC, 2009). In limiting the abuse of this discretionary power bestowed on states, it is provided that the national regulations and procedures shall not apply unless they are not against the principal aim of the protocol (EAC, 2009).

In order to avoid legal differences, the national laws and administrative procedures of a partner state should not apply where the principal aim or effect is to deny citizens of other partner states the employment that has been offered (EAC, 2009). Also, the provisions of Article 10 may not apply to employment in the public service unless the national laws and regulations of a host partner state so permit (EAC, 2009). However, free movement of workers shall be subject to limitations imposed by the host partner state on grounds of public policy, public security or public health (EAC, 2009).

3.8. Free Movement of Services

Partner states hereby guarantee free movement of services supplied by nationals of other partner states and the free movement of service suppliers who are nationals of partner states within the community (EAC, 2009). This means that, by the free movement of services, the provider from one of the partner states will be allowed to supply services in any other partner states without constraints. Free movement of services shall cover the

supply of services from the territory of a partner state into the territory of another partner stat by a service supplier of a Partner State through commercial presence of the service supplier in the territory of another State (EAC, 2009). For the implementation of the free movement of services, partner states are under obligation to take necessary measures and steps including not limited to legal and administrative actions by removing and not introducing new restrictions on the delivery of services within the partner states (EAC, 2009).

3.9. Right of Establishment

There is right of establishment whereby partner states guarantee the right of establishment of nationals of the partner states within their territories and the partner states shall ensure that there is no discrimination against nationals of the other partner states based on nationalities (Ndegwa, 1965). The right of establishment entails that, a national of a partner state has right and freedom to take up and pursue an economic undertaking in the territory of another partner state. The companies and firms established in accordance with the national laws of one of the partner states and having a registered office, central administration or principal place of business and which undertake substantial economic activities in the partner state shall, for the purpose of establishment, be accorded non-discriminatory treatment in other partner state (EAC, 2009). On the same regards, for the purposes of undertaking an economic activity, partner states shall mutually recognise the relevant experience obtained, requirements met, licenses and certificates granted to a company or a firm in the other partner states (EAC, 2009). In other words, a company with a certificate and registered in accordance with national law of one of the partner states shall be allowed to carry out its activities in other partner states (EAC, 2009).

3.10. Right of Residence

By right of residence, partner states shall guarantee the right of residence to the citizens of other partner states who have been admitted in their territories in accordance with the protocol (EAC, 2009). As the case for right on the free movement of workers, the right of residence shall also apply to spouse, children and dependents of the worker or self-employed persons entitled to the right of residence as provided in Articles 10 and 13 of EAC-CMP (EAC, 2009). After signing of the protocol and launching its operations, the EAC partner states had to put the EAC Common Market in the process mode. The Common Market Protocol indicates clearly: rights, freedoms, duties and obligations of people themselves to carry out common market forward and reap its benefits. The Common Market Protocol provides schedules for its implementation. Foremost as provided in the schedules, is the domestication of Protocol's provisions by partner states within their national laws by December 2010 (Ndegwa, 1965).

4. Prospects of Implementing CMP Free Movement of Labour in Burundi

There are restrictions on the Free Movement of labour based on the license. Burundi, just like other EAC Partner Sates, has made some progress towards implementation of CMP (EAC, 2012). There were, for example, 132,083 EAC citizens who had been granted access into Burundi between January to May 2010 (EAC, 2012). The EAC citizens passed through Gasenyi-Nemba and Kanyaru Haut border posts. Between June 2011 and April 2012, about 922 students who were citizens of EAC had been granted student passes to visit and study in Burundi (EAC, 2012). Also, Burundi harbours no discriminatory legislations inhibiting freedoms of movement of citizens of other partner states into Burundi. In the five months to May 2012, about 48,646 Burundians had entered into other EAC partner states using the Burundian National Passport (EAC, 2012). Burundi has entered into a Memorandum of Understanding with the Republic of Kenya on exchange of students and teachers and mutual recognition of educational qualifications (EAC, 2012).

While Kenya, Tanzania and Uganda have been issuing EAC Passports, Rwanda and Burundi at first did not issue the same to their nationals. However, currently such have been issued. Burundi is also yet to put in place the machine-readable electronic identity cards (IDs) to ease movement of labour in the EAC and factors of production (EAC, 2012). Further, Burundi do not have a border post that operates 24 hours apart from the Bujumbura Airport. Work is in progress to render operational, the Gasenyi and Kobero borders. Burundi do not also have a single border post with the necessary infrastructure and electronically interconnected or integrated border management systems between Burundi and the bordering EAC partner states. This makes it hard to collect data on movement of persons across these borders and ability to track and respond to any human tracking situation is acutely curtailed (EAC, 2012).

5. Challenges of Free Movement of Labour in Burundi

Poor Perception of Educational Qualifications*:* Although it is not written, there is a widespread perception by many would-be employers in countries like Kenya, Uganda and Tanzania that Burundi did not have the higher tertiary level training institutions to provide the level of education and certification that is considered as satisfactory (EAC, 2012). This perception alone makes any professional trained in Burundi to be considered as not well qualified and are therefore, less competitive in a regional labour market. Its professionals are therefore likely to face skills and remuneration discrimination when looking for jobs in other partner states. This is likely to be the case in the short to medium term before the culture and practice of qualification recognition and harmonisation of curriculum is fully embraced in the region. It is reassuring, though to note that the process has commenced, with Burundi and Kenya having had MoU in this regard (EAC, 2012).

Low Public Awareness*:* There is insufficient public education and awareness in the country, which means that many residents of Burundi are not fully aware of the opportunities and the preparations they need to

make to operate optimally within the EAC Common Market. Although this is a challenge that cuts across all partner states (EAC, 2012). There is also no comprehensive regional integration strategy to steer implementation of CMP in Burundi. Burundi also lacks institutional mechanism to coordinate and monitor implementation of CMP (EAC, 2012).

Impact of differentiated Commitments in CMP*:* It is clear from CMP commitment schedules that nearly each partner state has made different commitments in terms of the categories of labour they would welcome in their labour market. Most of the partner states with relatively higher wage levels that would provide incentive for Burundians to move require relatively highly skilled labour, specially in categories where they deem they have a domestic shortage (Mukandala, 1999). Burundi has been experiencing low level of skills development and has an acute shortage of the eligible professionals required by other partner states. Therefore, Burundi is not likely to benefit from the opening of EAC labour markets because of these restrictions. Ideally, all categories of labour and professionals should have been able to move freely without discrimination between categories. In any case, a region needs a mixture of both skilled and unskilled labour to develop and unite. Thus, restricting the movement of certain categories of labour is creating imbalances and disunity rather than promoting integration of labour markets in the region (Mukandala, 1999).

Nonetheless, there are those who belong to the school of thought that EAC member states need more skilled people so that the onus should be on the unskilled to get skills for them to be able to move freely and thereby contribute more to the development of EAC. In fact, those who have tolerated this thought might argue further that if unskilled persons moved freely, they may end up unemployed and anti-social behaviour (such as crime), may set in as well as expansion of slum dwellings, results which may adversely affect the development and growth potential of a country (Mukandala, 1999).

There is no Comprehensive Regional Integration Strategy in Burundi*:* A regional strategy is critical to ensure consistency of the various commitments made in different regional negotiations. Integration, notably in the framework of EAC is fully underway and substantive results have already been achieved. However, Burundi still lacks a coherent and concrete strategy with a prioritized roadmap for action (EAC, 2008). The full implementation of CMP by Burundi has taken several years. There is still a strong rationale for Burundi to develop such a strategy. Moreover, the establishment of an efficient institutional mechanism to coordinate and monitor implementation of regional integration efforts is a prerequisite. Without such a strategy, some of the benefits expected to accrue for Burundi might not be achieved. Elaboration of such strategy should help Burundi in the prioritisation of its numerous regional commitments in the future (EAC, 2008).

5.1. Other Challenges

Implementation of free movement of labour to the nationals of the EAC might be hampered by other challenges. To begin with, the privileges of free movement of labour are accompanied by the right of residence whereby the migrating workers, their spouses and children are supposed to be provided with housing. Gaining access to housing facilities can be problematic particularly in countries that are already experiencing housing shortages like Burundi (Yvonne, 2011).

Another notable challenge facing EAC partner states regarding mutual recognition of academic certificates and qualifications as well as the skills and experience gained in a particular field. As the partner states might have unique education systems which differ from those of other partners, a country's education system and standards may appear superior to those of its neighbours. Harmonising education qualifications, skills and experience requirements before gaining entry into the labour market can therefore be problematic for partner states trying to implement the labour mobility freedom. For instance, can a Bachelor of Medicine degree obtained at Makerere University be considered the same with the one obtained at University of Nairobi or other universities in Tanzania, Rwanda and Burundi? Differences in academic qualifications and skills may necessitate employers in the receiving country to undertake training programmes for nationals of other member states wishing to work within the country which translates into additional costs to the employers and to production cost (Gastorn, 2011).

Language barriers also pose major challenges (Vandamme, 2000). Countries belonging to a Regional Economic Community in most cases have different official and national languages. Taking EAC as an example, the official language in Kenya and Uganda is English, in Tanzania it is Kiswahili, while in Rwanda and Burundi it is French based on the colonial heritage of the member states (Vandamme, 2000). If the Common Market in EAC region is to be fully implemented, then the region requires one common language, at least for purposes of interaction and conducting business in the region. But language is closely intertwined with the culture of the people and therefore it would be difficult to force nationals of a particular member state to adopt a new language for communication purposes. There is however a compelling cause for people seeking to trade within the region to strive to learn the dominant language for trade in those partner states. The challenge comes in cases where the language barrier becomes a problem to attain employment in the host country (Vandamme, 2000)..

Free movement of persons and labour can also be hampered by resistance by incumbent member states to open up their labour markets, particularly to the member states that acceded recently or are planning to accede in future. Such resistance has clearly been demonstrated by EU in which some of the fifteen original member states of EU (commonly referred to as EU-15) have become resistant towards opening up their labour markets to Romania and Bulgaria (the two newest countries to join the Union). For instance, towards the end of 2011, Spain, which had opened its labour doors to Romania and Bulgaria, chose to institute

restrictions on Romanian workers in the face of tough economic times and rising unemployment rates (Euractiv, 2011). The imposition of restrictions/bans on immigration of workers from other Partner States is however dependent on the provisions in the Treaties agreed upon by the member states (Euractiv, 2011).

In the case of EAC- CMP, the perception of free labour mobility between partner states might only be on paper but not in practice. Indeed, there could be public policy restrictions to immigration. For instance, Article 10 of EAC-CMP states: "*the free movement of workers shall be subject to limitations imposed by the host partner state on grounds of public policy, public security or public health*."(EAC, 2009) There is possibility to disguise under `public policy' to deny free movement of workers from other partner states. CMP was enforced and it grants free movement of workers in the region but lacks in the understanding of the policy architecture of the partner states that could defeat the objective of CMP. This challenge is likely to present itself if the partner states have not harmonised their labour policies, national laws and programmes as envisioned (EAC, 2009). Indeed, there has been little movement in this area of harmonisation.

Article 10 (10) provides: "*The provisions of this Article shall not apply to employment in the public sector."* This shows that free movement of workers is only being promoted in the private sector in the partner states (EAC, 2009). Where specific skills and professionals are lacking in the public sector of the partner states and the national labour policy restricts employment of foreigners in the public sector, then this provision might starve the public sector of the right mix of skills.

The twin issue of brain-drain and brain-gain always comes up in labour mobility discourses. Countries may be resistant towards regional labour mobility for fear of suffering from brain drain. Brain drain or brain gain refers to skilled labour and is highly related to mutual recognition of academic certificates and professional qualifications (Evarist et al., 2009). With this mutual recognition, migrant workers are assured of higher standing on the professional ladder as well as higher remuneration. Mutual recognition also provides migrant workers with incentives required to work in the formal rather than informal sectors of employment (Evarist et al., 2009). Partner states of EAC could take advantage of the skills disparity that exists in the region by training more professionals with the motive of sending them to those partner states with shortage of skilled labourers (e.g. Kenya sending English teachers to Tanzania and accountants, lawyers and engineers to Rwanda and Burundi) (Jumuiya 2009).

The benefits/costs arising from brain flight depend on the capacity of partner states to produce qualified labourers. Partner states with a high capacity of producing to produce qualified labourers can gain especially from remittances sent by its skilled workers in neighbouring countries. On the other hand, countries that lack this capacity (even for its own domestic labour market) can suffer devastating effects from flight of its skilled

labour (brain drain). The receiving countries also benefit from brain gain particularly because they end up with highly skilled labour force for which they did not incur the cost of educating or training. In short, there are both winners and losers in the brain drain/brain gain game (IILS, 2008). In addition, there are also high possibilities of brain waste arising from deskilling in which migrant workers with high skills (but without employment opportunities in the home country) may end up being employed in lower- skilled jobs in the partner states with those employment opportunities (Kahanec, 2012). As such, they do not utilise their skills and expertise. This is detrimental not only to the worker but also to his/her home country as well as the host country. Examples include skilled people willing to do any job including in low-skilled sectors like petrol attendant, receptionist in a country with high wage rate for the incentive of higher pay than that person would earn at home in a high killed employment (Kahanec, 2012).

Social security issues may also pose major challenges to the free movement of persons/labour within the EAC. In any case, the EAC partner countries tend to have different social security schemes not only in the design but also in the number of the schemes. As a result, harmonising these schemes could become a headache to the partner states. Moreover, an issue such as the transferability or otherwise of the benefits from the schemes makes the free movement of labour more difficult. For instance, does a Rwandan working in Burundi and enjoying social security benefits while in the country have the right to transfer the hard-earned benefits to his/her home country if he/she desires to go back home? Other issues include the difference in currency, for instance, should the benefits enjoyed by the Rwandan working in Burundi be in Burundian Franc or in Rwandan Franc? This is problematic, given the lack of a common currency in the region. In recognition of the hindrances to free movement of labour arising from non-transferability of social security benefits, some RECs such as the EU and the CARICOM have allowed the transfer of social security benefits among the member states (Watson et al., 2007). The EAC Council of Ministers had issued a directive for the region to conduct an actuarial study depicting the economic and financial impact of the portability of social security benefits if the system was to be implemented (Watson et al., 2007).

Promoting free movement of persons and workers requires relaxation of border controls. This in turn leads to porosity of borders. The main concern resulting from this is the security of the nationals of the receiving country (Newman, 1965). Human, drug and fire arms trafficking may increase due to porous borders. This concern has been raised by other RECs such as EU. Some of the EU member states were of the opinion that accepting the new member states to the Union and opening up their labour markets to them would result in an influx in the number of illegal immigrants and rate of crime in their territories. In the EAC region, human trafficking is rampant, given that two out of the five member states (Kenya and Uganda) lie in the Horn of Africa region which suffers from severe droughts and famine, conflicts, high poverty levels, terrorism, political

instability and general desperation. Kenya and Tanzania have indeed become an important destination as well as transit point for human trafficking (Newman, 1965).

The situation is further complicated by the influx of refugees from neighbouring countries of Somalia, Ethiopia and South Sudan (Ongaga, 2007). As of September 2011, the East African countries like Kenya and Uganda hosted more than 452,000 refugees at Dadaab camp, the largest refugee camp in the region, majority of who were from Somali (Ongaga, 2007) (SID). The large number of Burundian migrates to different East African country is a major hindrance to the free movement of persons and labour in the EAC region because it increases the susceptibility of the nationals of EAC partner states to trafficking, smuggling and other types of abuses (SID, 2012). Echoing this fear, Ambassador Dr. Richard Sezibera, Secretary General for the EAC stated that, Kenya is one of countries that are receiving hundreds of Somalis and the EAC Heads of State need to deliberate on how to solve these problems for the better future of wananchi and their nations at large (Jumuiya, 2011).

Problems of trafficking go hand in hand with abuse of the human rights of migrant workers. In particular, porous borders increase the risk of abuse of women and children who are often lured into forced labour and the sex industry. Majority of abuses of fundamental human rights of migrant labourers revolve around slavery, forced labour, cruelty, degrading and inhumane treatment by employers, as well as severe and unwarranted punishment (Jumuiya, 2011). However, migrant labourers who find themselves in such situations are mostly those who have been trafficked, hence, the need to address the human trafficking problem. Women are particularly vulnerable to such kinds of abuses because of the nature of work they do and the gender-specific industries they work in (IOM, 2010).

Closely related to the abuse of fundamental human rights is the abuse of labour rights of the migrant workers. Providing the workers of other partner states the privilege of free movement and right of residence and establishment means that the migrant workers should be granted equal labour rights as the resident workers of the receiving country. Such rights include: equal treatment with respect to recruitment procedures, equal privileges in the living and working conditions, equal access to justice, and equal treatment with respect to taxation and social security benefits as well as equal opportunities in vocational training and promotions in the workplace. Other rights include the right to engage in collective bargaining through labour unions, the right to family reunification and the right to appeal against a decision made by employers to terminate their employment contracts (Ndegwa, 1965).

All the above rights are provided for in various international Conventions on Human Rights and labour rights by the United Nations (UN) and the International Labour Organization (ILO). These Conventions include: `the Universal Declaration of Human Rights (UDHR), (UN) the International Convention on the Elimination of all

Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Cruel Inhumane and Degrading Treatment of Punishment (CAT) and the Convention on the Rights of the Child (CRC) (Euractiv, 2010).

Although, many countries have signed or ratified these international conventions, domesticating them by incorporating them into their national laws is another issue and this influences the power of member states or individual countries to fight against such malpractices. The biggest reluctance by countries relates to protection of rights, which are specific to migrant workers. This is evident in the Arab region in which there has not only been a slow domestication of the International Conventions of Human and Labour Rights but worse still, non-ratification of these Conventions. This is one of the major driving forces behind the high rates of abuse of migrant workers in the region. For instance, the Gulf Cooperation Council (GCC) states have been described as `examples of countries operating high numbers of migrants but few rights labour immigration policies. (Euractiv, 2010)' If EAC is to reap benefits from the freedom of movement of persons and labour, then it requires not only domestication of the International Conventions on Human Rights of migrant labourers, also harmonisation of national laws and policies in the same direction. An analysis of performance of EAC partner states in these respects can be considered timely as the region focuses on effective implementation of the Common Market.

Finally, a national of a partner state wishing to start a business in another partner state must have a citizen shareholder. The migrant is then provided with a temporary work permit which is renewed for as long as the migrant wants but the migrant has limited if any, chances of getting a permanent residency irrespective of the length of time he/she has established or worked in the host country (Euractiv, 2010). The sponsorship system is also existent in the EAC partner states where nationals of other EAC partner states wishing to establish in the country to partner with locals. This is done mainly due to fear of embezzlement of funds from the host country to the country of origin of the migrants (EAC).

6. Conclusion

The common market commenced in July 2010 and will ultimately allow all factors of production to move freely within the region. It provides for the free movement of goods, services, persons, labour and capital as well as for the rights of residence and of establishment. All the five partner states have made commitments to open up and create regional markets in several sectors and have accepted to remove restrictions on the free movement of workers, right of establishment and residence as well as to pursue mutual recognition of academic and professional qualifications. On that note, Article 5(2) of the Treaty for the Establishment of the

East African Community (the EAC Treaty) enjoins partner states to establish among themselves a Customs Union, a Common Market, a Monetary Union and ultimately, a Political Federation. The Common Market is therefore the second stage of integration after the Customs Union which was achieved through the EAC Protocol on the Customs Union in 2004 (EAC, 1999). Burundi has indeed undertaken a myriad of policy and legislative reforms in view of her commitment in the CMP.

Burundi could benefit potentially from the established EAC common labour market. A major impediment to free movement has been the lack of a political commitment to implement the decisions to remove the legislative and administrative barriers to the free movement of persons. In some cases, government has made the legislative commitments but the administrative hurdles continue to be problematic.

7. Recommendations

This section contains various suggestions on how to enhance free movement of labour in Burundi and in East African Community in whole. To ensure free movement of labour in **Burundi and in East African Community, the following have to be done: Elimination/Adjustment of Domestic Laws to Fit in EAC-CMP**: The restrictions which are still found within domestic laws of partner states including Burundi have to be removed. The use of the direct effect and direct applicability of community law as both principles are used within European Union. Though the study is not suggesting that we do exactly what European Union does but it is obvious to us that that system needs some adjustments. The States have to be reminded about their commitments they made in regard of other rights and freedoms of the Common Market Protocol and be encouraged to fulfill them since their non-fulfillment affect, in one way to another, the free movement of labour.

Introduction of Penalties on the Partner States: Heavy penalties should be introduced against Partner States or an institution which infringe community law and fails to perform its obligations because it has been seen that there are no such penalties in place and that their absence affects the effectiveness of the community law. For example, aviating states should be required to pay a specified amount of money.

Strengthening of the East African Court: Access of private litigants to East African Court of Justice has to be encouraged because the practice indicates that, the domestic courts of partner states do not use effectively the East African Court of Justice in handling disputes submitted before them pertaining to the interpretation and application of East African Community law.

Improvement in Clearance from the Boarder Points: There is need to solve the challenge of long clearance time of people moving into Burundi due to duplication of customs declarations at Burundi-Tanzania border. There is need to ensure that the Kabanga/Kobero are converted to one stop border post (OSBP), necessary infrastructure established so as to realise a marked reduction in clearance time.

Technical Capacity Building in EAC: Recruitment of skilled personnel to work in different ministries and border posts of the EAC to reduce or solve the problem of lack of technical capacity in the various areas of policy reforms and legislative changes hence Burundi should undertake such reforms. Increased capacity building is required to strengthen regulatory and supervisory capacity and to improve collection of the necessary statistics on movement of people and workers. Regular training and formation of knowledge platforms and establishment of agencies or bureaus of employment that tracks and disseminates information on available employment opportunities within EAC need to be established.

Increase on Infrastructure Investment: EAC partner states particularly, Burundi should invest in infrastructure (ports, railways, electricity, and telecommunications) in East African in general, and along the central and northern corridors of Burundi in particular, in order to reduce the cost of doing business and facilitate efficiency in production, transportation and delivery of goods and services to the people of East Africa.

Setting up a single authority in EAC: That EAC partner states should set up a single authority to oversee the management of border posts with the necessary enabling legislations clearly defining scope and giving it the necessary power to execute its mandate. Such authority must have the support of all regional governments.

Promotion of Joint Regular Border Meetings: That EAC partner states should promote joint regular border meetings to address issues affecting trans-boundary communities; where such meetings should involve security and local leaders within the borders. Also, there is need to harmonise travel documents including students' passes to East African partner states on gratis basis.

Sensitization of Burundians about Common Market Protocol: To date, Burundi public relations strategy has been less than desirable. Public awareness about opportunities provided by the Common market is very low. The public relations strategy has to take a holistic approach to meet the required objective of sensitizing Burundian people of their rights under the common market protocol. Wider and deeper sensitization should be undertaken to enable Burundian community to appreciate and have sufficient knowledge on their rights and responsibilities along with benefits entailed in the operationalisation of the Common Market Protocol and other integration stages.

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