

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**AN ASSESSMENT OF THE IMPLEMENTATION OF FREE MOVEMENT OF
PERSONS IN EAST AFRICA COMMUNITY: A CASE OF KENYA**

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DEGREE OF MASTER OF ARTS IN INTERNATIONAL CONFLICT MANAGEMENT**

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DECLARATION

I declare to the best of my knowledge that this Research Project is my original work and that all the sources that I have used have been acknowledged.

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DEDICATION

I dedicate this work to my dear family, my wife and dear children. This would not be possible without their encouragement.

ABSTRACT

Economic integration has been considered a harmonious development strategy between sovereign nations. Economists maintain that “integration of economics of foreign states has been one of the leading aspirations of social-economic policy in the second half of the twentieth century such that the period may be described as having been an era of economic integration. The purpose of implementing the unrestricted movements of people protocols is to reap the advantages of regional cooperation. However, a combination of other factors determines the implementation of free movement of person’s protocol. These factors can be residual within the regional economic community or external to the RECs. These considerations have primarily controlled the adoption procedure of the unlimited immigration of persons agreement, which has resulted in a contraction of commodities and a resurgence of inter - tribal confrontations with disastrous long term consequences. Though the effectiveness of the unlimited immigration of individuals agreement varies depending on geographical commercial blocs and specific nations, the effectiveness of such agreements is not well understood. As a result, the report's key issue is to examine the state of the Unlimited Immigration of Individuals Program's enforcement in Eastern Africa.

As a result, the finding demonstrated four purposes and investigation hypotheses in order to analyze the topic. Three particular priorities influenced this research: to introspectively evaluate the application of unrestricted mobility of individuals within territorial economic groups, to evaluate Kenya's deployment of the East african community Guidelines on the Unlimited Movement of People, and to examine the difficulties as well as possibilities which emerge in the deployment of the East african community Guidelines on the Unlimited Movement of individuals. The data for this research were acquired and evaluated using both direct as well as indirect sources. A prime example was used in the research. Survey questions, along with organized conversations, were used to gather information for this research. This report's analysis process were qualitative, with essential factors being investigated in naturalistic environments.

The research study was able to examine the challenges slowing protocol implementation and the efforts made to realize the successful adaptation of the agreement. Raising understanding to modify negative perceptions against unrestricted mobility of people, enhanced lobbying for funding societal financial backing in the implementation of the unlimited immigration of individuals guidelines in regional economic gatherings, leadership for dynamic unrestricted mobility of people, and eventually, the advancement of a regional migratory strategy are all recommended in the research.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACPMO	-	African Common Position on Migration and Development
AFCFTA	-	African Continental Free Trade Area
AU	-	African Union
BENELUX	-	Belgium, Netherlands and Luxembourg
CACM	-	Central American Common Market
CEEAC	-	Economic Communities of Economic Community of Central
CJEU	-	Court of Justice of the European Union
CM	-	Common Market
CMP	-	Common Market Protocol
CMS	-	Common Market Scorecard
COMESA	-	Common Market for Eastern and Southern Africa
CU	-	Customs Union
EAC	-	East African Cooperation
EALA	-	East African Legislative Assembly
ECSC	-	European Coal and Steel Community
EEC	-	European Economic Community
EU	-	European Union
FTA	-	Free Trade Area
GATS	-	General Agreement on Trade in Services
ICCPR	-	International Covenant on Civil and Political Rights
ICPRMW	-	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IGAD	-	Intergovernmental Authority for Development
ILO	-	International Labour Organization
MPFA	-	Migration Policy Framework for Africa
MU	-	Monetary Union

NCM	-	National Coordination Mechanism on Migration
OAU	-	Organization of African Union
PF	-	Political Federation
PTA	-	Preferential Trade Agreement
REC	-	Regional Economic Community
RTA	-	Regional Trade Agreement
SADC	-	Southern African Development Community
UDHR	-	Universal Declaration of Human Rights
WTO	-	World Trade Organization

Chapter One

Introduction and Background to the Study

Introduction

Economic integration has been considered a harmonious development strategy between sovereign nations. Economists maintain that “integration of economics of foreign states has been one of the leading aspirations of social-economic strategies in the latter stage of the twentieth century such that the period may be described as having been an era of economic integration. Aspiration for economic integration has been demonstrated by the formation of various Regional Economic Communities (RECs) in developed and developing countries.¹

Economic integration is normally achieved through regional trade agreements (RTA’s) by the conclusion of treaties and protocols which bind member states. Economic integrations vary significantly depending on the degree of depth at which they are aimed at. Nonetheless, the sole purpose is to eliminate or reduce barriers between member states. There is a consensus that economic integrations take six forms namely Preferential Trade Agreements (PTA), Free Trade Area (FTA), Customs Union (CU), a Common Market (CM), Monetary Union (MU), and Political Federation (PF).² However, Uche has argued that the process of economic integration in all its forms is characterized by the independence of migration of people for its to translate to tangible benefits to all citizens.³

Cherunilam observed the fundamental goal for economic integration has been the generation of economic growth and development between partner states regardless of whether the agreement

¹ O’Connor, Anthony M. 7 Geography & Economic Integration. University of California Press, (2021): 1-234.

² Ibid

³Uche, Lilian Onyinyechi. "Towards Economic Integration in Africa: Reflections on The Implications of Nigeria’s Border Closure." International Review of Law and Jurisprudence (IRLJ) 3, no. 2 (2021): 20-34

involves developing or developed countries. Economic experts also believe the unrestricted movement of components of manufacturing allows for effective commodity distribution in the shared marketplace during economic interdependence. The reasoning for a single market in commercial merger is founded on macroeconomic concepts as well as other ideologies that claim that regional economic interdependence is simple provided commodities and manufacturing inputs (workers and investment) flow smoothly across international allied nations.⁴

The unrestricted migration of people in contemporary days may be dated directly to the 1957 Treaty of Rome, which established the European Union. Since the Europe's Union's inception, special laws have always been in existence to enable the mobility of particular categories of European Union citizens inside its borders. At first, unrestricted mobility of people only applied to laborers as well as other commercially engaged people. It was evident at that point that in order for unrestricted migration of employees to be successful, EU statute required to include protections for employees' dependents. Following that, the freedom of migration of people grew to embrace an increasing number of people, even if they had been not immediately productive workers. The first step to the realization of free movement person came into effect after the signing of the Treaty of Maastricht in 1992. This was later followed by the greatest achievement of the EU, The Schengen Treaty, signed in March 1995, permits inhabitants of Twenty two of the Europe's Union twenty eight signatory countries, plus Norway, Switzerland, Iceland, and Liechtenstein, to visit Schengen Zone individual countries without a residence permit for up to three months. The Europe's Union success story has sparked a slew of territorial cooperation efforts in Africa aimed at facilitating unlimited immigration.

⁴ Mlambo, Victor H. "Consolidating Regional Integration Through a Free Movement Protocol: The Quest for Collective Development in the SADC." *African Journal of Governance & Development* 9, no. 2 (2020): 455-471.

The Organisation of African Unity (OAU), that subsequently became the African Union (AU) in 2002, originally established in 1963 with the goal of promoting regional cohesion, fraternity, and sympathy amongst African governments, as well as coordinating and intensifying multi-national collaboration for advancement. The achievement of such objectives was contingent on individuals being able to freely migrate throughout Africa. In acknowledgment of the need for unlimited immigration in Africa, the Organization of African Unity (OAU) enacted the Nigerian Detailed programme in 1980, which establishes sub-regional institutions as foundational elements for fostering unlimited immigration in the Continent.⁵

The EAC is an international nongovernmental association that was founded in 1967 with multiple cofounders. Its demise in 1977 was caused by administrative divisions and disagreements over how to administer the society's earnings. The Agreement re-establishing the Eastern African Partnership were agreed in 1999 and entered into operation in 2000 when all three Member Nations had ratified it. The East African Community is now made up of six countries and is based in Arusha, Tanzania. A Trading Bloc is a crucial foundation of collaboration and commercial deregulation in the EAC, according to Article 76 of the EAC Convention. . Because open borders to individuals inside EAC is a crucial component of the common market convention, the report's purpose is to examine how the framework is implemented in EAC.

⁵ Leshoele, Moorosi. "AFCFTA and Regional Integration in Africa: Is African Union Government a Dream Deferred or Denied?." *Journal of Contemporary African Studies* (2020): 1-15.

1.1 Statement of the Research Problem

Regional economic community East African Community recognizes the prospect and benefits that can be derived from integration. The construction of unrestricted migration accords around prospective economic rewards for residents or a projected unified collective identity is a common aspect of multilateral negotiations, regardless of the commercial, political-security, or social economic environment. Whereas unlimited immigration at the worldwide platform is unlikely to implement, this might be a more feasible legislative choice at the provincial (superstate) stage. As a result, geographic commercial groups have proceeded to create and execute the Unlimited Migration of People and Workers Agreement.

The purpose of implementing the unlimited immigration of individuals agreement is to reap the advantages of multilateralism. Nevertheless, the execution of the procedure for unlimited immigration is determined by a number of these other circumstances. Such influences might come from inside the geographic commercial organization or from outside the RECs. The process of implementing the unlimited immigration of persons agreement has been heavily influenced by these considerations. Commodities were depleted, and frequent ethnic as well as sectarian disputes erupted, with disastrous consequences for environmental protection.

Although this effectiveness of the unlimited immigration of individuals agreement varies depending on continental financial blocs and sovereign governments, the effectiveness of such agreements is not well understood. As a result, the article's major objective is to examine the state of the Unlimited Immigration of Individuals Program's enforcement in East Africa. As a result, the investigation establishes four targets and investigation hypotheses in order to analyze the topic.

1.2 Objectives of the Study

1.2.1 To examine the operation of unlimited immigration across regional development groups seriously.

1.2.2 Evaluate Kenya's adherence of the East African Community Agreement on Unlimited Mobility of People

1.2.3 To address the problems and possibilities that the EAC Agreement Agreement on Unlimited Mobility of People presents in its execution.

1.3 Research Questions

1.3.1 How is unrestricted mobility of people across regional development groups being implemented?

1.3.2 How well is Kenya carrying out the East Africa Community Protocol on unrestricted Movement of Persons?

1.3.3 Which are the obstacles and advantages in putting the EAC Agreement Declaration on Unlimited Mobility of People into effect?

1.4 Literature Review

The various factors have been further discussed in this study culminating to the understanding of Unlimited Mobility of People in any given regional bloc.

1.4.1 Free Movement of Persons in Africa

Unlimited Mobility of People is analyzed within a regional framework, Hamadou argues. In his argument, he states that the movement of persons in Africa differs from Europe and hence any analysis needs to take into account this difference. Such analysis occurs within the conceptual, methodological, and theoretical confines, to avoid creating more confusion and biases. From a conceptual point of view, asserts Unlimited Mobility of People must take into account the notions of the region, regional integration, regionalism, regionalization, etc.⁶ Secondly, Unlimited Mobility of People occurs within the regional and international context, and so theoretical lens need to suit political science and IR or economic or migration studies context. Gumede's claim that the geographical area concepts struggle severe Western cultural prejudice emphasizes this issue, resulting in a scenario where "success in multilateralism is evaluated in perspective of the European union, that might be hard to implement in the African environment."⁷

Finally, Mlungusi claims that any examination of unlimited immigration must make a precise difference among constitutional requirements and administrative execution. Experimental evidence on unrestricted mobility of people in West Africa shows that legislative assessment is just a possibility when it comes to policies execution. The large percentage of West African nations having been able to assimilate the ECOWAS agreement on unrestricted migration of people, according to the research, that is a comprehensive investigation. Considering the

⁶ Hamadou, Abdoulaye. "Free Movement of Persons in West Africa Under the Strain of COVID-19." *AJIL Unbound* 114 (2020): 337-341.

⁷ Gumede, Vusi, Samuel Ojo Olorunfoba, and Serges Djoyou Kamga. "Migration Policies in Africa." In *Regional Integration and Migration in Africa*, Brill (2020) 77-96.

adoption of the legislative framework in West Africa, the report claims that unrestricted mobility throughout the area is still a long way off.⁸

Many scholars have documented that the free movement of persons is largely dependent on existing protocols within the regional economic community. Mlambo, for example, indicated in a research performed in SADC that the state's unrestricted migration procedure is indeed not thorough and serves to stymie the progress of unrestricted mobility beyond geographical borders by preventing any additional engagement, notably in terms of the phases of residency and incorporation. In their analysis of the Agreement, the researchers contend that imposing residency requirements permits regional legislation to be stringent in preventing unlimited immigration within SADC. In addition to thoroughness, the stage of execution of the open mobility procedure has been highlighted as a factor in establishing the extent of unlimited immigration in Africa.⁹ Comparative discourse analysis in n both Ecowas and SADC regions revealed that free movement of persons is relatively well established in ECOWAS as compared to SADC for the reason that ECOWAS is at the fourth phase of their implementation while SADC is still at the second phase.¹⁰

Yeboah recognized the importance of domestication of laws on the free movement of person's protocol. In arguing in favor of national laws. In their research, he noted that various places throughout the African continent have passed legislation that make it easier for individuals to migrate around. According to the authors' study, practically all ECOWAS nations have passed

⁸ Hirsch, Alan. "Strategic consideration of the African Union Free Movement of Persons Protocol and other initiatives towards the freer movement of people in Africa." (2021). 22-34

⁹ Yeboah, Thomas, Leander Kandilige, Amanda Bisong, Faisal Garba, and Joseph Kofi Teye. "Same Policy but Different Implications for Different People? An Analysis of How Diverse Categories of Ecowas Nationals Experience the Free Movement Protocol." (2020): 12-36.

¹⁰ Zanker, Franzisca, Kwaku Arhin-Sam, Leonie Jegen, and Amanda Bisong. "Free movement in West Africa: Juxtapositions and Divergent Interests." (2020): 1-11

legislation to protect the unrestricted mobility of individuals, but just a few nations in the EAC and SADC had done so. In an effort to explain why there are differences in the adoption of legislation pertaining to unrestricted movement of individuals throughout African continental commercial organizations, Akhigbe attributes it to the existence of a powerful ECOWAS administration that is successful in making decisions.¹¹

1.4.2 Free Movement of Persons in East Africa

The Shared Marketplace Agreement intends to facilitate unrestricted mobility of people among Tanzania's, Uganda's, Kenya's, Rwanda's, and Burundi's partner countries. The EAC is regarded as one of the local economical organizations with some of the best higher level of envisioning and executing a contractual structure for cross-border mobility of people beyond the European Union and amongst underdeveloped nations. As a result, it will have significant economical and diplomatic implications for the area, as well as serve as a model for comparable projects in other underdeveloped countries. Researchers have looked at the system's architecture in terms of achieving the purpose of unlimited immigration.¹² Basnett in their detailed study of the EAC common market protocol structure argues that the Protocol falls short of meeting its aspirations.¹³

Gasiorek's observational research on the East African Community studies and analyzes the degree whereby the East African Community's Shared Markets Agreement allows for the unrestricted circulation of labor that it claims. The researchers tracked the trajectory of the Society's trading bloc since its initial inception, showing how it has progressed via merger,

¹¹Akhigbe, Oseahume Allwell. "The ECOWAS Protocol on Free Movement and Implications for Border Security Management of the Nigeria-Benin Borders." *Ibadan Journal of Peace And Development* 10, no. 1 (2020): 43-55.

¹² *Ibid*

¹³ Basnett, Y. (2013). *Labour Mobility in East Africa: An Analysis of the East African Community's Common Market and the Free Movement of Workers*. *Development Policy Review*, 31(2), 131-148.

fragmentation, and expanded reunification. Furthermore, the authors argued that currently, there are significant differences in regulations for the operationalizing of free movement of workers as it requires workers to acquire permits in different states. The study concludes that although the EAC protocol provides a good framework to realize the unrestricted movement of individuals and workers in the regions has still been a challenge.¹⁴

The study by Francis also analyzed the execution of the right to unrestricted movement of individuals in the EAC with a focus on Tanzania, Kenya, and Uganda as founders of the EAC. The implementation of the right to unrestricted movement of individuals envisaged under the EAC Treaty and the EAC common market protocol was examined concerning domestic employment, immigration, and social security laws and policies of the EAC partner state in a view to determining how they facilitate unrestricted movement of individuals in the EAC common market.¹⁵ It was highlighted in the study that although the EAC common market protocol has borrowed largely from EU protocol in promoting unrestricted movement of individuals, it is still far off as the countries are still grappling with how to affect the free movement of workers. Francis also argues that in as much as the common market protocol seeks to promote the protocol, its main preoccupation lies in promoting labor mobility first.¹⁶

Atunza in analyzing the free movement of person protocol in the EAC community voices concerns that the protocol is not only biased towards the movement of labor but also skilled labor as opposed to unskilled or semi-skilled labor. A similar argument against the protocol was

¹⁴ Gasiorek, Michael, Bruce Byiers, and Jim Rollo. "Regional integration, poverty and the East African Community." (2016): 12-26

¹⁵ Ejones, Francis. "Regional Integration, Trade Duration and Economic Growth in The East African Community: Three Empirical Essays." Phd Diss., University of Newcastle. (2020): 1-14.

¹⁶ Ejones, Francis, Frank W. Agbola, and Amir Mahmood. "Do regional trade agreements promote international trade? New empirical evidence from the East African Community." *The Journal of International Trade & Economic Development* (2021): 1-34.

expressed in a study conducted in EAC, with the authors recognizing that the protocol is not only biased towards skilled labor but also citizens¹⁷ takes the issue to the fact that citizens of the East African Community are extended few exclusive privileges for entry and stay like free movement protocol in the EU and hence views the protocol as largely ineffective in ensuring unrestricted movement of individuals. Although the EAC reign for free movement has been seen as more conducive towards unrestricted movement than similar regimes in other RECs, its role on the free movement of persons largely remains undocumented as extant literature largely focuses on the unrestricted movement of workers.

1.4.3 Factors determining the Implementation of Free Movement Protocol

In Africa, the notion of a boundless region has mostly remained unchallenged. Assistance for (sub)regional unlimited immigration in the continent is a practical element in the promotion of "organized, secure, and sustainable mobility" and the predicted good impacts on the economy, jobs, and democratic and social levels from an advancement strategy viewpoint. The RECs, on the other hand, confront considerable difficulties in establishing unrestricted mobility. Most of these issues originate inside the sub-regions, whereas many may be traced back to the Europe's Union expanding migrant policies.¹⁸ Non-harmonized migratory processes, burdensome and redundant migration operations in conjunction with requests for employment or student credentials, bribery, and nationalistic attitudes are among of the hurdles to unrestricted mobility of individuals in SADC, according to Maunganidze.¹⁹

¹⁷ Atuza, Theresia Tuhoye. "Contributions of East African Common Market Protocol to Economic Growth: The Case of Tanzania, 2010-2017." PhD diss., United States International University-Africa, (2018): 1-149.

¹⁸ Sule, Mutawalli Alhaji. "Assessment of ECOWAS Free Movement Protocol in Promoting Regional Growth and Development in West Africa." *Amity Global Business Review* 13, no. 1 (2018): 1-13

¹⁹Maunganidze, Ottilia, and Julian Formica. "Freedom of Movement in Southern Africa: A SADC (pipe) dream?" (2018): 45-60

Gumede demonstrates that both ECOWAS (West Africa) and IGAD (North-East Africa) encounter issues with existing unrestricted mobility regulations, but the difficulties appear at various phases of the democratic establishment. National governments in the IGAD area have yet to negotiate on an unrestricted mobility agreement, while the ECOWAS territory is suffering difficulties in the enforcement of existing regulations at the country and provincial levels. These discrepancies, according to the authors, stem from historical route interdependence, varying levels of legality, and varied goals among sub-regional powers.²⁰

The nature of the facilitation protocol determines the implementation process.²¹ In analyzing the SADC free movement protocol, they concluded that the current facilitation protocol provides for a securitized or controlled approach to the movement of people. This can stifle the geographical movement of individuals seeking convenient access to amenities, reducing the state's favorable circumstances. In Africa, ECOWAS and the EAC have always been at the frontline of supporting unlimited immigration across national boundaries by granting free admission and visa on arrival to countries with something they have sub-regional cooperation. However, according to Alabi, several sub-regions have yet to take similar steps, which underscores why certain national governments are hesitant to sign the AU Protocol on unrestricted mobility of people. This is owing to participating countries' apathetic attitude toward the program's enforcement, which arises from an absence of democratic willpower, international boundary squabbles, civil unrest,

²⁰ Gumede, Vusi, Samuel Ojo Oloruntopa, and Serges Djoyou Kanga. "SADC and ECOWAS: Comparative Perspectives." In *Regional Integration and Migration in Africa*, (2020) pp. 147-162.

²¹ Luthuli, Isaac. "The role of the Southern African Development Community (SADC) and the Economic Community of West African States (ECOWAS) in facilitating continental integration." PhD diss., (2020): 1-201

conflicts, and participating countries' refusal to relinquish sovereignty and independence to ECOWAS as a sub-regional agency..²²

Okunade and Ogunnubi have exhaustively researched a few issues that have been highlighted as causes for the Convention on unrestricted mobility of labour in Africa's non-operationalization and successful integration. They grouped these issues into two categories after examining them: politics and military worries. Political and protection issues are based on the significance accorded to Africa's boundaries. While some perceive the boundary as an unrestricted space intended to enable commerce and commercial activity, others consider it as a representation of national independence which shouldn't be bargained lightly. As Okumu correctly points out, when meetings are conducted, wonderful policies are created, but when they return to their own places, implementation becomes an issue.²³

In terms of protection, the emergence of cross-border illegal behavior such as insurrection and severe terrorists, including the Islamic movement in Northern Mali, Radical Islamists in Nigeria, and others, has been cited as a compelling cause for individual states' reluctance to execute the Agreement. Though it has been suggested that encouraging and implementing the Agreement on unlimited immigration between boundaries will worsen the internal security because everyone is able to roam openly across all of these boundaries.²⁴ The concern which this raises is whether, as participating countries have become hesitant to fully apply the unlimited immigration of individuals agreement in Africa, would have already been capable of overcoming the safety problems created by these terrorists considering they began their operations throughout the

²² Alabi, Abdullahi. "ECOWAS Protocol Implementation on Free Movement of Persons and Trade between Nigeria and Benin Republic: An Overview." *Journal of Management and Social Sciences* 9, no. 2 (2020): 1-16

²³ Okumu, Wafula. "Border Management and Security in Africa." *Concordis Briefing* 4, no. 4 (2011): 2-14

²⁴ Alabi, Abdullahi. "ECOWAS Protocol Implementation on Free Movement of Persons and Trade between Nigeria and Benin Republic: An Overview." *Journal of Management and Social Sciences* 9, no. 2 (2020): 1-16

continent. These inquiries allow the study to delve deeper into the reasons behind the system's sluggish deployment in the East African population. .²⁵

Related to political factors, resistance from powerful member states has also been cited as one of the major reasons why the unlimited immigration of individuals protocol has been repeatedly violated throughout REC's existence.²⁶ A study in ECOWAS has acknowledged that the slow implementation of the unlimited immigration of individuals protocol in West Africa is tied to resistance from countries such as Nigeria. Nigeria it has been explained has been slow slowed the full implementation of free movement protocol due to fear that it will lead to an influx of cheap labor from neighboring countries.²⁷ Similarly, empirical work in South Africa linked the slow implementation of the unlimited immigration of individuals protocol in South Africa to similar fears. The authors argued that the South African government's slow pace in developing a national framework has led other states to adopt wait and see approach in the implementation of the protocol. As a consequence, the strength of South Africa within the SADC block has led to other nations developing cold feet in the full implementation of free movement protocol.²⁸

The degree of legalization and institutional capacities is also one of the challenges identified as limiting the implementation of free movement protocol in Africa. An empirical study conducted in ECOWAS in SADC revealed that while ECOWAS has been mandated as an overarching body on migration matters in West Africa, the same cannot be said of SADC who mandate has excluded migration. A situation which the study largely attributes to the varied difference

²⁵ Akhigbe, Oseahume Allwell. "The ECOWAS Protocol on Free Movement and Implications for Border Security Management of the Nigeria-Benin Borders." *Ibadan Journal of Peace and Development* 10, no. 1 (2020): 43-55.

²⁶ Uzomah, Ngozi L., and Ignatius A. Madu. "Factors of migration of ECOWAS citizens into Nigeria: a principal component analysis approach." *International Journal of Migration and Border Studies* 6, no. 3 (2020): 234-257.

²⁷ Apwenum, Agape J., Kester Onor, and Moses M. Duruji. "Assessment of the Socio Economic and Political Implications of ECOWAS Free Movement." *Covenant University Journal of Politics and International Affairs* 8, no. 1 (2020): 1-14

²⁸ Moyo, Busani, Marko Kwarambo, and Mamello Nchake. "Regional integration Southern Africa." *IFPRI book chapters* (2020): 149-174

between SADC and ECOWAS on implementation of the open-market protocol. The legalization of free movement protocol has been amplified as one of the reasons explaining the marked differences in free movement of persons between regional economic communities in Africa.²⁹ A literature review study that documented the progress on implementation of unlimited immigration of individuals in Africa highlighted legalization as a major issue. Based on a comparative analysis, the study shows that while the majority of the countries have developed a national legal framework for the in West Africa, only a minority of countries have established a legal framework in SADC.³⁰

Monetary, organizational, human, and excellent infrastructure inadequacies at federal levels, as pointed out by (Professor Anthony Asiwaju), continue to be a major impediment to unlimited immigration. Researchers have concluded that even when there is legislative desire, many participating countries lack the capacity to standardized travelling papers and examine them quickly at the territorial boundaries. For example, placing in operation customs and immigration information as well as surveillance infrastructure, as well as utilizing fingerprinting equipment or document-reading technologies, all demand considerable resources at a period whereas most authorities are running on wafer-thin budgets. This has frustrated efforts meant to facilitate the free movement of people in Africa.³¹ Despite various challenges documented as affecting the implementation of free movement of persons, current evidence is largely limited in Africa, ECOWAS, and SADC, and hence the motivation for the current study.

²⁹ Sule, Mutawalli Alhaji. "Assessment of ECOWAS Free Movement Protocol in Promoting Regional Growth and Development in West Africa." *Amity Global Business Review* 13, no. 1 (2018).

³⁰ Vearey, Jo, Thea de Gruchy, and Nicholas Maple. "Global health (security), immigration governance and Covid-19 in South (ern) Africa: an evolving research agenda." *Journal of Migration and Health* (2021): 10-21

³¹ Apiko, Philomena, Sean Woolfrey, and Bruce Byiers. "The promise of the African Continental Free Trade Area (AfCFTA)." (2020): 1-21

1.5 Justification and Significance of the Study

1.5.1. Academic Justification

Regional economic communities are seen by the African Union, politicians, and international relations experts as methods for achieving free movement of a person's protocol in Africa. Only a few studies have looked into the implementation of the Protocol on Unlimited Migration of People in all of Africa's regional economic groupings. Accordingly, the lack of sufficient empirical evidence calls for studies that focus on all the regional economic communities. By limiting itself to EAC, this study will contribute to providing more insight into the Enforcement of the Agreement on Unlimited Migration of People in the eastern region of Africa.

Scholars have attempted to analyze the The similar market system is in the midst of being implemented. in the East African community. However, most of the existing studies have largely dwelt on the free movement of labor in the region. Although free movement of persons and labor are related, they are not similar, and hence the importance to analyze how Unlimited Migration of People in the community has been implemented. The findings of the study will help in addressing this lacuna of empirical evidence in the East Africa community. This will help in providing a holistic understanding of the concept of the Unlimited Migration of People the region.

1.5.2. Policy Justifications

The accompanying strategic arguments are addressed in this research. The increased urge to strengthen regional economic communities has led to increased attempts by policymakers to enhance the benefit that accrues from regional economic communities. Thus far, attempts to fully implement the protocol of unrestricted movements of individuals have not worked as intended,

suggesting ineffectiveness in the implementation process. This study will generate knowledge on challenges affecting the implementation, and through this information policymakers and practitioners will revise existing policies to make them more effective.

The success of the African Continental Free Trade Area (AFCFTA) is partly hinged on the full implementation of the protocol of unrestricted movements of individuals by the regional economic communities in Africa. Nonetheless, knowledge on the challenges affecting the realization of AFCFTA through the free movement of persons is still lacking. This study will contribute to the development of mobility policies that may contribute to the realization of AFCFTA goals and objectives.

1.6 Hypotheses

To achieve the objectives of this study and to provide testable variables to guide the type of data collected this study sets the following hypotheses.

- 1.6.1 The implementation of free movement of persons within regional groupings has not been fully achieved.
- 1.6.2 The execution of the EAC protocol on the unrestricted movements of individuals is undermined by the weak institutional and normative frameworks in Kenya.
- 1.6.3 Successful implementation of the EAC protocol on the unrestricted movements of individuals is undermined by political, economic, and institutional challenges.

1.7 Theoretical Framework

Neo-functionalism philosophy is used in the examination of the report's main concerns since it is appropriate and beneficial. In reaction to the founding of the European Coal and Steel

Community and subsequently the European Economic Community, Ernst Haas developed the idea in the late 1950s and early 1960s. Regional assimilation, as per this hypothesis, is an inherently intermittent and confrontational procedure, but wherein, under democratic and multidisciplinary recognition, nationwide authorities will become progressively entrapped in geographic imperatives and eventually wind up settling about their dispute by giving geographic organizations a broader scope and much more jurisdiction.³²

The earliest of the five underlying premises of neo(neo)functionalism is constrained rationality, which assumes that individuals are innately reasonable but that their objectivity is constrained in period and range. All kinds of uncertainty are available to reasonable agents, limiting their ability to anticipate occurrences and resulting in unanticipated decision-making outcomes. The second hypothesis is that the mechanism of imported choice may alter as a result of differential responses, socializing mechanisms, and the development of loyalties and personalities.³³ The third assumption is that the nature of policies is characterized by high and low politics in integration. The fourth assumption concerns government minimalism where the government only transfers sovereignty power when they don't have an option. The final assumption is on functional synergies assumes that policies or political interdependencies may exist between different state actors. This collection of hypotheses includes the perspectives that neo-functionalism uses to examine the integrating procedure: unintentional effects, path-dependency, as well as integrating phases.³⁴

³² Niemann, Arne, Zoe Lefkofridi, and Philippe C. Schmitter. "3. Neofunctionalism" In: Wiener, Antje/Börzel, Tanja A./Risse, Thomas (eds.): *European Integration Theory*, Oxford: Oxford UP, pp. 43-63."

³³ Polman, D. F. "Return to sender. Closing the cycle from domestic implementation experiences to the formulation of European legislation." PhD diss., (2020) 1-198.

³⁴ Nicoli, Francesco. "Neofunctionalism revisited: integration theory and varieties of outcomes in the Eurocrisis." *Journal of European Integration* 42, no. 7 (2020): 897-916.

This hypothesis will be used to examine the degree whereby the EAC participant states have followed the procedure of unrestricted movement of individuals in order to accomplish continental objectives. This is because the theory emphasizes that regional integration is bedeviled by various challenges. In addition, the transfer of domestic allegiance explained in the theory will be used to establish how the African union transferred the implementation of the protocol to the regional economic community such as EAC.

1.8 Research Design and Methodology

The information for this investigation was acquired and evaluated using both primary and secondary sources, as indicated in the subsequent paragraphs. A case analysis was used in the research. Research papers are a widespread and well way for doing investigation in the domain of worldwide politics. For social science investigators, case investigations are a prominent approach. The ability to produce in-depth information into a case is a big part of their attractiveness (individuals, groups, institutions, countries, etc). Research report research is commonly understood within a positivist epistemology defined by specific understandings of causation and underlying mechanisms.³⁵

1.8.1. Case Study

A case study is defined as an in-depth examination of a particular cause in order to comprehend a bigger group of situations (a population). Several cases may be included in a case study. Nevertheless, at some point, it became impossible to conduct a thorough investigation into those situations. A investigation is considered to be cross-case when the concentration of the investigation switches from the particular case to a sampling of instances. There is no clear line

³⁵ Cornish, Flora. "Towards a dialogical methodology for single case studies." *Culture & Psychology* 26, no. 1 (2020): 139-152.

between a research study and a cross-case analysis. The lesser examples there are and the more thoroughly they are investigated, the more a publication deserves to be considered for an attribution research study. Despite this, the investigation used a single/individual instance.³⁶

The case study research design exhibits certain advantages and disadvantages that require trade-offs when selecting the case study approach to use. Case study designs are useful in generating the theory-driven hypothesis, and as such their applicability to international relations studies has gained traction. Secondly, a case study generates more insights on a phenomenon and this is critical in providing more insights into the causal mechanism process. Although it may be lacking in providing stronger evidence on causal effects it compensates for this by explaining the causal mechanism.³⁷

Nevertheless, qualitative case study assessment has been criticized, with the most prominent complaints focusing on the intertwined concerns of methodological rigor, researcher partiality, and confirmability. In regards to the first issue, the conventional wisdom holds that "using a case study exonerates the researcher of any scientific problems." Others argue that the lack of formal methods for scenario research investigation makes methodological approach ineffective. The dependability and comparability of various kinds of individual analysis of the data collected is a second problem, which also involves construct validity difficulties. The issue of investigator objectivity is a real one, and it would only be meant as a technical indictment toward less structured and researcher-independent approaches.³⁸

³⁶ Ibid

³⁷ Newig, Jens, and Oliver Fritsch. "The case survey method and applications in political science." In APSA 2009 Toronto Meeting Paper. (2009): 1-18.

³⁸ Ibid

1.8.2. Data Collection Methods and Instruments

This study used both primary and secondary data

In summary, there are four types of primary source material in foreign relations. The very first collection of information is that which is gathered directly from the informants. Surveys, personal investigations questions, target groups talks, and in-depth conversations were used to accomplish this. Semi-structured and unstructured interviews provided the research main information. Purposive choice directed the respondents' choices depending on their understanding of the East African unlimited immigration of individual procedure, which was based on the non-probability criteria. Wherever feasible, interviews were performed via mobile interviews and face-to-face interviews.

The actual constitution, the subordinate group of material, was the most difficult for the investigator to acquire and read. Existing archival documents such as those stored in the well-established preservation laboratories or the domestic security repository, initial images including those in personal collections and library archives, first-person articles capturing an incident in the existing journal or mainstream press, legislative and regulatory files from the issuance agency such as international relationships of any state, legislative transcript; senate and house hearings. In the current study, the second category of primary data consisted of newspaper articles, government policy documents issued by the ministry of foreign affairs or East African community, and regional development. Records of parliament or senate proceedings was employed in the study.

Publications that have assembled compilations reproducing genuine materials in printed form; microform, or, most frequently, picture version for the World wide web, fall into the third type of

basic information resources. The research examined collections by the trademarks East Africa and Daily Nation (Historical) anthologies in this area. Reimaged information and interpretations of original materials make up the fourth type of primary source material. This information originated from TradeMark East Africa's documentation of the region's free movement of people. Secondary data constitute observations of various researchers, and scholars of the fields of international relations, migration studies, international development studies. Such data was collected from the library, academia, and online sources from reputable organizations dealing with the mobility of persons or labor in East Africa. Data was compiled from published materials especially using online journals, AU reports, international labor organization (ILO) reports, East African Legislative Assembly reports and World bank reports. Further investigations was done from the documents of international, regional, and sub-regional treaties, and conventions on the free movement of person protocol.

1.8.3. Data Analysis and Presentation

This report's research process was qualitative, with essential factors being investigated in naturalistic environments. Conceptual analysis was performed to identify the paper's research topics and examine the significant topics and relationships amongst them. Data was gathered from both primary and secondary resources, processed, and then integrated into the report's topics..

The various approaches used in the study generated qualitative findings that was presented through a theme schema of the findings. This was supported by verbatim and excerpts from various interviews that was conducted. Quotations from newspapers and other sources was used to support the findings.

1.9 Chapter Outline

This study was structured around the following five chapters:

Chapter One is an overview of the research since it presents the original study research topic and provides a basic backdrop to the data analysis challenge so that the goals, assumptions, and policies, as well as the study's academic relevance, are well understood. It also includes an empirical evaluation of the literature that is relevant to the study's goals. It finishes by outlining the study's conceptual and analytical foundation. **Chapter Two** delves deeper into the history of free movement in Africa, discussion on different regional approaches to regulating the movement of persons, and a comparative analysis of the different approaches employed by RECs.

The EAC as a territory has addressed the migration of people in **Chapter Three**. It provides a thorough examination of EAC Regulations that influence people's mobility in order to underline the importance of freedom of movement. Kenya's status as a regional superpower in terms of unlimited immigration will also be explored. **Chapter Four** expands on the ideas in **Chapter Three** by examining the obstacles that EAC's free movement of people has faced. The thesis is brought to a close in **Chapter 5**. In particular, uses the data to supply realistic suggestions for enhancing people's freedom of migration in the EA

Chapter Two

Implementation of the Free Movement of Persons within Regional Economic Groupings

Introduction

This chapter goes further into the history of free movement in Africa, including a study of various regional methods to control person movement and a comparative examination of the various techniques used by RECs. The chapter begins with a consideration of the existing legislative framework for controlling human mobility and then moves on to migration frameworks across various regional economic groupings. The chapter hopes to demonstrate that such frameworks exist at the international and regional levels as a result of this dialogue. This chapter lays the groundwork for the succeeding chapters' examination of various methods to the free movement of people.

2.1 International Laws on Movement of People

Internationally, despite requests for more consistency, the rules governing the rapid, globalizing, and diversified movement of people are scant and severely fragmented. Several international agreements address transnational migration of persons primarily and foremost from the standpoint of human rights. They allow for mobility inside states as well as travel across borders (emigration and immigration) In regards to human rights, the 1948 Universal Proclamation of Human Rights (UDHR) published by the Un Council is a statement of possible human liberties principles lacking a lawful effect. In numerous states, Article 13 of the Universal Declaration of Human Rights functions as the constitutional foundation for restricting people's independence of migration. In essence, the rule provides persons with the right to travel to and from their home nations without being hindered or restricted. There are no legally recognized rights to move or visit a foreign country in the international community, however, as a result of this status. The

sovereignty member states of the individual nations make the ultimate judgment on whether or not an individual is permitted to access neighboring state. This right of emigration is only available to citizens of the nation of origin who were born there. The 1966 International Covenant on Civil and Political Rights (ICCPR) is a follow-up to the Universal Declaration of Human Rights (UDHR) and, unlike the UDHR, has an enduring impact when a country has adopted and ratified the convention. One hundred and sixty eight nations around the universe have accepted the International Covenant on Civil and Political Rights (ICCPR)³⁹.

Section twelve of the International Convention on Civil and Political Rights states that, "Everyone legitimately inside the territory of a state should, within that territory, enjoy the right to liberty of movement and the freedom to choose their domicile, and shall also have the right to leave any country, including their home country." Incorporating this provision into the legislation constituted a significant advancement of a fundamental human right, as well as a vital component of the right to individual liberty. Whereas the freedom to travel is inalienable, it is restricted in depth and is controlled by Article twelve of the Universal Declaration of Human Rights, as are many similar personal freedoms (3). The International Covenant on Civil and Political Rights, like the Universal Declaration of Human Rights, does not affect a person's ability to travel freely to and from a foreign country. That right is granted only per the laws of each nation.

Due to the fact that they do not yet permit travel across jurisdictions, these laws are more restricted in their ability to regulate the migration of sovereign citizens outside of their boundaries than other kinds of regulations. They specifically state that individuals have the freedom to exit and re-enter their respective nations, but that they don't even have the permission

³⁹ Ibid

to join the jurisdiction of another nation. In effect, these principles allow for state-bound travel, cementing nations' dominance in restricting the entrance of migrants into their country. While sovereignty has its justifications, some states have grown too restrictive in terms of the internal rules they offer to their citizens. One instance is the difficulties to free movement of people in Africa, which will be examined later in the chapter.

Despite these broad restrictions on people mobility from a human rights standpoint, there has been little progress and agreement on rules governing people movement from a commercial or economic standpoint. From an economic aspect, just a handful of multilateral treaties control the easy passage of people throughout the world. In this regard, Panizzon points out that only 2 transnational treaties deal with workforce or service mobility: According to Panizzon, the. The eighteenth December 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families (ICPRMW), that also effectively addresses population (foreign employees) and even though has yet to be approved by a solitary developed sovereign state, and the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) are illustrations of multilateral cooperation which address such unique issues. Furthermore to this framework, the International Labor Organization (ILO) has a number of legitimately actionable Conferences related to migratory workforce security, including the International Labor Organization Convention on Migration for Employment (1949) as well as the International Labor Organization Conference on Foreign employees.⁴⁰⁴¹

⁴⁰ Koprić, Ivan, G. Lalić Novak, and T. Vukojicic Tomic. "Migrations, diversity, integration, and public governance in Europe and beyond." *Migrations, Diversity, Integration, and Public Governance in Europe and Beyond* (2019): 25.

⁴¹ Ibid

2.2 Continental and Regional Frameworks on the Movement of People

This chapter includes a greater description of the national or territorial approach to individuals migration, with a focus on the African Union including its constituent countries (AU).

2.2.1. The African Union

The two transcripts that might be useful in tracing the history of the effort to financially unite the African region are indeed the Lagos Plan of Action and the Constitution of the Organization of African Unity (OAU). The Africa Economics Communities Agreement (commonly referred to as the Abuja Protocol) was ratified in June 1991 as a consequence of this endeavor, creating the African Economic Union.. It is often recognized as Africa's most important treaty in terms of economic, social, and political integration since it came into force on May 12, 1994, and has been in existence ever since. Cross-border mobility of people is also a significant aim in the process of strengthening regional integration across the African continent.⁴²

People may move more freely thanks to this provision, which ensures admission at the most basic level and establishment at the most advanced level for those who meet certain criteria. Additionally, when skilled personnel assets from one Sovereign Nation are in increasingly scarce, they may readily migrate, integrate, and settle oneself in other Participating Countries, which would be a vital element in promoting local collaboration in downtrends. The AU offers two primary components which are primarily targeted on relocation to help accomplish such. Both texts in dispute are the African Common Statement on Immigration and Prosperity as well as the African Immigration Regulatory Frameworks . These guidelines don't really enforce any constitutional standards on African Union member countries, although they do provide

⁴² Garba, Dimas, and Wancelous Avong Alexander. "African Union's Single Passport and Free Movement: The Challenges." *Covenant University Journal of Politics and International Affairs* 9, no. 1 (2021).

recommendations for improving migratory control. These frameworks will be discussed in further detail further down the page.⁴³

2.2.2. African Common Position on Migration and Development (ACPMD)

The ACPMD is a non-binding policy declaration that emphasizes the important relationship that exists between migration and economic development. Eleven policy proposals are detailed in the document, to offer a comprehensive approach to human mobility, which is a critical goal in enhancing Africa's migration strategy. Policies that influence human mobility will be of particular importance to this research, and those that are related to migration and development will be of major relevance. The ACPMD structure is fairly substantial in terms of both its scope and its rules. In summary, the strategy declaration urges Individual Countries to integrate immigration in overall performance targets and to fight for the required budgetary supports to guarantee periodic movement.

2.2.3. Migration Policy Framework for Africa (MPFA)

The ACPMD is a non-binding policy declaration that emphasizes the important relationship that exists between migration and economic development. Eleven policy proposals are detailed in the document, to offer a comprehensive approach to human mobility, which is a critical goal in enhancing Africa's migration strategy. Policies that influence human mobility will be of particular importance to this research, and those that are related to migration and development will be of major relevance. The ACPMD structure is fairly substantial in terms of both its scope and its rules. In brief, the strategic statements pushes States Parties to integrate immigration in

⁴³ Ibid

their strategic goals and to fight for the required budgetary assistance to guarantee routine movement.⁴⁴

According to the MPFA, migration is critical to development, and members are encouraged to establish policies that regulate and harness migration for the greater good of the community as a whole. The African Union Committee resolved to modify the Migratory Policy Framework for Africa (MPFA) as well as develop a strategy of intervention for its execution as a consequence of the complexities of population movement and also the continuous transitions in statistical trends, resulting in the Migratory Policy Framework for Africa and Plan of Action (2018– 2030). The reformed MPFA is entrusted with advising Member States and regional economic communities (RECs) on immigration control, building on the accomplishments and issues of the former MPFA. The new MPFA highlights the significance of the interaction between economic growth, trade, and migration as part of a holistic strategy to deal with migration and trade in the context of globalization. The revised MPFA, for instance, recommends that regional and national accords recognize the growing importance of short-term mobility or personal mobility in the framework of international trade, and also contain steps to combat domestic smuggling.⁴⁵

Increased cooperation in the sectors of mobility and commerce across regional economic communities (RECs), on a regional and international foundation amongst African states, and between Africa and perhaps other regions of the earth, is also recommended. These remain the greatest important initiatives to implement in order to improve the SADC's mechanism for managing individuals mobility. The MPFA study, unlike the ACPMD articles mentioned above, doesn't really enforce any statutory requirements on Member States, while it does offer strategies

⁴⁴ Adeola, Romola. "The African Union Protocol on Free Movement of Persons in Africa: Development, Provisions and Implementation Challenges." *Afr. Hum. Rts. YB* (2019): 260.

⁴⁵ Dinbabo, Mulugeta F., and Adeyemi S. Badewa. "Monitoring migration policy frameworks, treaties and conventions for development in Africa." *Journal of African Union Studies* 9, no. 1 (2020): 23-49.

for improvement migratory administration. All of these platforms, as modern and straightforward as they are, helps to establish the stage for an united African wherein immigration and incorporation are constructively linked to the region's growth. Despite this, the guidelines, that are not lawfully enforceable, may not provide an organizational basis for ensuring that the content of its respective papers is followed. Or to put it another way, even if Members agreed to these guidelines, there would be no advice available to ensure that they were carried out correctly and consistently.⁴⁶ African Union members surpassed a declaration on Migration in 2015, which reaffirms the AU's commitment to selling mobility and integration at the continent at the same time as additionally recognizing the importance of migration in development, as well as the desire to combat both regularly and illegal immigration. chief a number of the commitments made via heads of country and authorities is to boost up the implementation of continent-wide visa-free regimes, as well as the operationalization of the African passport, which could first of all promote unrestricted movement of human beings, and the established order of the Protocol on free mobility of humans. A legislative framework has been set up via the African Union (AU) primarily based at the Abuja Treaty's Article 43 to create a unrestricted economic territory at the continent in addition to free movement of people, citizenship rights, and the freedom to set up organizations at the continent.⁴⁷

2.2.4. Agenda 2063 and migratory Policies.

The African Union Member States adopted Agenda 2063 in September 2015 as a result of the Abuja Treaty, which serves as a solid framework for addressing historical injustices (slavery, colonialism, apartheid, and so on) and achieving the continental goal of an integrated, prosperous,

⁴⁶ Ibid

⁴⁷ Edimo, Ruth Mireille Manga. "The African Union's Governance of Irregular Migration: Framed Policies, Deconstructed Meanings and States' Actions. (2019) "

and peaceful Africa, among other things. The African Regional Integrating and Prosperity Strategy establishes a foundation for extensive and expedited territorial cooperation and connectivity throughout the continent. The African Union's Mission 2063 emphasizes the necessity for unlimited immigration of Individuals across the territory in order to accomplish real unification and enhanced economy. Aspiration number two, for example, states this viewpoint directly, asking for "a politically united and linked continent built on Pan-ideals Africanism's and the vision of Africa's Renaissance. "This comprehensive aim is embodied in the concept of Africa as a region where unrestricted migration of individuals, money, products, and commodities leads to major improvements in commerce amongst African nations." The African Union has taken many elevated actions to implement its objectives, including the creation of a transcontinental trading bloc. A Provisional Agreement on the Unlimited Mobility of People, the Freedom of Settlement, and the Freedom of Incorporation was concluded in 2017 as yet another cornerstone approach to advance the program, complementing this ambition and the objectives of Article 43 of the African Union Agreement, which was published in 2017.⁴⁸

2.2.5. AU Continental Free Trade Area (AfCFTA) and Migratory Policies.

The African Union Member Jurisdictions met in 2012 for the 18th Regular Legislative meeting of presidents and Government of the African Union, during which they endorsed a choice to demonstrate a Continental open Trading Area (AfCFTA) by 2017, with negotiations to immediately start as quickly as possible afterwards . The AfCFTA will be the African Union's inaugural regional unrestricted market agreement. The African Continental Free Trade Area (AfCFTA) aims to create an unified regional marketplace for products and resources, and also unrestricted mobility of individuals and capital, to pave the way for a continental Trading Bloc to

⁴⁸ Aniche, Ernest Tooichi. "African Continental Free Trade Area and African Union Agenda 2063: the roads to Addis Ababa and Kigali." *Journal of Contemporary African Studies* (2020): 1-16.

be built more quickly. An extensive variety of measures are included in the AfCFTA, including rules on commodities trade as well as trade-in services; investment; intellectual property rights; and competition policy. According to Nshimbi, the vastness of Africa's economic landscape might serve as an incentive for a deliberate reform of African economies. The AfCFTA may provide Africa with a more secure basis on which to begin a renaissance, according to him.⁴⁹

In particular, the Treaty envisions in the initial round of discussions an indeterminate Convention on Economic cooperation which lacks explicit rules on the different types of resource providing, notably with consideration to the permanent mobility of human beings. Its mandate is similar to that of the GATS in that it regulates the exchange of goods and services, with a lesser emphasis on people movements. If the Protocol is followed strictly, it authorizes the rendering of services by natural persons from one State Party on the territory of another State Party, provided that the natural persons meet specific requirements.⁵⁰

One may argue that unlimited mobility of individuals is a key component of a free trade area and that this feature of the Protocol should be liberally controlled since the export of some services, such as financial services, needs individuals to be able to travel freely around the region. This, however, is not the case at all. A Supplement to the Convention was Creating the African Economic Community Pertaining to the Independent Migration of Individuals, the Privilege of Settlement, and the Freedom of Business, that was finalized independently to govern individuals migration on a larger scale than the Convention originally, was concluded. . There have been a variety of constraints which must be overcome in attempt to allow the migration of individuals, products, and resources throughout the continent, in contrast to the problems previously

⁴⁹ Bischoff, Paul-Henri. "The Politics of Regional Integration in Africa." In Oxford Research Encyclopedia of International Studies. 2021.

⁵⁰ Garba, Dimas, and Wancelous Avong Alexander. "African Union's Single Passport and Free Movement: The Challenges." Covenant University Journal of Politics and International Affairs 9, no. 1 (2021).

mentioned. The much more critical factor is the continent's lack of connectedness, and the reality that actual facilities in important regions of Africa should be built to allow intra-regional commerce and transit. The African Union Commission had received the instruments of ratification of the AfCFTA from 22 countries as of April 29th, 2019. As of April 29th, 2019, one nation, Zimbabwe, has received legislative approval but was still waiting for the African Union Council to submit their additional protocols. As per the African Union, the estimated population of allowed signatories lodged with the AU today is 37, paving the path for the AfCFTA to take operation on May 30th, 2019. The Treaty would come into operation 30 days after the requirement of 22 countries is achieved, whichever occurs first, according to Article 23 of the Treaty.⁵¹

2.2.6. AU Protocol Relating to Free Movement of People, Right of Residence and Right of Establishment

The Protocol of the African Union (AU Protocol) is a protocol that derives from the vision of the Abuja Treaty and is a component of the plan to implement Agenda 2063, discussed above in This chapter is intended to provide African citizens with the right to unrestricted mobility ,settlement and establishment. According to this Protocol, "free movement" refers to "the right of nationals of a Member State to enter and move freely in another Member State per the laws of the host Member State and to exit the host Member State per the laws and procedures for exiting that Member State." A first draft of the implementation roadmap is included with the continental Protocol. The Protocol shall be implemented in a phased manner, beginning with the least

⁵¹ Ibid

common phase, during which no visa will be needed, and progressing to the highest phase, which is the right of establishment, as stated above in Article 43 of the Abuja Treaty.⁵²

As a result, the Agreement helps to build an unified Continent wherein African citizens will be able to dwell and settle oneself in another Membership Country when immigration restrictions are lifted. Pursuant to the terms of this Protocol and relevant legislative action, citizens of a Sovereign Nation already have right to access, remain in, travel around independently within, and depart the jurisdiction of other Participating Country in accordance with the regulations of the receiving country. To make this a possibility, countries must grant citizens of other Participating Countries access to enter their territories for a period of 3 months without need for a residence permit or payment of any charges. In general, the freedom of settlement refers to the capacity of any African individual to start a company, trade, or operate for oneself in any African country, provided that they meet specific requirements. Residents of any African country have the freedom for citizenship, and under the provisions of the residency permit, they may be accompanied by their spouse and any dependent children they have.⁵³

Article 15 adds that the hosting country parties must give resident certificates, work authorization, or other necessary credentials or cards to residents of other Participating Countries who desire to live permanently or seek employment in the hosting country under the conditions of their migratory procedure. A significant point is that the mechanisms employed by host nations in the process of issuing residence permits are established in such a manner that residents have the right to appeal against any decision that denies them a permit or a pass. Therefore, services and labour will be able to migrate freely because African individuals who want to

⁵² Leshoele, Moorosi. "AfCFTA and Regional Integration in Africa: Is African Union Government a Dream Deferred or Denied?." *Journal of Contemporary African Studies* (2020): 1-15.

⁵³ *Ibid*

transfer their services would be able to do so without having to go through the time-consuming and onerous documentation system that is now in place.⁵⁴

2.3 Migration Frameworks in Africa and Beyond

Migration policies are central to any regional integration. This section discusses the migration frameworks in Africa and beyond.

2.3.1 Migration Framework in the European Union

The mobility of individuals, particularly to find a job, has been a constant trend across the European Union for some time. There have been several small-scale measures taken throughout the years that have culminated in the liberalized labour mobility system that is now in place. Example: The governments of Belgium, Holland, and Luxembourg (BENELUX) came up with an original proposal in 1948 to eliminate border barriers between the three countries. This was the first time this had been done. After a successful attempt in 1953, the Nordic Passport Union was established in 1954, allowing for unfettered travel and the abolition of border controls between the member nations of the union, which included Denmark, Sweden, Iceland, Norway, and Finland, among others.⁵⁵

It was then founded in 1986 by the Single European Act (SEA), which said that the EU should be broad and open with no barriers of any kind. This implied that the EU should be vast and open with no barriers of any kind. This was accomplished by the combination of four freedoms: goods, money, services, and individuals (see Figure 1). Initial interpretations of the right to free movement of persons focused mostly on employment. As Ruhs points out, job seekers, who are defined as EU citizens who move to another EU country to look for employment, were the

⁵⁴ Olayiwola, Wumi. "Governing the Interface between the African Continental Free Trade Area and Regional Economic Communities Free Trade Areas: Issues, Opportunities and Challenges." (2020).

⁵⁵ Boucher, François, and Johanna Gördemann. "The European Union and the Global Compacts on Refugees and Migration: A Philosophical Critique." *Interventions* 23, no. 2 (2021): 227-249.

principal beneficiaries of this freedom to migrate. It became clear at that moment that, to ensure the success of unlimited mobility of individuals, EU law needed to be comprehensive, allowing employees' dependants the same flexibility to migrate as employees themselves. Following that, the unlimited mobility of individuals continued to expand, with a growing number of individuals who were not just engaged in job searching benefiting from it. A watershed moment in European Union history occurred in 1992 when the Treaty of Maastricht officially established Union citizenship. This marked the beginning of the direct attachment of numerous free movement rights to the status of EU citizens and marked the beginning of the European Union's modern history. Anyone with the category of European Union resident, essentially means they are an assimilated individual with nationality in one of the European Union's twenty-eight participating countries, has the opportunity to migrate and seek work in any another European Union participant country. Article 18 of the Agreement Established the European Community (currently Article 22 of the Agreement on the Operation of the European Union) creates an universal freedom to openly travel and stay inside the Eu Countries, and it acts as the legal underpinning for this right.⁵⁶

The Governing Cabinet passed legislative provisions in the regulatory regime (EC) No 562/2006 in 2006, which outlined the legislative framework of the European Union and formed the European Commission. Among the many provisions of this Regulation is the Schengen Borders Code and which became effective in 1995. By emphasizing that a single region without internal limits was required to ensure the free movement of individuals, in particular, the Schengen Convention's provisions were either enlarged or repealed by the Code. Italy declined to repatriate but instead granted temporary authorization to over 20,000 Tunisian people who had sought to

⁵⁶ Ibid

enter the EU illegally from Tunisia in 2011. The country's commitment to human rights was tested in 2011. However, the gradual restoration of border controls has the potential to disrupt the EU's integrationist route forward. Reevaluating the Schengen Agreement necessitates emphasizing the need for very robust border security along the Schengen Area's external borders to conduct a thorough assessment of the agreement.

2.3.2 Brexit and migratory frameworks

When looking at the European's Union's commitment to unlimited immigration, it appears clear that, in contrast to protection and uncontrolled immigration concerns, genuine movement of Individuals within the European Union constitutes a danger to state independence in several nations. The EU policy limits the authority of the state to impose control over the individuals who enter and reside in the European Union, according to the United Nations. As seen by the United Kingdom's statement of its wish to renegotiate conditions with the EU in order to quit the EU under Article 50 of the Lisbon Treaty, which was spearheaded by its Prime Minister David Cameron, this line of thought may be found in other countries as well. Another of the key motivations for the British Monarchy's choice to exit the European Union, as Gordon noted, was the need to re-establish national independence in the country (or Brexit, as it is more often known). The United Kingdom will restore part of its independence as a result of its exit from the European Union, which implies that, for the very first time after joining the EU, it will never be forced to apply EU legislation inside its national systems, nor will European Union law receive priority above domestic laws in the UK.⁵⁷

⁵⁷ Noja, Grațîela Georgiana, Mirela Cristea, Petru Ștefea, and Ciprian Panzaru. "Challenges and Perspectives of International Migration in Europe within the Brexit Framework." In *Uncertainty and Challenges in Contemporary Economic Behaviour*. Emerald Publishing Limited, 2020.

2.3.3 Economic Community of West African States (ECOWAS)

As a frame of comparison, an in-depth investigation of the Economic Community of West African States (ECOWAS) will be done. In 1979, they drafted an Agreement on Independent Migration of People, Freedom of Settlement, and Settlement that covered to the whole African region. The corresponding additional regulation reflects participant nations' willingness to bring unregulated intra-regional mobility of individuals at the centre of the geographical connectivity procedure, and enables as a tribute to the 1979 Proposal's achievement by simply placing this willingness at the top of the list of the local connectivity procedure. In essence, the Economic Community of West African States (ECOWAS) is the regional entity within Africa with the greatest depth of competence in ensuring the unrestricted mobility of individuals, owing to the very long history that it has had in this area of expertise. Part of this chapter will look at people's freedom to move about in their communities. It will also look at challenges that the community has encountered throughout the process of implementing its policies.

2.3.4 Implementation Challenges of the Protocols on Free Movement of People in the Economic Community of West African States

A dispute resolution system is essential to enable the best possible implementation of the above-mentioned intra-ECOWAS migration rules in the case of controversies amongst participating nations about the interpretation or application of treaty, protocol, or regulation provisions. According to Article 7 of the 1979 Protocol, if an equitable solution cannot be established via direct negotiation between the parties, a dispute may be brought "by one of the parties before the Community tribunal, whose judgment is final and without appeal." The amended Treaty of 1993 takes another step toward assuring integration by providing for a hearing before the Community Court of Justice whenever a solution cannot be achieved. An administrative framework aimed at

ensuring compliance with intra-regional migration has been established under the auspices of the Economic Community of West African States (ECOWAS). Apart from this monitoring body, a slew of additional organizations based on the 1975 Treaty have been established to monitor the execution of the agreement's provisions on unlimited mobility of individuals, resident rights, and establishment rights. Despite the fact that several pieces of legislation have been enacted to address the issue, how effective have they been in guaranteeing people's freedom of movement? The Economic Community of West African States' Free Movement Agenda has achieved remarkable strides. Despite the fact that the Protocols are vast and well-structured, they are not without implementation difficulties.⁵⁸

There has been some discussion on how many residents of the ECOWAS region are ignorant of the Protocol. Residents are particularly susceptible to harassment and extortion at border crossings while seeking to pass into nearby sub-regional states as a result of this lack of awareness of the situation. As previously indicated, the Protocol is planned to be executed in stages over a fifteen-year period, with the first step commencing immediately. Phase I, entitled "Right of Entry," became operational in 1980. ECOWAS citizens who travel inside the region no longer need to get a visa, and they have automatic entry and travel privileges across the region for a period of ninety days. For citizens of member countries, entry visas have been largely removed throughout this step of the process. In the instance of Adepoju, only seven of the fifteen ECOWAS member nations have issued him with the necessary travel authorization: the Gambia, Burkina Faso, Guinea, Ghana, Nigeria, Niger, and Sierra Leone, as well as the United States.⁵⁹

⁵⁸ Ibid

⁵⁹ Yeboah, Thomas, Leander Kandilige, Amanda Bisong, Faisal Garba, and Joseph Kofi Teye. "The ECOWAS Free Movement Protocol and Diversity of Experiences of Different Categories of Migrants: A Qualitative Study." *International Migration* 59, no. 3 (2021)

At its conference in Abuja in 2000, the Authority of Heads of State and Government of the Economic Community of West African States (ECOWAS) produced a single ECOWAS certificate, modeled just after European Union passport and featuring the ECOWAS logo on the rear page. Nationality identities shall be utilized in combination with ECOWAS certificates for a five-year transitional term while ECOWAS passports were rolled in and grew increasingly available. Such passports are still to be granted by the greater part of Participating Countries. These freedoms, particularly the second or third phases, appear to be being inadequately enforced in the sub-region as a result of the area's governmental and financial uncertainty, as per Bolarinwa's analysis. "Progress has been stymied by the sub-regional economic crisis of the 1980s, as well as by widespread chronic dispersion resulting from the Liberia and Sierra Leone conflicts in the 1990s and early twenty-first century," she adds. According to Boulton, "the basic disadvantage of these enormously beneficial features in the free movement protocols is that they are either unrecognized or unutilized." His theoretical position is that all three steps have been completed and that the rights described in the free movement protocols have been incorporated into the local legal system. Despite this, it should be noted that only the first of three levels has been finished in its entirety. Another issue that has arisen as a result of the Protocol's implementation is the lack of effective procedures to regulate criminal infiltration, border officers' warped corruption, disparate and inconsistent national laws, policies on migration and labor, as well as policies on migration and labor that are at odds with regional laws.⁶⁰

⁶⁰ Akhigbe, Oseahume Allwell. "The ECOWAS Protocol on Free Movement and Implications for Border Security Management of the Nigeria-Benin Borders." *Ibadan Journal Of Peace And Development* 10, no. 1 (2020): 43-55.

2.3.5 Movement of People in The Southern African Development Community (SADC)

Ever since end of the nineteenth century, whenever commercial recovery switched increasingly towards to the mining companies, Southern Africa has been acknowledged as a region of irregular immigration. Southern African countries have been exporting and accepting undocumented laborers in reaction to the current situations ever since arrival of labor emigrants to operate on the Kimberley mineral deposits, largely from contemporary Zimbabwe, Lesotho, and Mozambique.. Zimbabwe and Zambia have seen an increase in mining and commercial agricultural operations, resulting in an inflow of unskilled labourers from other nations.⁶¹

Several initiatives have been launched to give people the freedom to move around, but little progress has been made. According to the International Labor Organization, people from the Southern African Development Community (SADC) earned the opportunity to unilaterally come, remain in, and organize oneself in a Participating State other than their own in 1995, when the SADC accepted a draft Protocol on the Free Movement of People (ILO). While the Protocol was not implemented, South Africa, Namibia, and Botswana expressed objection. A revised agreement on the promotion of migration flows was agreed in 2005, replacing the preliminary agreement from 1995. Only six nations have adopted the Agreement on the Assistance of the Mobility of People, which has been confirmed by at least a dozen nations. To put it differently, every Participant State's viewpoint on movement in the territory, as well as their immigration strategy, varies from others..⁶²

⁶¹ Mlambo, V. H. (2020). Consolidating Regional Integration Through a Free Movement Protocol: The Quest for Collective Development in the SADC. *African Journal of Governance & Development*, 9(2), 455-471.

⁶² Ibid

2.3.6 Protocol on the Facilitation of Movement of People of 2005

A Agreement on the Assistance of Individuals Transportation (hence referred to as the Facilitating Convention) was formed as a follow-up legislative document to the Unlimited Immigration Guidelines upon its formation. It is currently the most important legislative mechanism in place to govern persons migration within the Southern African Development Community. The Facilitating Protocol was developed as a pledge to assist the African Union's (AU) initiatives to ease unlimited immigration across the region and to redress inequities in large demographic movements within the SADC area.. It was a specific goal of the Protocol on Facilitation to develop policies that would gradually reduce barriers to people's movement from and within the area in general, as well as between and within the territories of the States Parties.⁶³

When it comes to implementing the Protocol's provisions, it stipulates that the 'priorities of this Protocol will be set by the Strategy for Deployment, that will be concurred on by the Contracting States 6 months following the date of this Protocol's signing by at least nine Member States.' This clause, once it becomes enforceable, creates a great deal of uncertainty about the course of events in the following years. A major concern of the Member States when they discuss regional policies is how those policies will be implemented, including the costs and procedures that will be involved in putting them into effect. With no concurrence on a Strategy for Deployment, to properly implement the Protocol, reaching a consensus among the Member Nations on what course of action to take will remain a pipe dream for the foreseeable future. A draft Strategy for Deployment, that the Member States can evaluate throughout the ratification process will be beneficial in terms of streamlining the process and providing some assurance that the framework

⁶³ Lenaghan, Patricia, and Victor Amadi. "Advancing regional integration through the free movement of persons in the Southern African Development Community (SADC)." (2020).

will be followed through. The African Continental Free Trade Area (AfCFTA), that includes an Agreement on the Freedom Mobility of People, the Freedom to Dwelling, as well as the Freedom to Settlement, has been negotiated and approved by a variety of Indigenous nations, notably Ethiopia and Kenya.⁶⁴

The SADC Facilitation Protocol also calls for the harmonization of movements legislation and practices across member states of the SADC through revisions, intending to bring them into compliance with the Protocol's objectives. According to the second proposal in the Facilitation Protocol, three stages of implementation should be carried out, with no specific timetable for the completion of each stage being specified. While similar to the previous Free Movement Protocol in that it is implemented in phases, it does not grant residents of Member States the "right to admission, residence, and establishment" that was granted by the preceding Free Movement Protocol, which is a significant difference.⁶⁵

2.4 Challenge towards achieving Movement of Persons in SADC

Following the completion of the framework, the first step is to reach an agreement on the text of the Agreement, which will then be followed by ratification of the Agreement by the parties. This is a problem that affects everyone in the Southern African Development Community. According to the Regional Indicative Strategic Development Plan, the SADC hoped to achieve the status of a shared market by the year 2015. (RISDP). A Common Market is defined as a Customs Union with standardized laws and regulations governing the unrestricted mobility of productive factors such as human beings, workers, services, and capital, and this is what we mean by the term "Common Market." This level of integration can only be achieved if all of the member countries

⁶⁴ Ibid

⁶⁵Gumede, Vusi, Samuel Ojo Oloruntoba, and Serges Djoyou Kamga. "sadc and ecowas: Comparative Perspectives." In *Regional Integration and Migration in Africa*, pp. 147-162. Brill, 2020.

work together as a team. Promoting the SADC integration agenda amongst local entrepreneurs is vital to ensure that Member States gain from it; however, the Member States will certainly recognize that their national interests differ from one another for them to reap the benefits of integration. Because Botswana, South Africa, and Namibia chose to ignore the Protocol on the unrestricted mobility of individuals following its drafting to protect their national interests, the Southern African Development Community decided to abandon the Protocol (SADC).

This denial was predicated on the notion the region wasn't prepared for "free movement of persons," which was based on the disparity in economic conditions between the Member States. In the context of the Southern African Development Community (SADC), this is a legitimate concern that is relevant given South Africa's significant economic influence in the region, perhaps second only to Namibia and Botswana, according to some estimates. In Solomon's opinion, one of the most significant impediments to regional integration projects in developing nations is the tendency of workforce and investment to move to the more developed countries in the area. Many variables play a role in this, including increased economic infrastructure and a bigger supply of employees who are acclimated to the rigours of manufacturing in the hegemon's industries in the area.

A major source of concern for South Africa and other regional economic powerhouses at the time was the above-mentioned issue. The argument was straightforward: allowing an area with no internal border control would result in a large influx of migrants into their respective countries, according to the argument. It was ultimately decided on a more watered-down version of the language in the form of a draft protocol to be used to facilitate the movement of people (hence referred to as the Facilitation Protocol). The terms "open borders" and "facilitating of moving" have indeed been altered in the Facilitation Agreement, suggesting a higher level of

political engagement amongst Participating Countries to promote full-scale human movement. It varied from the Agreement on the Unlimited Mobility of Individuals in that it committed practically all freedoms (including such passport-free travel, residency, and settlement privileges) to national legislation whilst urging governments to create multilateral arrangements to guarantee unlimited immigration beyond boundaries. A real intention to handle protection through international treaties and federal law, as the Convention mandates. The Protocols also demonstrates a genuine incentive for safety administration through international treaties and federal law, as stated by the Convention, and also sincere appreciation for independence.⁶⁶

Mulaudzi characterizes the SADC as a statist organization, claiming that it leaves it up to individual countries to determine the extent to which they should integrate. In other words, the constant rejection of the notion of free mobility by an economic superpower such as South Africa is what Oucho and Crush are referring to when they say that the particular within SADC is the rejection of free mobility by an economic superpower such as South Africa. "The current status quo demonstrates that sovereignty will continue to predominate there in face of insufficient institutional capability at the Southern African development community level, as well as an authentic preference for the inclusion of labour markets and security management through bilateral agreements," Segatti writes in his article. It is a diverse community with persistent and growing socio-economic gaps across its member countries, which is represented by the Southern African Development Group (SADC). Such economies are unable to integrate, and this creates a difficulty particularly when stronger economies such as South Africa wind up

⁶⁶ Deda, Rest Zororo. "Deeper Regional Integration in the southern African Development Community (SADC): Intra-Regional Migration as the building force." PhD diss., University of Pretoria, 2019.

imposing the terms of reference and operational procedures to impoverished and less developed countries of the regional grouping, according to Mapuva.⁶⁷

Although this is accurate, while considering the region's diversity and looking at both ends of the economic scale, from the destitute to the wealthy, the results are ambiguous and contradictory. According to some estimations, unrestricted migration would add to the stress on the socioeconomic infrastructure of upper-middle-income nations such as Botswana, South Africa, and Namibia, which are already facing substantial issues. When dealing with social issues such as social welfare, security, and xenophobia in these countries, the political sphere will be put under even more strain as a result of these developments. Increasing brain drain immigration from low-income nations like Malawi and Zimbabwe to elevated states in the area will be worsened by private citizen mobility, ultimately entrenching the state's underdevelopment. As per the Southern African Development Community, unrestricted mobility of people would continue to be a concern as far as some nations prosper while others struggle (SADC). This particular difficulty has manifested itself in the adoption of a protectionist strategy toward the mobility of people, rather than the development of a more collaborative approach to the mobility of people. As Segatti argues, "as far as migration issues are considered, the present current state of affairs suggests 2 variables: the low level of attention attributed to migration concerns by States in the area, and a paucity of credibility between them on the subject."⁶⁸

In the opinion of Frayne and Segatti, the current policy discourse on migration is marked by a high degree of defiance, which indicates a lack of unified stance on the major contribution of

⁶⁷ Matsvai-Mutsau, Christina. "Challenges to the free movement residence and work rights of foreign migrant workers in South Africa and Kenya: a comparative study." PhD diss., University of Pretoria, 2018.

⁶⁸ Vhumbunu, Clayton Hazvinei, and Joseph Rukema Rudigi. "Facilitating regional integration through free movement of people in Africa: progress, challenges and prospects." *Journal of African Union Studies* 9, no. 2 (2020): 43-64.

unrestricted mobility of workforce in lessening brain drain, and also a paucity of political will to nudge the process of free movement of individuals forward. Most probably, this will continue to happen till economic equality has been attained or until a general change in public view of migration to one of opportunity rather than one of difficulty or as a cause of economic suffering has taken place. As previously said, economic disparities remain inside the EU and ECOWAS, but they are less evident and have not so far had an impact on their will to integrate. The conscientious, simplistic, quasi, gradual approach that was nudged thru the UN General Assembly more than a decade after the Protocol's adoption has failed to bring the Member States together. Because of historical inequalities and the questionable consequences of present policies, Southern Africa needs a new strategy for migration management to improve sustainable development and regional integration.⁶⁹

⁶⁹ Mlambo, Victor H. "Consolidating Regional Integration Through a Free Movement Protocol: The Quest for Collective Development in the SADC." *African Journal of Governance & Development* 9, no. 2 (2020): 455-471.

Chapter Three

The EAC Common Market Protocol: An Analysis of the Free Movement of Persons

Introduction

The previous chapter was able to delve deeper into the history of free movement in Africa, provide a full overview of several regional techniques to restricting people's mobility, as well as a comparative study of the various approaches used by RECs. This chapter will now look at how the EAC as a whole has dealt with population mobility. It gives a basic overview of the region's common market. It also includes a look at the EAC's regional integration and freedom of movement of people. In addition, the chapter will offer a full description of the present framework for free movement of individuals. Finally, the chapter examines the state of free movement of individuals in the EAC, as well as the potential for implementation.

3.1 History of Common Market in the Region

The region has a long background of possessing a discordant common marketplace practices. Partnership between the East African Community member countries has an ancient legacy extending back over one hundred years ago. Burundi, Rwanda, and Tanganyika were just a single entity (Germany Eastern Africa) mostly under European administrative control from 1884 until 1919. Throughout Britain foreign domination, Uganda and Kenya were distinct countries. The collapse of German sovereignty in World War I altered the territorial boundaries of German East Africa. Following Belgian colonial administration, several regions have been severed from the region and created independent countries, dubbed Burundi and Rwanda.⁷⁰ The remainder formed Tanganyika (eventually Tanzania republic) during British authority, originally as a

⁷⁰ Shiraku, Mutende R. "A Critical Analysis of the Implementation of Migration Law and Regulations in East Africa: The Case of Regulations on Free Movement of Persons." PhD diss., University of Nairobi, (2013): 1-115.

League of States command and then as a United Nations sovereign colony. In summary, with the Versailles Agreement of 1919, that required Germany must cede every one of her international possessions, the triumphant nations split the former German territories amongst themselves. Four components of common market inclusion might well be identified by looking at the state's past growth.⁷¹

Pre-colonial African societies were also not structured around nations and tribal groupings in particular. Collaboration became increasingly essential over rivalry as their personalities as well as everyday dialects faded into one another. Everything altered immediately European colonial power arrived in Africa. At the desire of a chosen explorers in Britain, Germany, or France, they created borders throughout the world at own pleasure primarily to serve their sovereign ambitions and pleasure. Researchers also grouped African inhabitants, putting them under tribal groups and developing an unique ethnographic blueprint to depict the boundaries of every group. They only needed readily controllable, recognized devices.⁷²

The initial chapter of regional cooperation commenced on 1895 with the development of the Ugandan rail line, which originated around the coastal area of Kenyan, Mombasa and connected both countries of Kenya and Uganda. Since uganda had formed official rules along with immigration agreements with Kenya for Mombasa to remain the Custom Collecting Headquarters, it established national foundation enabling the initial development of a joint marketplace linking Kenya and Uganda in 1900. By 1905, both nations adopted identical currencies (the Eastern African Shillings). As a result, Kenya and Uganda successfully completed all major phases of inclusion , notably (a) administrative partnership, (b) single

⁷¹ Ibid

⁷² Ouma, Patricia. "Stereotyping and regional integration in the East African community: Challenges and opportunities." In *Intra-Africa Migrations*, pp. 106-125. Routledge, 2021.

marketplace, and (c) currency coalition.⁷³ Since both Uganda and Kenya had been colonized by the Britain, collaboration amongst the two nations had been greatly fostered. Tanganyika (formerly German East Africa) remained, nevertheless, within Germany administration at the moment thus could never readily be included in such a British partnership.⁷⁴

The next stage of the common market began following Germany's downfall in the first world war, this ultimately resulted in Britain taking control of the area. Having Tanganyika as part of their Colonial monarchy, the British objectives would be effectively upheld. As a result, Tanganyika became incorporated into the existing cooperative agreements. Tanganyika signed international customs unification agreement in 1922. It had just joined the Postal Community as well as the unrestricted interchange of domestically sourced commodities in 1933, and the Trade Agreement linking Tanganyika, Kenya, and Uganda were formed in 1934.⁷⁵

The Convention for Eastern African Partnership, signed by Kenya, Tanzania, and Uganda in 1967, established the third transitional period of the common market. The Common Market Commission as well as the Common Market Judiciary were two of the most important trading bloc institutions. The functioning of such a trading bloc was heavily impacted by past events, that led to Kenyans leading the way and reaping significant advantages through the trade agreement. Uganda profited as well, whereas Tanganyika profited the lowest. These disparities

⁷³ Trouille, Jean-Marc. "Introduction—A journey towards regional integration." In *The East African Community*, pp. 1-12. Routledge, 2021.

⁷⁴ Gastorn, Kennedy, and Wanyama Masinde. "The EAC Common Market." In *East African Community Law*, pp. 285-292. Brill Nijhoff, 2017.

⁷⁵ Ng'ingo, Goodluck Andrew. "Assessment of the Implementation of EAC Common Market Protocol on Free Movement of Labor in Tanzania." PhD diss., Mzumbe University, 2019: 1-158

in compensation were one of the factors which contributed to the breakdown of the single marketplace in 1977, having slowed the commercial progress of certain countries.⁷⁶

Following the sovereignty of Tanganyika (1961), Uganda (1962), and Kenya (1963), there had been a strong desire, particularly among Tanganyika's citizens, to form a governmental federalism, a concept rooted in Pan-Africanism. Tanganyika desired to expand on the phases of incorporation that had previously been accomplished, such as the trading bloc, single marketplace, and shared currency, as well as establish a democratic republic. Tanganyika was also willing to postpone its sovereignty for a whole season in order to allow Kenya and Uganda to form an Eastern African Confederation. As a result, a Proclamation for the Formation of a Political Association were adopted in 1963. According to Nyerere, the President of Tanganyika,:

It would seem rather simple to form a confederation comprising of Kenya, Uganda, and Tanganyika. They now possess a multilateral trading system and the Common Services Association, that has its own Centralized National Parliament and an Administration comprised of the three countries' Prime Ministers. This is really the core through which a partnership grows organically..

Unfortunately, difficulties over the concept of a democratic confederation prohibited the federation from being established, and the Eastern African Cooperation had been established subsequently. Separation of governmental authorities, nationality, borrowing privileges, and theoretical frameworks are all areas of contention. In any case, Uganda's Chancellor, Honorable. Apollo Milton Obote, played a key role in the association's dissolution, believing that Uganda would be on the verge of extinction. Furthermore, though it seemed rather early to aspire for

⁷⁶ Rauschendorfer, Jakob, and Anna Twum. "Unmaking of a Customs Union: Regional (Dis) integration in the East African Community." *World Trade Review* (2020): 1-12.

a confederation, citing the challenges of federation as well as the reality that most previous phases of incorporation had not been people-centered and done in a methodical and progressive manner.⁷⁷

The current Common Market is the fourth stage, built on the ruins of the now-defunct East African Cooperation, which collapsed in 1977. Between 1967 and 1977, the East African Common Market (EACM) and the Central American Common Market (CACM) were widely regarded as the two most financially interconnected sectors among the lowest industrialized countries. The East African Common Market was viewed as a more complete trade bloc with deeper commercial policy integration, whereas the CACM was viewed as a more liberal trading zone.⁷⁸

3.2 Regional Integration and Free Movement of Persons in EAC

A large majority of current territorial agreements seek for total (or full) unrestricted mobility of persons in the context of a Common Market (or Solitary Financial Zone), which includes the unrestricted transfer of products, commodities, investment, as well as workforce. The EAC is a well-known illustration of a strategy intended to allow residents in the area to roam freely. The EAC society's foundational leaders had not envision widespread unrestricted mobility at initially, but rather prioritized the industrial populace, which would subsequently be gradually expanded to all types of individuals. As a legislative and economical procedure, territorial inclusion entails the transfer of authority from the country to a regional body. The above dynamics generally imply a shift of authority beyond the government to the regional community. Likewise,

⁷⁷ Ng'ingo, Goodluck Andrew. "Assessment of the Implementation of EAC Common Market Protocol on Free Movement of Labor in Tanzania." PhD diss., Mzumbe University, 2019: 1-158

⁷⁸ Nita, Sonja. "Regional free movement of people: The case of African Regional Economic Communities." *Regions and Cohesion* 3, no. 3 (2013): 8-29.

unrestricted mobility of individuals produces unique processes that nations must adjust to. As a consequence, both decentralization or liberalization necessitate a rethinking of conventional self - government notions. This is reflected in the CMP appendix, which asks for the compatibility of current state legislation with the unlimited immigration of individuals agreement in order to promote and enhance unrestricted movements of workers.⁷⁹

Regional economic cooperation is difficult to achieve, but it offers a large benefit. The establishment of the Common Market is aimed at achieving faster industrialisation. Improving the flow of operations and money, removing impediments to the flow of commodities, particularly strengthening the freedoms of incorporation or residency which brings the area nearer to realizing its vision. Domestic trading and economic obstacles may be reduced more effectively via unrestricted mobility of people, that can also assist EAC enterprises attain economies of scale or improve overall productivity, bringing the territory nearer to a common target for foreign investment.⁸⁰

The elements of territorial connectivity and movement have been at the core of this transition. In 2016, the East African Community registered \$3.1 billion in intra-regional industrial communities commerce, whereas the Inter - governmental Authority on Development (Igad) registered \$2.5 billion, as per an United nations conference on trade study from 2019. While the reduction of trading restrictions may be a stimulus of commerce for globalisation, immigration seems to have a demonstrable relationship to greater cross-border trading, since immigrants acquire commodities from both their domestic and foreign states. Migrants generally help to

⁷⁹ Ibid

⁸⁰ UNCTAD. East African Community Regional Integration: Trade and Gender Implications (2018): 1-81

boost tourism and are important cross-border businessmen. Female's and teenager's empowerment is proven to be a significant motivator of mobility.⁸¹

It's been noted that enhanced migration and unrestricted transfer of people help overall economic prosperity by decreasing impoverishment as well as the jobless rates amongst young. This implies that regulations for people movement within the territory, such as those championed mostly by African Union's African Continental Free Trade Area (AfCFTA) contract, the Eastern African Community's Common Marketing Protocol, as well as the Multilateral Jurisdiction on Development's Unlimited Immigration Guidelines, are critical to the state's or continent's economies' continued relocation and mobility-fueled modernization. These help to develop employment for a community that is expanding and becoming more younger.⁸²

The relevance of multinational commercial cooperation has increased. The EAC is an example of a fresh attempt at incorporation. The EAC aims to promote financial progress and stability. It will be accomplished via globalization and international productivity. As a result, the workforce management sectors is a vital element of integrating development, as regional prosperity is dependent on labour marketplace effectiveness equality.⁸³

In order to achieve intra - regional trade, unrestricted mobility of people is essential. This not only helps to make commercial operations and possibilities more accessible, but it simply offers the ability to distribute personnel resources and expertise more successfully as well as profitably when it was most required. To rectify apparent and actual disparities in the employment sector, this is required. The work force inside the EAC is often characterized by unusually significant

⁸¹Ibid

⁸² Tröster, Bernhard, and Eva Janechová. The long journey towards Pan-African integration: The African Continental Free Trade Area and its challenges. No. 31. ÖFSE Briefing Paper, 2021: 1-16

⁸³ UNCTAD. East African Community Regional Integration: Trade and Gender Implications (2018): 1-81

percentages of working population unemployment. The percentages of idleness indicate a working demographic which is not employed. They are not employed, unemployed, or on the lookout for work. Effective and beneficial integration is predicated on the availability of timely and dependable labor, which can only be realized through free movement of people.⁸⁴

3.3 Free Movement of Persons Framework in the East African Community

The common market provides the framework for unlimited individual mobility in the EAC. On July 1, 2010, the East African Community Common Market opened for business. The serious talks for the Common Market started in April 2008 and ended in November 2009, when the East African Community Leaders of Countries adopted the Agreement on the Development of a Common Market. By the end of July 2010, every Partnership Country has finished their certification procedure. A common market is a system in which participant or associate nations of a regional development association function as a common marketplace for products, services, investment, and employment, with shared revenues and trading rules. Initially, liberation of commerce and mobility guarantees that every type of manufacturing conducted in the neighborhood will strive in the industries which satisfy it greatest; and furthermore, it manages to guarantee that, where there is an opportunity in massive manufacturing of a consumer good, it would be manufactured inside one or a few locations, again for entire neighborhood, rather than being manufactured on a micro level in one or a few locations, for the entire territory.⁸⁵

The implementation of the protocol, therefore, kicked off the moment the protocol came into force in July 2010. Part of the protocol consists of regulations governing various aspects of the Common Market Protocol. These regulations were are contained in annexes I-VI of the protocol.

⁸⁴ Ibid

⁸⁵ Ibid

These annexes implement various provisions of the protocol. Some of the provisions were to be implemented immediately from 2010 the time when the protocol became effective whereas other provisions were to be progressive.⁸⁶Article 16's provisions on free movement of services and capital were among the measures that would be gradually implemented. For example, Annex I regulations on free movement of persons implement Protocol provisions in article 7; free movement of persons, 8; standard identification system, 9; travel documents; and Annex II regulations on free movement of workers implement Protocol provisions in article 10; free movement of persons, 8; standard identification system, 9; travel documents..⁸⁷

Regulations of rights of residence in Annex IV and rights of establishment in Annex III implement articles 13 and 14 of the protocol. The primary goal of such rules is to "guarantee that the Member Countries execute the Agreements in a comparable manner and that, to the degree practicable, the procedure is visible, responsible, equitable, reliable, as well as compatible with the System's requirements. These regulations regulate the scope of application, procedures of acquisition and denial of various permits, the procedure of treatment of citizens of East Africa, and related issues directly concerning migration."⁸⁸

Member Countries are required under Articles 5(2) of the Agreement for the Creation of the East African Community (the East african community Agreement) to develop a Trade Agreement, a Common Market, a Currency partnership, and, eventually, a Democratic Confederation amongst oneself. After the Trading Bloc, that was accomplished in 2004 by the EAC Agreement on the Customs Unions, the Common Market is the next level of unification.

⁸⁶ Kosmac-Okwir, Baker. "The Legal Challenges and Constraints affecting the Implementation of The Common Market Protocol on The Movement of Labour Within The East African Community: A Case Study of Uganda." PhD diss.,Islamic University In Uganda, 2014: 1-156

⁸⁷ Ibid

⁸⁸ Shiraku, Mutende R. "A critical analysis of the implementation of migration law and regulations in east africa: the case of regulations on free movement of persons." PhD diss., University of Nairobi, (2013): 1-115.

Chapters 76 and 104 of the East African Community Treaty provide the cornerstone of the existing Common Market. According to Clause 76 of the Agreement, "a Common Marketplace should be initiated amongst Member Countries." There should be unlimited immigration of personnel workers, products, services, investment, as well as the freedom of foundation throughout the Trading Bloc, according to the Protocols established for in section 4 of this Chapter. The formation of the Common Market will be gradual and adhere to timetables set by the Council. The Commission might create and bestow responsibilities and jurisdiction on certain organizations as it deems essential to govern the Common Market for the objectives of these Review. The Agreements must agree to a Protocols on a Common Market in order to implement the above Article.

Additionally, the Common Market Proposal's Article 46 mandates that the Cabinet of Ministries create authorities or organizations to oversee the Common Market. This power has not yet been developed. Its proclaimed overarching goal of the Common Market is to broaden as well as strengthen commercial and societal collaboration amongst Partnership Countries for its mutual advantage. The Customs Union, the Common Market, the Financial Union, and the Political Confederation are the four different stages of present East african community unification. The essential concepts of collaboration for common advantage, mutual trustworthiness, democratic will and sovereignty fairness, effective administration, balanced advantage redistribution, and mutual understanding and decent communality will guide the attainment of the aforementioned phases.⁸⁹

Article 104 of the EAC legislative structure is an additional key legislative framework for unrestricted mobility of individuals since it establishes the ground for migratory freedom

⁸⁹ Ibid

legislation. When contrasted to Article 76(1), the requirements of Chapter 104 are more larger and more extensive, and they are compatible with the above-mentioned overall purposes of the East Africa Community Treaty. Article 104(1) of the EAC Agreement establishes a framework for collaboration, requiring the Member Nations to commit to take steps toward attaining free mobility of persons and employment, and also ensuring individuals' freedom to create and remain inside the Communities. The article continues on to say that state parties would accomplish this goal through a) "facilitating boundary movement by people of partnership countries," and b) "harmonizing and sustaining shared workforce regulations, initiatives, and laws."⁹⁰

This section has a flaw in that it does not clearly reference the requirement for immigration legislation standardization, that is required to build a consistent EAC unrestricted circulation of individuals system. Despite this, Articles 76 and 104 both call for the completion of a Protocols on the Common Market and a Protocols on the Unlimited Immigration, Labor, Resources, and indeed the Rights of Incorporation and Settlement, correspondingly, in order to provide implementation to its contents.⁹¹

Since July 2010, the East Africa Community Protocol Creating the Common Market has been in effect, and it contains the EAC Protocol's provisions. The EAC, on the other hand, has yet to draft a continental agreement on unrestricted mobility of individuals in accordance with Article 104. (2). The Common Market's goal is to increase commercial and societal collaboration amongst participant countries by removing barriers on the mobility of commodities, individuals,

⁹⁰Mhina, Magdalena. "The role of East African Community integration in promoting immigration policies in Tanzania." PhD diss., University of Dodoma, (2017): 1-147

⁹¹ Ng'ingo, Goodluck Andrew. "Assessment of the Implementation of EAC Common Market Protocol on Free Movement of Labor in Tanzania." PhD diss., Mzumbe University, 2019: 1-158

labour, commodities, and investment, as well as the freedoms of incorporation and residency. In certain ways, the Agreement is the primary EAC legislation that controls and provides specifics to migratory freedoms in the area.⁹²

The Common Market Protocol (CMP) is fairly comprehensive, as it establishes liberties to dwell and organize themselves or a commercial enterprise wherever inside the Society's limits, as well as four liberties of products, individuals and labour, activities and money. The substance of the Protocols, according to Article 2(4) of the CMP, sets guidelines on unrestricted mobility of persons, open mobility of labour, rights of foundation, and rights of residency.

The East African Community Common Market is primarily concerned with four freedoms: the unlimited immigration of products, labour, services, and investment. As a result, it entails the merging or fusion of four markets: the products marketplace, the employment economy, the activities industry, and the financial market. The freedom of foundation, residency, and unrestricted mobility of individuals (apart from employment) are all important parts of the Trading Bloc, according to Article 2(4) of the Common Market Protocols. As a result, privileges of incorporation and residency might well be incorporated to the Common Market as the fifth freedom.⁹³

The elimination of tariffs and non-tariff obstacles (trade barriers) to facilitate the flow of products is known as unrestricted circulation of goods. Non-tariff barriers do not need direct monetary expenditures. Such are quantifiable constraints and precise constraints that operate as market barriers and manifest in the manner of trade-harming policies, legislation, and statutes. The unrestricted mobility of employees across territory is referred to as free movement of labor.

⁹² Ibid

⁹³ Lumumba, Fleming. "Free Movement of Services: Challenges to the Implementation of Cross-Border Legal Practice within EAC." Available at SSRN 3065974 (2017): 1-17

It incorporates the idea of non-discrimination on the basis of citizenship in employment legislation. The free movement of employees and their following spouses or children is guaranteed by Article 10 of the Common Market Protocol (family members).⁹⁴

Section F of the Common Market Agreement establishes free movement of commodities, which relates to the mobility of amenities offered by residents of Member Countries inside the Communities. The timeline of commitments on the unlimited immigration of amenities lists the following industries that will be democratized: (a) company solutions, (b) interaction solutions, (c) allocation facilities, (d) schooling facilities, (e) monetary solutions, (f) hospitality and relevant facilities, and (g) public transportation.⁹⁵

Section G of the Common Market Characters for the elimination of limitations on the mobility of investment contributed by citizens of Partner Countries, as well as the elimination of exclusion dependent on citizenship. Article 13 of the Common Market Protocols grants a citizen of a Partnership States the freedom to engage in and conduct commercial activity as a self-employed individual, as well as create and administer commercial enterprises in the jurisdiction of another Member. This also permits a self-employed individual working in other Member Country or region to rejoin the Member Country's national safety plan under its federal legislation..⁹⁶

The privilege of foundation is implemented in accordance with certain statutes. Individuals from neighboring Signatory Countries that had been permitted to the nation as professionals or self-employed individuals within the privilege of settlement as described previously are entitled to residency. Individuals of the Member Governments might be eligible to a permanent residency in

⁹⁴ Makoko, Charles Elirehema. "Implementation of the Right to Free Movement of Workers in the East African Community: Examination of the Law and Practice." PhD diss., Mzumbe University, 2019: 1-293

⁹⁵ Ibid

⁹⁶ Sereti, Solitei Ruth. "Assessment of Kenya's implementation of the East African community economic integration protocols." PhD diss., Moi University, 2018: 1-165

the hosting States if they were working or self-employed in accordance with the hosting territory's federal standards and procedures.⁹⁷

The privilege of residency is also implemented in accordance with special legislation. The above-mentioned liberties are the focus of the next sections, which would go through them in further depth. At this point, please understand that the Common Market might have increased the possibilities within the area by expelling all barriers to interpersonal and intercommunal trade as well as to combine global economies into a single consolidated real economy, thereby creating a position where independent financial liberty can be implemented irrespectively of the Alliance Countries' boundaries. Well over 143.5 million individuals live in the Eastern African Community Common Market, which has a total Gross Domestic Product of \$110.3 billion (2014). Possibilities involve (a) a greater comprehension as well as assimilation of East Africans, that would enhance regional harmony and steadiness; (b) an expansive competitive landscape for commodities, assistance, investment, and workforce, that would enhance and accelerate regional monetary and interpersonal advancement; and (c) the establishment of a solid platform around which prevalent financial regulations, including monetary system, could be developed.⁹⁸

The CMP has detailed rules for controlling immigration under several Articles, including: unrestricted mobility of persons (Articles 7-9); unrestricted movements of professionals (Articles 10-12); freedom of foundation (Articles 13); and freedom of residency (Articles 14-15). (Article 14). The execution of each of those liberties and entitlements as set forth in the relevant legislation attached to the CMP. The Agreement indicates a generalized tendency of openness in

⁹⁷ East African Community. Protocol on the Establishment of The East African Community Common Market. (2009): 1-60.

⁹⁸Ibid

the continental implementation phase, particularly in terms of people mobility. Article 7 as well as Article 10 are especially pertinent in this regard..⁹⁹

Article 7 guarantees EAC residents the ability to move freely throughout the boundaries of any Partnership Country without fear of discrimination depending on their nationality. This is guaranteed by four components: "individuals must be allowed to access the region of a further member country without a passport, migrate liberally inside of the borders of such a Partner State, remain in the nation without excessive restriction," "civilians ought to be allowed to penetrate the region of another member State without a residence permit, remain in the region without undue restriction,"" To make this a reality, the EAC introduced the East African Passports in 1999, with the single stipulation that all nationals be eligible to register for it. Eventually on, this one was updated to EAC computerized passports. It has yet to be fulfilled, highlighting the difficulties in implementing easy passage in the country. Furthermore, the Partnership Countries are obliged to adopt an uniform standardized approach for providing country identity papers in order to significantly simplify this procedure of unlimited immigration and to recognize the inhabitants of the EAC Member Countries. As discussed in Chapter 4, it has yet to be achieved.

As per the CMP, individuals are granted the rights to security when on the jurisdiction of other partnership country depending on that Partnership Government's domestic legislation. Nevertheless, under Article 7(5), this mobility is prohibited for reasons of public morality, community safety, or healthcare, and certain limits shall be informed towards the other Member Nations. For consistency, unrestricted mobility of persons must be implemented under the EAC Common Market Complimentary Mobility of Individuals Guidelines, which are included in

⁹⁹Ibid

Annex 1 to this Agreement. Passport restrictions for residents were repealed as part of the implementation of these regulations.¹⁰⁰

The Treaty comprises six amendments that outline how the different stages of the protocols will be implemented in order to give substance to the aforesaid liberties and regions of collaboration. Freedom Mobility of Persons, Unlimited Immigration of Workers, Rights of Organization, Rights of Residency, Open Mobility of Companies, and Freedom Mobility of Investment are the topics of the six annexes. In general, the Agreement establishes a global foundation for governing the liberalization, particularly services suppliers and employees, by establishing a consistent and consistent regulatory environment. The Protocol's codification of operations and objectives implies that guidelines are becoming established for all participating countries to implement. It is essential to note that almost all of the Program's stages are intimately interwoven as well as could indeed be accomplished without unlimited immigration. The Program's principles are presently in operation, having received approved by the five Member Governments. The Protocol went into effect on July 1, 2010, after it was ratified. Nevertheless, as noted in Chapter 4, there are obstacles in implementing this freedom to unfettered mobility of individuals.

3.4 The Status of Implementation of Free Movement of Persons in EAC Region

The population of the Participating Nations were eagerly anticipating the CMP's entry into effect in July 2010. Throughout the CMP's inception, several gains have been made. Increased cross-border commerce is among the accomplishments. The EAC has indeed accomplished significant progress toward implementing the protocols, notably in terms of operationalizing border stations

¹⁰⁰ Mhina, Magdalena. "The role of East African Community integration in promoting immigration policies in Tanzania." PhD diss., University of Dodoma, (2017): 1-147.

around the clock and harmonizing immigrant processes. That, together with other nations (Kenya and Rwanda) removing the permanent residency charge for East African community people, is a significant success. However the accomplishments are noteworthy, much more work remains to be undertaken to assure the CMP's sustainability.¹⁰¹

Kenya has accomplished significant progress towards realizing the CMP's goals, according to the report. These would include easing movement of people within the Partner Countries' borders, opening and operationalizing seven boundary comments around the clock, establishing interconnected boundary managerial processes, and amending legislation to guarantee that Partner Governmental residents are not discriminated against. Other significant achievements include considerable work towards the issuing of universal identity cards, the creation of mechanisms for labour as well as labor policy harmonizing, and mutual acknowledgement of academic and occupational credentials.¹⁰²

Several membership countries have also made advances on working licenses. Some partner nations have reportedly gone into bilateral agreements to decrease current permission prices and encourage cooperation. While in Kigali in April 2013, EALA submitted a proposal for a resolution advocating for the removal of working visa costs in the interest of boosting employee mobility. Work permit costs for EAC nationals intending to work in Kenyan and Rwandan have been removed. Sustained effort in enhancing social dialogue over the work permit has continued in recent times with Uganda also granting elimination of most work permits, with only a few required under special circumstances.¹⁰³ Nonetheless, Tanzania still requires a work permit as was highlighted in the much-publicized case of Sylvia Mulinge's appointment as Vodacom CEO

¹⁰¹ Gastorn, Kennedy, and Wanyama Masinde. "The EAC Common Market." In *East African Community Law*, pp. 285-292. Brill Nijhoff, 2017.

¹⁰² Ibid

¹⁰³ Ibid.

in Tanzania in 2018. Many of the nations that have abolished work permits have done so without harmonizing their internal work permit systems to ensure that EAC nationals are treated equally, as required by Article 12 of the EACMP Protocol.¹⁰⁴

The six countries are contemplating functional regulatory and other frameworks that would not only allow, but also enable professionals who are nationals of the EAC member countries to freely move across the common borders to engage in employment, research, and related activities in countries of their choice. The draft resolution in the formation of the regulatory framework has been approved by EALA and only awaits the signing by the head of state. Although the 27th February 2021 summit considered a report on the formation of functional regulations on the free movement of persons the implementation of this directive is not approved yet.¹⁰⁵

In the latest step toward greater unification, Kenya and South Sudan declared on July 26, 2021 that visa restrictions for its citizens entering the united countries will be eliminated. South Sudanese flying to Kenya would be able to access for free as long as they have a legitimate passports and fulfill certain medical requirements for tourists as a result of the judgment. Kenyans would no longer be required to register for something and purchase for South Sudanese passports electronically prior to traveling to the country. The decision is in keeping with the East African Community's established integrating policy. Citizens of the Republic of South Sudan were exempt from the necessity for a visa as of the dates of the notification. The movement is in accordance with the East African Community's Common Market Protocols, a convention that allows for unrestricted mobility of labour and persons among member nations. South Sudan entered the EAC in 2016, but has yet to ratify key Community treaties such as the Trading Bloc

¹⁰⁴ Ibid

¹⁰⁵ Communiqué of the 21st ordinary summit of the east african community heads of state

and the Common Market Agreement, that enable for the convergence of customs, the removal of some tariffs on regional products, and visa-free travel within the area. As a result, most of the application of the unrestricted markets protocol has centered on the unlimited circulation of services rather than the free movement of people.¹⁰⁶

The national laws of all East African states have laws regulations stipulating the requirement for free movement of persons, work or residence permit for citizens of East Africa countries wishing to reside or engage in economic activity in the respective states. These laws are The Kenya Citizenship and Immigration Act (No. 12 of 2011) and the regulations thereof the Kenya Citizenship and Immigration Regulations 2012. The Uganda Citizenship and Immigration Control Act Cap 66 of August 19995 and Regulation 2004, the Registration of Aliens Regulations 2004, the Passports Regulations are some of the legal instruments that guide the work of the immigration department under the Directorate of Immigration and the National Citizenship and Migration Control Board.¹⁰⁷

The Tanzania Citizenship Act and The Immigration Act of 1995, The Immigration Regulation 1997, The Passport and Travel Documents Act 2002 and Regulations thereto, the Visa Regulations, the official immigration policy among others. Constitution of the Republic of Rwanda of 04 June 2003 (O.G. special number of 4 June 2003) article 7 provides for issues of nationality and citizenship under the Rwandese law thus setting the stage from the law no. 04/2011 of 21/03/2011 on immigration and emigration in Rwanda for regulation of emigration and immigration.¹⁰⁸ These laws in Kenya and Rwanda have largely been harmonized with the

¹⁰⁶ Makoko, Charles Elirehema. "Implementation of the Right to Free Movement of Workers in the East African Community: Examination of the Law and Practice." PhD diss., Mzumbe University, 2019: 1-293

¹⁰⁷ Ibid

¹⁰⁸ Sereti, Solitei Ruth. "Assessment of Kenya's implementation of the East African community economic integration protocols." PhD diss., Moi University, 2018: 1-165

protocol complying with the requirement that laws be amended to comply with the protocol and its regulations. Nonetheless, they are still inadequate in addressing the free movement of persons issues in the region especially. The laws of Uganda and Tanzania are yet to be fully harmonized with the free movement protocol in the East Africa community. A situation attributed to the protection of domestic labor markets from foreign domination in what was called the “domestication of the economy.”¹⁰⁹

Burundi has a federal immigration management structure. The State of Burundi's Nationwide Immigration Controls was formulated in 2015 by an inter-ministerial immigration commission led by the Department of Interior Services and co-chaired by the Ministries of Internal Protection. The Strategy was created "to address emigration, as well as concerns such as conventional and uncontrolled mobility, border control, Burundian travelling papers, the Burundian community, relocation and growth, safety, and multilateralism. Burundi exhibits its adherence to the common market system's unrestricted mobility of individuals in the legislation. Whereas the strategy tackles all immigrant migration concerns, it particularly mentions the EAC CMP and promises to executing its principles, including unrestricted mobility of workers, settlement and foundation privileges, and enhancing inter-State collaboration to encourage unrestricted mobility of labourers within the East African Community.”¹¹⁰

Kenya does not have a migration-specific policy in place, but work is underway to draft a Nationwide Mobility Administration Strategy which would include instructions from the Kenyan administration to the EAC CMP on unrestricted mobility of individuals. In contrast, the State Collaboration on Immigration is driving the development of a comprehensive National

¹⁰⁹ Shiraku, Mutende R. "A critical analysis of the implementation of migration law and regulations in east africa: the case of regulations on free movement of persons." PhD diss., University of Nairobi, (2013): 1-115.

¹¹⁰ East African Community. Conference Report on the East African Community Common Market Protocol for Movement of Labour Achievements and Challenges of Implementation of the Protocol (2012): 1-19

Migration Strategy for Kenya. Following a partners conference in March 2017, the NCM finalized the Draft Nationwide Strategy On immigration for Kenya, which is awaiting approval.¹¹¹ The strategy presents a thorough regulatory structure to govern migration administration in Kenya, with the goal of making it easier to control people's movements throughout Kenya. The unrestricted mobility of people is now governed by country legislation, rules, as well as other relevant legislation in the presence of a nationwide strategy. The Law of the Government of Kenya, 2010; the Nationality and Immigrant Act, 2011; the Kenya Nationality and Immigration Guidelines, 2012 (as revised in 2016); the Kenya Residents and Overseas Nationals Management Service Act, 2011; and the Statistical Act, 2006 are among the most important.¹¹²

The Common Market Scorecard (CMS) has been implemented as an evaluation instrument for the deployment of a CMP by the EAC member countries of Burundi, Kenya, Rwanda, Tanzania, and Uganda. The CMS is a method for determining regulatory conformance with the CMP's promises. The CMS intends to strengthen EAC cooperation in order to boost the region's economic potential and enhance the business environment. The inaugural CMS was published in 2014, and the EAC increased its participation in 2016, accepting South Sudan as the newest partner. The report by World Bank on East Africa Common Market Scorecard observed that the provisions on free movements of workers and rights to establishment and residence are currently being earnestly implemented by the regional governments. Kenya and Rwanda are at advanced stages of this implementation through the republics of Tanzania, Uganda, and Burundi were allowed a five-year grace period which expired in 2015 to allow free movement of workers,

¹¹¹ Makoko, Charles Elirehema. "Implementation of the Right to Free Movement of Workers in the East African Community: Examination of the Law and Practice." PhD diss., Mzumbe University, 2019: 1-293

¹¹² Sereti, Solitei Ruth. "Assessment of Kenya's implementation of the East African community economic integration protocols." PhD diss., Moi University, 2018: 1-165

capital, rights of residence, and establishment. The reports further note that the requirement for harmonization of permit classes has been completed only that Tanzania, Uganda, and Burundi levy fees for issuance of work permits.¹¹³ Only Burundi, Rwanda, and Uganda established pledges under the CMP in all standards on the unrestricted mobility of individuals delivering specialized activities, according to the 2016 Common Market Assessment analysis. Tanzania is failed to complete one of its pledges, whereas Kenya has fulfilled several of its.¹¹⁴

3.5 Opportunities for advancing Free Movement of Persons in the EAC region

There is prevalent arrangement that existing ideological interactions in the territory offer favorable momentum for unlimited mobility of individuals that must be assembled on further, particularly the loosening of conflicts amongst Kenya and Tanzania following President Samia Suluhu's inauguration and the Tanzania country's considerable transition in strategy to EAC incorporation. Tanzania has been a (strong) adversary of regional unlimited immigration in the previous era, partially to preserve its markets and security concerns, as Ngingo points out.¹¹⁵ However, the government of Tanzania under President Suluhu is seeking to position the country as a leader in driving forward regional integration, with the President affirming this on multiple occasions.¹¹⁶

Suluhu has opened a new chapter in the relationship between countries in EAC. Since taking office on March 18, 2021, Tanzanian President Samia Suluhu Hassan has been to Kenya, Uganda, and Rwanda on a state visit. State visits to the area are intended at mending commercial

¹¹³ Nita, Sonja. "Regional free movement of people: The case of African Regional Economic Communities." *Regions and Cohesion* 3, no. 3 (2013): 8-29.

¹¹⁴ Ibid

¹¹⁵ Ng'ingo, Goodluck Andrew. "Assessment of the Implementation of EAC Common Market Protocol on Free Movement of Labor in Tanzania." PhD diss., Mzumbe University, 2019: 1-158

¹¹⁶<https://www.eac.int/press-releases/2102-president-samia-suluhu-hassan-calls-for-review-of-eac-legal-instruments-to-reflect-current-times>

connections between East African neighbors, which had significantly lower levels to her predecessor's stance on the East African Community.

Tanzania has also been viewed as reluctant concerning changes urged by partner nations for some time, and President Samia's willingness to engage fellow EACs is now seen as a measure of confidence for the region's common market protocol. President Samia Suluhu Hassan has made her approach of governing evident in her first one hundred days in power, being more transparent at domestically and in the area than her predecessors John Magufuli. President Samia has emphasized the necessity of implementing the EAC common market protocol's ambition. The government made a point.

"We will enhance and promote our relations with our neighbors. Tanzania will continue to be a good neighbor and an important ally in regional and international cooperation. Our ties will continue to be good and even get better under my leadership,"

AfCFTA is also seen as another boon for facilitating the realization of free movement of persons in EAC. The African Continental Free Trade Area (AfCFTA) presents a major opportunity for regional economic communities to popularize the ratification of free movement of persons protocol as highlighted in AfCFTA.¹¹⁷ The agreement expands on AU member states' efforts to foster social, economic, and cultural development, as well as the integration of African economies, at bilateral and regional levels. The free movement of people is essential for content integration and cannot be isolated from other regional integration measures like the EAC common market protocol. Because all EAC member states are signatories to AfCFTA, the adoption of the AfCFTA free movement protocol may be advantageous in the implementation of the EAC single market protocol. Like the EAC common market protocol, the standard allows for

¹¹⁷ World Bank. The African Continental Free Trade Area: Economic and Distributional Effects. Washington, DC: World Bank. doi:10.1596/978-1-4648-1559-1. (2020): 1-163.

the achievement of its purpose in phases. As a result, both procedures may be implemented in tandem, accelerating the aim of unrestricted movement of people in the EAC.

Chapter Four

Challenges to the Implementation of EAC Protocol on Free Movement of Persons

Introduction

The previous chapter presented an overview of how the EAC has tackled people migration as a region. It gave a deep examination of EAC Protocols that influence people's mobility in order to emphasize the importance of freedom of movement.. Furthermore, Kenya as a regional powerhouse was also discussed on its role in the free movement of persons. This chapter, on the other hand, analyses constraints that limit the implementation of free movement of persons protocol in EAC based on primary as well as secondary data. This is followed by a discussion on the effort undertaken to realize the successful implementation of the free movement of person protocol and a conclusion based on study findings.

4.1 Constraints to the Movement

There exist a number of constraints to movement within the EAC regions. The constraints are as discussed below.

4.1.1 Technical Constraints

Technical challenges arise out of the unwillingness of existing countries mandated with the implementation of the protocol to live up to their mandates through effective institutions, systems, or even legal frameworks. The human resource in these institutions is an obstacle to the implementation given their resistance to implementing provisions of the Protocol. There are many institutions with the responsibility of implementing various provisions of the Protocol, this

also results in overlaps and duplications compounded by supremacy contests among them.¹¹⁸ A look at the agencies involved in the implementation confirms this. Given these institutions are all independent of each other, there is missing a coordination mechanism to ensure harmonious implementation and evaluation of the implementation by the various agencies. The Ministry of East African community which was created to function as a coordinating agency is not properly constituted to respond to this function given the other agencies frustrates this ministry by hiding in their various legal mandates.¹¹⁹

Legally, there is a challenge that arises out of either lack of laws to guide the implementation of the existing inadequate law being weak such that its implementation is affected. Weak laws arise out of a lack of enforcement mechanism in the laws, bad law that does not withstand time, and a law that is inferior or perceived to be inferior to national laws. To give the protocol the legal strength it requires. National laws are expected to be harmonized with the protocol.¹²⁰ Article 47 of the Protocol requires national laws to be approximated and harmonized to the provisions of the protocol. This elevates the protocol to equal status as national laws even though this should be the superior law on regional and other issues. By failing to expressly give precedence to the protocol, the drafters of the protocol rendered it weak since it is at the mercy of the member states to implement or not to implement. A provision recognizing the Protocol as superior in case of conflict of laws is absent in this Protocol.¹²¹

¹¹⁸ Hall, Samuel. "Free and Safe Movement in East Africa." (2018)

¹¹⁹ Dick, Eva, and Benjamin Schraven. Towards a borderless Africa? Regional organizations and free movement of persons in West and North-East Africa. No. 1/2019. Briefing Paper, 2019.

¹²⁰ Mhina, Magdalena. "The role of East African Community integration in promoting immigration policies in Tanzania." PhD diss., University of Dodoma, 2017.

¹²¹ Ejones, Francis. "Regional Integration, Trade Duration and Economic Growth in The East African Community: Three Empirical Essays." PhD diss., University of Newcastle, 2020.

A look at the harmonization of national laws with free movement of persons protocol in EAC shows that most member states are still lagging on this. The the Aliens (Registration and Control) Act , Uganda Citizens and Immigration Control Act, Cap 66, the Passports Act, Cap 64; and, Cap 61 and its Regulations,; all govern people's freedom of travel in Uganda. Other important legislations address a number of labor-movement laws that continue to be relevant to people's freedom of movement.¹²²

The Ugandan Constitution, Article 7, also protects freedom of movement. People's freedom of movement is not total, however, because it must be done in the public's, health, and security's best interests. As a result, entry of prohibited immigrants is prohibited. Regulations on immigration are also still in effect. Most current laws are still not entirely linked with the principles of free movement of individuals in the common market protocol, therefore entrance and departure points into and out of Uganda must be at defined places under national rules and immigration processes. Uganda is also yet to embrace the use of identification cards as a travel document, a situation that hampered the free movement of persons in line with EAC common market protocol that only requires the use of identification as a travel document.¹²³

Kenya's laws and systems are not in sync with those of the other EAC members. The Visa Laws, Kenya Citizenship Act (Cap 170), Alien Restriction Act (Cap 173), and Immigration Act (Cap 172), among other Kenyan regulations that formerly restricted free movement of people, have all been removed. The Kenya Citizenship and Immigration Act No. 12 of 2011 and the Kenya Citizens and Foreign Nationals Management Act No. 31 of 2011 were abolished in favor of the Kenya Citizenship and Immigration Act No. 12 of 2011 and the Kenya Citizens and Foreign

¹²² Ibid

¹²³ Ejones, Francis, Frank W. Agbola, and Amir Mahmood. "Do regional trade agreements promote international trade? New empirical evidence from the East African Community." *The Journal of International Trade & Economic Development* (2021): 1-34.

Nationals Management Act No. 31 of 2011. Nonetheless, these laws are still an impediment as they fail to capture the spirit of free movement of persons as enshrined in the common market protocol.¹²⁴

“The East Africa Community Customs Management Act 2004, the Kenya Constitution 2010, the Kenya Citizenship and Immigration Act 2011, the Refugee Act 2006, and the East Africa Community Customs Management Act 2004 were all harmonized in accordance with the Common Market Protocol domestication to ensure free movement of people, goods, and services. It also assured that the rights to develop and stay in the region were preserved. However, the execution of these policies has been fraught with difficulties.”

Kenya has no internal legislative framework that factors the development impact of migrants in the country. Two policies that would address this are still in draft form. These are the Kenya Draft National Migration Policy of 2009, the current status and content of which is unknown, and the Kenya Draft National Labour Migration, which aims to ‘manage labor migration for the benefit of migrants and their families, and to provide up to date Labour Market Information on development of human resource policies and strategies.¹²⁵ These Draft policies are yet to be enacted and implemented. Kenya, like Uganda and Rwanda, has waived work permit fees for EAC citizens but there is a lack of awareness of this on the part of citizens and government officials at both the national and local levels. For Kenya unfortunately, information has not percolated down to the people who need to implement these policies; you still find non-tariff

¹²⁴ Atuza, Theresia Tuhoye. "Contributions of East African Common Market Protocol to Economic Growth: The Case of Tanzania, 2010-2017." PhD diss., United States International University-Africa, 2018.

¹²⁵ Landau, Loren B., Jean Pierre Misago, Nassim Majidi, Andonis Marden, Aditya Sarkar, Jabulani Mathebula, Brian Murahwa, and Iriann Freemantle. "Free and safe movement in East Africa: Report on promoting safe and unencumbered movement of people across East Africa’s international borders." (2019)

barriers even to movement. There is a lack of awareness partly on government and the citizens themselves.¹²⁶

One of the barriers to CMP implementation in Rwanda is the lack of an institutional structure to support inculcation and nurturing of shared advantages among EAC countries. The unwillingness of some Partner States to carry out CMP decisions like as providing electronic IDs, harmonizing social security and employment, and conducting national manpower surveys delays CMP implementation. In addition, there is no comprehensive regional integration strategy in place in Burundi to guide the CMP's implementation. Burundi also lacks an institutional mechanism to coordinate and supervise the implementation of the CMP.

Multiple memberships have affected the implementation of free movement of a person's protocol in EAC. For instance, Tanzania is a member of SADC and also a member of EAC while Uganda, Rwanda, Burundi, South Sudan, and Kenya are members of COMESA. Although the objectives of the EAC, COMESA, and SADC are similar, they operate under divergent rules of origin, trade instruments, and common market protocols.¹²⁷ The creation or joining of a particular country to a regional organization is a policy choice. Tanzania for instance is a party to the implementation of the common market protocol at SADC and EAC. Generally, the parallel membership has raised challenges in coordination and commitment of the particular country to various arrangements regarding the implementation of free movement of person protocol. This to a particular degree has affected the adoption of some protocols.¹²⁸ Tanzania is both a member of the EAC Customs Union and the SADC customs union which requires the implementation of free movement of

¹²⁶ Ibid

¹²⁷ Vhumbunu, Clayton Hazvinei, and Joseph Rukema Rudigi. "Facilitating regional integration through free movement of people in Africa: progress, challenges and prospects." *Journal of African Union Studies* 9, no. 2 (2020): 43-64.

¹²⁸ Ibid

persons. Some concerns competing for trade blocs due to the multiple memberships have slowed the implementation of the free movement of persons protocol in the East African Community.¹²⁹

The overlapping membership of many RECs causes challenges to the successful execution of various EAC regulations. East African governments are at the crossroads of a tangle of regional blocs and trade agreements, including participation in IGAD, COMESA, SADC, and ECCAS, as well as a slew of bi-lateral and multi-lateral trade treaties with foreign states/RECs. As a result, EAC nations must comply with competing promises and disconnected sets of norms and standards. There are also some substantial variations between member nations' political ambitions in terms of common market norms. As a result, there are conflicts and increased coordination costs associated with executing regional policies, as well as fragmented policy settings.¹³⁰

The implications of varied REC membership are particularly seen in trade policy and hurdles to common market implementation. Efforts to adopt a single market protocol have been hampered by sluggish implementation, which is partly owing to the fact that EAC member states are members of separate FTAs. Except for Tanzania, which is a member of SADC, all EAC partners are members of COMESA.¹³¹ While the COMESA common market protocol is theoretically compatible with the EAC, inconsistencies will exist as long as Tanzania does not join COMESA and exclusions and exemptions differ. The subject of coherence and harmonization of the multiple trade regimes remains a problem since SADC seeks to adopt a common market

¹²⁹ Mwenedata, Alfred, and Mr Viateur Bangayandusha. "Legal Challenges to the Implementation of East African Community (EAC) Common Market Protocol Case of Free Movement of Capital in Rwanda." IOSR-JHSS 21 (2016): 35-55.

¹³⁰ Free and safe movement in East Africa: Report on promoting safe and unencumbered movement of People across East Africa's International borders." (2019)

¹³¹ <https://www.linkedin.com/pulse/East-African-Common-Markets-positives-challenges-ahead-associates>

protocol. Overlapping memberships have impeded the EAC's ability to act as a truly unified collective participant in the international arena.¹³²

On the labor migration front, the implementation of policies that safeguard migrants is also a concern. Even after joining the EAC's CMP, Kenya has been slow to include voluntary migrants into its internal development strategies and frameworks (2010). The framework allows free movement of products, labor, capital, and services between EAC member countries Kenya, Tanzania, Uganda, Rwanda, and Burundi. Kenya is a member of COMESA, however it has neither ratified or implemented the Free Movement Protocol's obligations.

4.1.2 Political Constraints

According to the replies collected, another main limitation highlighted by the respondents who fell below the 79 percent response rate was political restraints. First and foremost, finding common ground among EAC leaders remains the most difficult obstacle to the agenda's execution. Despite features such as their common history, culture, and language providing a suitable basis to enable this process, this has harmed their potential and prospects for building and institutionalizing good neighborliness among the residents of member nations. It would be helpful to have some data on contributions or financing for this.

Second, the reappearance of opposing factions inside the EAC is reminiscent of the 2013 'Coalition of the Willing' (Kenya, Uganda, and Rwanda grouping) phase, which almost culminated in the organization's "split." Personality disputes between the presidents prompted the formation of the 'Coalition of the Willing.' If the EAC is to achieve the aims outlined in its founding treaty, it must ensure that its framework transcends the personal interests of its

¹³² Lumumba, Fleming. "Free Movement of Services: Challenges to the Implementation of Cross-Border Legal Practice within EAC." Available at SSRN 3065974 (2017).

leaders. While it is understandable that the community's goals may conflict with those of individual member countries in some cases, it is critical to acknowledge that personality clashes and competing interests have compounded the lack of political will among EAC leaders.¹³³

Tensions regarding Tanzania's participation in the informal grouping of Kenya, Uganda, and Rwanda, which Tanzania initially rejected before finally joining, illustrate the collision of interests. The Summit, which is particularly prone to regional power politics, reflected this tension. When the informal grouping of Kenya, Uganda, and Rwanda was used as an alternative policy forum to Tanzania's exclusion in late 2013- 2014, the Tanzanian government refused to sign an EAC Council of Ministers report on political integration until the issue of land ownership was resolved and military cooperation clauses were revised.¹³⁴ Tanzania's denial was representative of the EAC's opposite vision and distinct position in the region. The proposed political federation is built on the right to own land across the area and a military treaty, but Tanzania favours a shallower type of integration that can suit its other regional obligations. Because Tanzania is a party to the SADC defense agreement, joining one in the EAC may have put Tanzania in a position where it had contradictory duties if member states of the two RECs came into conflict.¹³⁵

“Lack of political will and the competing interest in the East african region has also been a challenge to free movement within the region. For a long time Kenya and Tanzania had an on and off diplomatic relation, something that affected the movement of people between the two countries”

¹³³ Vhumbunu, Clayton Hazvinei. "The African Continental Free Trade Area." *Africa Insight* 50, no. 1 (2020): 122-143.

¹³⁴ Rukema, Rudigi Joseph, and Clayton Hazvinei Vhumbunu. "Facilitating regional integration through free movement of People in Africa: progress, challenges and prospects." (2020).

¹³⁵ Ibid

Two recent occurrences have heightened relations between Kenya and Tanzania. To begin with, the long-standing competition for control of the regional transit market is intensifying, thanks to an increase in traffic at Dar port, which has increased by 13 percent compared to 11 percent in Mombasa, and the US\$10 billion financing secured by the Tanzanian government for the development of the Bagamoyo port. 20 Second, the finding of gas reserves worth US\$2.1 trillion might aid Tanzania's industrial transformation efforts while posing a challenge to Kenya's regional economic supremacy.¹³⁶ Although neither of these events now constitutes a threat to Kenya's regional status, they have the potential to do so in the future, and Kenyan elites appear to be responding strongly to this prospect. It's disturbing to see how the spirit of East African cooperation has faded, with mutuality and good neighborliness remaining mostly among the inhabitants. The lack of unity in the face of the epidemic is exposing the whole integration program, which is so heavily vested in the hands of individual leaders, as well as the careful balance of their relationship.¹³⁷

The EAC leaders must rise above narrow interests and speak with one voice in the implementation of the integration agenda and the battling of regional difficulties such as COVID-19. The EAC's objectives and aspirations should be based on what the community's residents desire, since this will help it achieve its aim of becoming a people-centered bloc. Individual member states' interests should be defined and pursued in ways that contribute to the community's unity, solidarity, and common good. What has happened recently is reminiscent of the collapse of 1977, when individual differences undermined the existence of EAC 1.¹³⁸

¹³⁶ Matsvai-Mutsau, Christina. "Challenges to the free movement residence and work rights of foreign migrant workers in South Africa and Kenya: a comparative study." PhD diss., University of Pretoria, 2018.

¹³⁷ Moywaywa, George M. "Regional Integration in East Africa, its challenges and lessons from the European union integration." PhD diss., University of Nairobi, 2015.

¹³⁸ Ibid

The tension between Uganda and Rwanda over the border crossing dispute further serves to show how political leadership and interest can restrict the free movement of persons in the region. Though both the Rwanda and Uganda government mentions security as the major cause of the border tension, accusations have surfaced in the media that problem revolves around the political interests of the two leaders. The trade of accusations between Uganda and Rwanda over a border crossing issue serves as a vivid reminder of some of the obstacles that led to the failure of the last integration project. As a result of such cross-border difficulties, academics are questioning whether the concepts of the common market protocol can be properly implemented in the region.¹³⁹ Commentators are asking if the previous split of East Africa is resurfacing. Both Uganda and Rwanda have accused each other of waging a "trade war," and ties between the two heads of state have dramatically worsened. Meanwhile, more than two years after Rwandan President Paul Kagame ordered its closure, the Katuna/Gatuna border post between Rwanda and Uganda, one of the busiest crossing sites between the two nations, remains closed to people and goods commerce.¹⁴⁰ The risk of the EAC's dissolution has increased as a result of this escalation. Despite President Uhuru Kenyatta's diplomatic efforts on two occasions, at least four tripartite meetings between Presidents Joao Lourenço of Angola and Mr. Félix Tshisekedi of the Democratic Republic of the Congo, and a series of lower-level conferences between officials from the two nations' Foreign Affairs ministries, little steps have been taken in resolving some of the sticky issues. The political feud between Rwanda's and Uganda's presidents highlights the limitations imposed by political conditions on the EAC community's implementation of the free movement of persons agreement.¹⁴¹

¹³⁹<https://www.alp-ea.com/post/eac-opportunities>

¹⁴⁰ Norah Masai, Sikolia "Analysis of East African Common Market Protocol and Immigration: Case Study Kenya." (2019).

¹⁴¹ Ibid

4.1.3 Social Constraints

Social constraints is another major constraint that was given from the response received from the respondents who successfully answered the questionnaire. Language barrier is viewed as a competitive advantage, particularly among Kenyans and Tanzanians. This is mostly due to a lack of mastery of English, which is the language of choice for overseas investors. Concerns of social dumping, insufficient national capacities, economic costs from providing public services to foreign labor, and nationals' unwillingness to migrate to other Partner States are also obstacles.¹⁴²

The challenge of fear of losing out on jobs is also a problem affecting the free movement of person protocol implementation in Burundi. Burundians largely perceive that their low educational qualifications put them at a disadvantage with their peers from other EAC member countries. It has been documented that there is a widespread perception by many citizens in Burundi that the full implementation of the protocol will lead to citizens from countries like Kenya, Uganda, Rwanda, and Tanzania taking their employment opportunities due to their relatively skilled labor force.¹⁴³

The language problem also highlights different factors ranging from nationalistic tendencies and language challenges. Various Partner States have different national languages. For the region to have full implementation of free movement of persons, it is important to know at least one of the National Languages. In Kenya, the Official languages are English and Kiswahili. In Uganda, the national language is English, while in Rwanda, the official language is Kinyarwanda. In Burundi,

¹⁴² Wakhungu, J. P., G. P. Okoth, and E. O. S. Odhiambo. "Challenges and Opportunities Constraining and Enhancing Kenya and Tanzania Participation in the EAC Econo-Political Integration Process." *Open Journal of Political Science* 11, no. 01 (2021): 134.

¹⁴³<https://www.theigc.org/blog/a-delicate-balance-how-to-harness-regional-integration-and-industrial-policy-for-economic-transformation-in-africa/>

they predominantly speak French and Kirundi. Therefore, there is no homogeneity thus posing a challenge to the cross-border movement of persons.¹⁴⁴

Another issue that has a direct negative effect on free movement of people at border crossings is police intimidation, extortion by border guards who demand money for no reason, and a lack of information. Individuals and local traders were openly demanding bribes by law enforcement personnel. Bribes were easily provided to the authorities and customs officials by prominent entrepreneurs, truckers, and other market vendors to allow them to freely cross the border. This has had a severe influence on free movement of people at border crossings since the culture of corruption has made many believe that they must pay their way out.¹⁴⁵

As a social element, the COVID-19 epidemic has shown a lack of coordination and unity amongst some of the leaders who are driving the integration agenda. The COVID-19 epidemic has demonstrated that the EAC's values of good neighborliness and unity are built on a shaky and 'shifting' basis at the leadership level. By failing to give leadership in the creation of a comprehensive and unified frame and reaction toward the COVID-19 crisis, the EAC has again demonstrated its unpreparedness in forging unity among member states.¹⁴⁶

In 2014, EAC implemented a multidisciplinary "One Health" strategies to stop and manage communicable illnesses that can lead to epidemics and pandemics. As a result, it was envisioned that the EAC would employ these methods and plans to mobilize the whole area in a coordinated effort to reduce the COVID-19 pandemic while allowing free movement of people within the territory. The arrival of the COVID-19 virus, on the other hand, proved different.¹⁴⁷ The EAC's

¹⁴⁴ Kago, Caroline, and Wanyama Masinde. "Free Movement of Workers in the EAC." *East African Community Law: Institutional, Substantive and Comparative EU Aspect* (2017): 345-353.

¹⁴⁵ Ibid

¹⁴⁶ https://www.acode-u.org/newsletter/content/issue12_A1.pdf

¹⁴⁷ Ibid

declining involvement in coordinating reaction mechanisms to stem the emergence of COVID-19 has resulted in a slew of issues and consequences that have harmed people's freedom of movement.

Rwanda, Uganda and Kenya appear to have put in place tough measures to stop the spread of the COVID-19 epidemic, including city lockdowns and border restrictions. However, other member nations, particularly Tanzania, were not pleased with drastic measures such as border closures. As a result, animosity between Kenya and Tanzania have increased. The debate over the examination of citizens coming across the border is at the center of this, and it has significantly hampered free movement of people in the region.¹⁴⁸

Tanzania was pronounced COVID-19-free by the late President Magufuli, who stated that the disease had been "defeated through prayers" and that no COVID-19 tests were required. The Kenyan government has stated that a COVID-19 exam is required before entrance. In late May 2020, Kenya adopted a tough stance after over 30 Tanzania truck drivers tested positive for COVID-19 in only one day. At the time, the percentage of positive COVID-19 cases in Kenya had more than doubled.¹⁴⁹ Kenya chose to prohibit free movement of people from Tanzania until the Kenyan side re-took the COVID-19 exams, and Tanzania retaliated by prohibiting any Kenyans from coming into the country. The EAC special heads of state summit published a Communique to address this, urging "Partner nations to develop a standardized framework for certification and exchange of COVID-19 test findings." This did not, however, deter Kenya and Tanzania from fighting and bargaining over the border testing requirement. Despite the fact that

¹⁴⁸ <https://africanarguments.org/2020/07/why-the-Kenya-Tanzania-border-row-undermines-prospective-african-free-trade/>

¹⁴⁹ <https://www.africanews.com/2021/05/04/covid-19-and-trade-dominate-Tanzania-Kenya-talks//>

Kenya and Tanzania were able to resolve the difficulties subsequently, the COVID-19's worries about the free movement of persons protocol remain demonstrated in the area.¹⁵⁰

The high prices of Covid-19 testing are currently causing friction in the East African Community's free movement of persons and products (EAC). Members of the East African Legislative Assembly (EALA) believe this, and are working to standardize expenses and make them more cheap. Since March 2020, non-tariff barriers (NTBs) relating to Covid-19 have continued to obstruct free movement of people. In the EAC Partner States, the cost of Covid-19 varies. For example, in Rwanda, Kenya, and Uganda, the Covid-19 RT-PCR test costs \$60 and the quick antigen test costs \$30, respectively, whereas in Tanzania, the Covid-19 RT-PCR test costs \$100 and the rapid antigen test costs \$30.¹⁵¹ Provided that many residents in the region cannot afford them, this expense is regarded exorbitant and a barrier to free mobility. EAC citizens are sometimes subjected to double testing, in which they are tested before leaving and again after they arrive in their target country. As a result, many EAC nationals have restricted their travel to other EAC nations.¹⁵²

4.1.4 Economic Constraints

Majority of the respondents gave economic constraints as a leading cause for undermined efforts to the free movement of persons in the region. One of the key challenges to effective implementation of the free movement of person protocol is the fear that the protocol will largely benefit some few member countries at the expense of others. Tanzania in particular has expressed fear that full implementation of the protocol may result in Kenyan flocking the country

¹⁵⁰ Ibid

¹⁵¹ Kinyua, Timothy K. "Institutional challenges facing the East Africa Community Common Market in Kenya." PhD diss., University of Nairobi, 2015.

¹⁵² Senewa, J. (2017). Assessing the Eac Common Market Protocol: an Analysis of Kenya's Implementation of Free Movement of Labour (Doctoral dissertation, University of Nairobi).

denying its citizens economic and employment opportunities. Due to large power inequalities between EAC nations and Kenya's role as regional hegemon, Kenya has been able to control the regional policy goals and focus it on speeding up integration. Kenya's hegemony in the area stems from its dominance in almost all facets of inter-state interactions. Kenya's GDP accounts for 37% of the EAC's total, whereas Rwanda's and Burundi's GDPs are just 6% and 2%, respectively.¹⁵³

Kenya enjoys a military advantage over the rest of the area. Kenya occupies a key location in the regional transportation and commercial network. This is owing to the port of Mombasa's critical position in the EAC's landlocked transportation system; for example, 80 percent of Uganda's transit trade travels via Mombasa port. As a result of these characteristics, the Government of Kenya can wield undue influence over other EAC member nations and control the regional policy goals. This is reflected in the push by the Kenyan government to hasten the implementation of free movement of persons in comparison to other EAC countries. Viewing Kenya as an economic powerhouse in the region has created fear amongst other members, Tanzania in particular that full implementation of the free movement of person protocol will greatly benefit Kenya at expense of other member states.¹⁵⁴

Some countries are concerned that regional integration may be viewed as a sort of national subjugation to Kenyan objectives as a result of Kenya's bigger and more imperialistic economy. This was a fundamental factor in the first EAC's demise, and it continues to prevent some industries from implementing regional integration initiatives. Tanzania performs the poorest in this respect, having the lowest degree of conformity with the Protocol on Free Movement of

¹⁵³ Lewela, William M. "The Influence of Immigration Policies on The East African Integration Process." PhD diss., University of Nairobi, 2019.

¹⁵⁴ Ibid

Persons. Related to this challenge is the fear by Tanzania nationals that they will lose jobs once job seekers from other Partner States are allowed into the country, with Kenya in particular considered a significant threat.¹⁵⁵ Kenya has the highest level of skilled and unemployed labor force in the region. Thus, the fear amongst Tanzania residents is that the implementation of free movement of persons in the country will allow for the influx of these skilled and unemployed Kenyans into their labor market thereby depriving them of job opportunities. This was a dominant policy in the reign of President John Pombe Magufuli, with the decision by Tanzania's government to deny Sylvia Mulinge, a Kenyan who had been appointed as its managing director of Vodacom Tanzania work permit viewed as part of the expression of fear against Kenyan nationals.¹⁵⁶

The lack of shared economic characteristics of EAC member states has stifled the implementation of common market protocol principles such as the free movement of persons. As a consequence, most East Africa countries lack complementary economic structures, a situation that has resulted in the low implementation of EAC common market protocols by some countries.¹⁵⁷

“Economic structures in some of the member states incline them more to closed economic structures rather than open economic structures that favor and support the free movement of persons in the region. For instance, Tanzania's economic structure favors a closed economy and this has predisposed the Tanzania government to adopt a cautious approach in the implementation of the protocol.”

¹⁵⁵ <https://ecdpm.org/great-insights/trade-and-development-making-the-link/East-African-integration-achievements-challenges>

¹⁵⁶ <https://www.eac.int/press-releases/154-peace-security/1743-eac-implements-its-covid-19-response-plan-and-reinforces-border-officers-and-communities-in-the-fight-against-cross-border-transmission>

¹⁵⁷ Ibid

One of the issues confronting the EAC community is continual delays in repatriation of monies from States Parties and key stakeholders, as well as limited funding resulting in a decrease in the total budget as the demand for services increases on the Community to offer more. Because of the EAC's dependency on donor funding, initiatives that appeal to donor objectives but have a small domestic base are less likely to be enacted. Traditional donors provided more over 65 percent of the EAC, while partner states provided just 30 percent.¹⁵⁸

4.1.5 Security Constraints

Lastly, security constraints was another major cause of concern that was presented by majority of the respondents who responded successfully to the questionnaire. Terrorism challenge is considered as a security threat to the implementation of free movement of persons in the region. The greatest terrorist danger in Eastern Africa comes from the Islamist organization al-Shabaab, which is based in Somalia. As troop-contributing nations to the African Union Mission in Somalia (AMISOM), Uganda, Kenya, Ethiopia, Burundi and Djibouti have been directly involved in attempting to oppose the group and assist transitional governmental systems in Somalia. Despite having had some success in driving al-Shabaab back in 2010s, the terrorist group still possesses a significant threat in the region. As a result, some of the members have developed cold feet to the full implementation of the free movement of person protocol due to the fear that it may create a passage for terrorists.¹⁵⁹

“The presence of porous borders is seen as limiting the effectiveness of the implementation of free movement of a person’s protocol. The presence of porous borders is seen as one of the security dynamics that has limited the implementation of the free movement of persons protocol in the EAC region. It has been discovered that the region's porous borders enable for the unrestricted passage of illicit weaponry,

¹⁵⁸ <https://www.tralac.org/blog/article/14615-EAC-Regional-response-to-the-covid-19-pandemic.html>

¹⁵⁹ Ibid

counterfeit products, vehicle theft, human trafficking, as well as other criminal enterprises, all of which contribute to the region's instability, mostly through illegal routes known as 'panya' routes (rat routes). These routes are generally developed by border communities that were separated during colonial times, and who frequently go over to opposite side of the border for commerce, pasture for their animals, water, and other reasons, using both the recognized border points and the illicit routes.”

Due to the region's permeable borders, refugees from war zones such as Somalia, Darfur, and Congo are able to enter. Because it is impossible to identify real refugees from militias, Mogire claims that migrants are nearly always accompanied by armed groups within refugee camps, posing a danger to both national and regional peace and collaboration. As a result, refugees are frequently regarded as a source of insecurity, and hence countries are cautious in fully granting free movement of persons in the region.¹⁶⁰

4.2 Implementation Efforts Towards Free Movement of Persons

As much as migration involves movement from one country to another, its regulation is domestic. The government plays a key role when it comes to the management of migration policies.

4.2.1 Reforms Implemented under Common Market Protocol Scorecard

The East African Common Market Assessment was launched in 2014 as part of a transparency effort to highlight partner nations' commitment to regional integration. The second edition of the Scorecard was issued in 2016, and the third version will be released in early 2021. The East African Common Market Scorecard program aids the Common Market's implementation by allowing Partner States to track their progress toward meeting the Common Market Protocol's

¹⁶⁰ Ibid

liberalization criteria.¹⁶¹The Assessment examines the promises of selected Partner States, details attempts to remove East African legal and regulatory barriers to Protocol compliance, and offers reform proposals. As a consequence, it enables Partner States to identify key areas for improvement and, in partnership with the EAC Secretariat and development partners, devise a strategy for removing remaining roadblocks to a more vibrant regional market. Through reform actions taken out under the East African Common Market Scorecard, Partner States have abolished certain important impediments to further free movement of persons since 2014.¹⁶²

The 2016 and 2021 scorecards have prioritized the assessment of commitments made in scorecard reports. While some shows progress has been made in reforms carried out in line with scorecard commitments it should be noted that all EAC Partner States remain largely non-compliant in their free movement of persons protocol and trade liberalization. Burundi and Kenya continue to score the highest in the implementation of a common market protocol that includes free movement of persons while Tanzania's implementation of reforms undertaken to commitments is the lowest at around 50% followed by Rwanda and Uganda's.¹⁶³

The East African Community Partner States have undertaken some reforms over the past four years to facilitate the implementation of the EAC Common Market Protocol. The Scorecard, which is published by the World Bank, says that Partner States have implemented significant reforms in the free movement of persons, Capital, Goods, and Services that are enshrined in the Common Market Protocol (CMP). For instance, Kenya in affirming its commitment to reforms proposed in the EAC scorecard of 2016 implemented one of its commitments to abolish visa fees for all East African member countries. In the latest step toward greater integration, Kenya and

¹⁶¹ <https://www.theestafrican.co.ke/tea/business/how-the-region-scored-in-common-market-protocols-3444792>

¹⁶² Ibid

¹⁶³ Ibid

South Sudan agreed an end to visa requirements for its people visiting the two nations in 2021. South Sudanese flying to Kenya will be able to enter for free as long as they have a valid passport and fulfill other health requirements for passengers. In exchange, Kenyans would no longer be required to apply for and pay for South Sudanese visas online before to departure. Despite the milestones achieved through reforms initiatives under the EAC scorecard there is still cause for concern as numerous barriers remain in the implementation of free movement of persons.

*In East Africa, rapid migration across the borders of Kenya, Uganda, and Tanzania could be a continuation of the EAC migration trend in certain aspects. However, it is indeed unknown to what level these migration patterns have impacted the economies of both the native and destination countries.*¹⁶⁴

The EAC has also pursued economic reforms that continue to pave the way for the full implementation of the Protocol on the Free Movement of Persons. The EAC nations have proceeded to expand the scope of reforms. The World Bank's 2018 Conducting Trade report highlighted Sub-Saharan Africa's success among modernizing economies. According to the 2019 study, the EAC has continued to thrive, accounting for one-third of all business regulation improvements. Rwanda and Kenya were in the forefront of the reformers. The push for reforms has placed the East Africa Community member states in a vantage position to also pursue reforms on implementation of free movement of persons.¹⁶⁵

4.2.2 Renewed Diplomatic Initiatives to Strengthen EAC

The efforts that were given by the respondents as pertains to the issue under question revealed that majority of the respondents agree that renewed diplomatic initiatives are a way of

¹⁶⁴Oral Interview

¹⁶⁵ <https://www.eac.int/communique/1725-communiqu%C3%A9-heads-of-state-consultative-meeting-of-the-east-african-community>

strengthening the Free movement of persons under the EAC. Concerted diplomatic efforts by various heads of states in affirming the need to strengthen the EAC through full implementation of common markets protocol. The concerted diplomatic efforts have been led by President Samia Suluhu and Uhuru Kenyatta. Kenyan President Uhuru Kenyatta recently traveled to both cities on a diplomatic trip to resolve the deadlock between Rwanda and Uganda. "The more we meet, the more we communicate, the better we integrate as a people," he remarked, summarizing the need of keeping an integrated EAC.¹⁶⁶ Following the election of Tanzania President Suluhu, the president in assuming office has been on a charm diplomatic effort that has seen the president visit Kenya, Uganda, and Rwanda. In all these diplomatic efforts, the president has argued for the need to continue with the reform agenda in EAC and affirm political commitment to the regional economic community. As part of the efforts by President Suluhu to affirm the commitment of the Tanzania government to EAC, the state cleared all the dues that Tanzania owed to the EAC due to non-payment. The renewed efforts by these two countries that for long have been antagonists show that there is hope in solving the conflict between Rwanda and Uganda, and further strengthening the cooperation.¹⁶⁷

4.3 Conclusion

This chapter shows that the implementation of Free movement of person protocol in EAC is characterized by economic, social, technical, security, and political constraints. Of these challenges, economic, political, and technical constitute the challenges that cut across all the member states while security and social constraints only affect a few member states. Despite the constraints that face the implementation of free movement of persons, efforts that have been

¹⁶⁶ Ibid

¹⁶⁷ <https://www.theeastafrican.co.ke/tea/news/East-Africa/Suluhu-seen-as-a-boon-for-integration-diplomacy-3340302>

made to ensure successful implementation largely involve reforms initiatives under the EAC scorecard and diplomacy efforts to address the tension between member states.

Chapter Five

Summary, Conclusion, And Recommendations

Introduction

The study tried to examine how the East African Community implemented free movement of people. This study's final chapter provides a summary of the study's findings, conclusions, and recommendations based on three specific study objectives: to critically analyze the implementation of free movement of persons within regional economic groupings, to assess Kenya's implementation of the EAC Protocol on the Free Movement of Persons, and finally, to discuss the challenges and opportunities that exist in the EAC protocol's implementation.

5.1 Summary

The first objective established that free movement of individuals in Africa is mostly directed by frameworks and regulations that are not binding on member states or regional economic communities but rely heavily on member states' goodwill. The aim also stated that free movement of people in Africa occurs mostly within the confines of regional economic communities that promote free movement, establishment rights, and residence rights. The implementation of free movement of persons, on the other hand, is still in its early phases, with none of the RECs able to fully implement the protocol. Among the impediments to establishing free movement of people.

The second objective of the study found out that the free movement of persons framework in EAC was enacted in November 2009 but became operational in 2010 under the common market protocol. Free movement of persons regulations is found in annexes I-VI of the protocol.

Following the coming into force of the protocol, some gains have been made in the implementation of the protocol with Kenya Uganda, Rwanda, and South Sudan leading the pack in its implementation. Despite the significant strides that countries in East Africa have made in the protocol implementation, there is still hope that the coming of President Suluho offers positive momentum for the full realization of the free movement of persons' protocol.

The third objective documented that the implementation of free movement of person protocol has been hampered by challenges that are largely technical, political, social security, and social. Political challenges are considered the main challenge that has slowed the implementation of the protocol because it has resulted in the manifestation of other challenges. Technical challenges it was established to arise out of the unwillingness of member countries to develop effective institutions, systems, or even legal. The perception that full implementation of the protocol may lead to the economic benefit of some member states at the expense of others and fear of job losses were established as significant constraints. Terrorism threats were found to be a problem in the full implementation of the protocol. Nonetheless, the reform agenda carried east Africa scorecard program and concerted diplomatic efforts are seen are providing hopes to the realization of the protocol.

5.2 Conclusion/ Findings

The initial goal of the research was to examine the free movement of people throughout Africa. According to the report, free movement of people in Africa is generally regulated by frameworks and rules that are not followed by member states. The African foundation for free movement of people may be traced back to the Protocol on Free Movement of Persons, Right of Residence, and Right of Establishment, which was passed in Abuja in 1991 but entered into force in 1994. The frameworks that regulate Africa's free movement of people are the protocol, the

African Common Position on Migration and Development, and the Migration Policy Framework for Africa.¹⁶⁸

Regional economic communities have made various efforts to implement the protocol on free movement of persons, with SADC and ECOWAS being prominent examples. ECOWAS approved the Protocol on Free Movement of People, Right of Residence, and Establishment in 1980. The protocol was supposed to take fifteen years to execute in three phases: Phase 1: Right of Entry and Abolition of Visas, Phase 2: Right of Residence, and Phase 3: Right of Establishment.¹⁶⁹ In the first phase of implementation, significant progress has been made. Phases two and three, on the other hand, have generally remained unimplemented due to a lack of political will and unanimity on how these stages should be executed. The facilitation protocol, as it is known in SADC, was implemented in 2005 as a promise to assist the African Union's (AU) efforts to encourage free movement of people throughout the continent. Following the development of the protocol, the challenge of lack of consensus on the content of protocol implementation has delayed the ratification process. Related to this is the prevalent challenge of active resistance of most member states in SADC leading to the proliferation of bilateral agreements on the free movement of persons. The reality is for as long as some economies in the SADC region consider themselves stronger and stables as opposed to other states there is bound to protectionist policies that limit the free movement of persons in most regional economic opportunities.¹⁷⁰

¹⁶⁸Garba, Dimas, and Wancelous Avong Alexander. "African Union's Single Passport and Free Movement: The Challenges." *Covenant University Journal of Politics and International Affairs* 9, no. 1 (2021).

¹⁶⁹Yeboah, Thomas, Leander Kandilige, Amanda Bisong, Faisal Garba, and Joseph Kofi Teye. "The ECOWAS Free Movement Protocol and Diversity of Experiences of Different Categories of Migrants: A Qualitative Study." *International Migration* 59, no. 3 (2021): 228-244.

¹⁷⁰Mlambo, V. H. (2020). Consolidating Regional Integration Through a Free Movement Protocol: The Quest for Collective Development in the SADC. *African Journal of Governance & Development*, 9(2), 455-471

This research sought to assess the protocol itself, its provisions, and the overall implementation by the partner states, Free movement of persons framework in EAC was enacted in November 2009 but became operational in 2010 under the common market protocol. Free movement of persons framework is contained EAC under common market protocol regulations in annexes I-VI of the protocol. These annexes I-IV are meant to implement various provisions of the free movement of person framework progressively protocol.¹⁷¹ For instance, Annex I implement provisions of the standard identification system and travel documents while Annex II focuses on rights of residence amongst other regulations.¹⁷²

Considerable progress has also been made by other member states such as Rwanda, Uganda, and South Sudan on work permits by some member states. The national laws of all East African states have laws regulations stipulating the requirement for free movement of persons, work or residence permit for citizens of East Africa countries wishing to reside or engage in economic activity in the respective states.¹⁷³

The reduction of hostilities between Kenya and Tanzania following the election of President Samia Suluhu is seen as a chance for the achievement of free movement of individuals in the EAC, according to popular consensus. The AfCFTA is also seen as a benefit for the EAC's adoption of free movement of persons. The African Continental Free Trade Agreement (AfCFTA) offers a significant opportunity for regional economic communities to advocate ratification of the free movement of persons protocol, which is highlighted in the AfCFTA agreement..

¹⁷¹ Trouille, Jean-Marc. "Introduction—A journey towards regional integration." In *The East African Community*, pp. 1-12. Routledge, 2021.

¹⁷² Ibid

¹⁷³ Ng'ingo, Goodluck Andrew. "Assessment of the Implementation of EAC Common Market Protocol on Free Movement of Labor in Tanzania." PhD diss., Mzumbe University, 2019: 1-158

The research study was able to look at the roadblocks to protocol implementation as well as the steps followed to guarantee that the protocol was implemented correctly. The challenges that have hampered the Protocol on the Free Movement of Persons' implementation are largely technical in nature, political, social security, and social. Political challenges are considered the main challenge that has slowed the implementation of the protocol because it has resulted in the manifestation of other challenges. Political challenges in the form of weak political will have affected member states as heads of states of member countries have not given the attention required to the affairs of the EAC.¹⁷⁴ The re-emergence of opposing political camps within the EAC has further slowed down the free movement of person protocol implementation. The split within political leadership in EAC has created two camps, one pushing swift implementation while the other adopting a cautious and slow approach in implementation.¹⁷⁵

Technical challenges arise out of the unwillingness of member countries to develop effective institutions, systems, or even legal frameworks for free movement of person protocol at individual states level or EAC secretariat. Institutions in EAC member countries mandated with implementing the common market protocol are either too weak in terms of capacity and have human resource constraints. The presence of weak laws or inadequate legal framework in member countries is a problem that has failed to give the protocol strength in partner states.

The fear that the nationals will lose jobs once job seekers from other Partner States are allowed into the country has also hampered the implementation of the protocol. The language barrier due to the absence of a common language in the region has affected the free movement of persons. Various Partner States have different national languages and hence the full implementation of

¹⁷⁴ Kinyua, Timothy K. "Institutional challenges facing the east Africa community common market in Kenya." PhD diss., University of Nairobi, 2015.

¹⁷⁵ Ibid

free movement of persons is only possible in cases where one knows at least one of the National languages in the country. Police harassment, extortion by the security agencies who forcefully demand bribes, and the information gap have also impacted negatively on the free movement of persons. In some instances, only those who can bribe their way at immigration centers are free to move across the region. The COVID-19 pandemic, with its attendant health guidelines and measures, has further impacted the free movement of persons in the region.

Economically the perception that free movement of persons in the region is likely to benefit the citizens from strong economies has stifled free movement in the region. Persistent delays in remittance of funds from the Partner States, and limited financial resources leading to the overall budget declining has resulted in the prioritization of other development fund priorities at the expense of free movement of person implementation since it's not considered a priority for development partners that contribute over 60% of EAC budget. Terrorism challenge is considered as a security threat to the implementation of free movement of persons in the region due to fear of the establishment of terrorist cells through the free movement of persons.

Concerted diplomatic efforts by various heads of states in affirming the need to strengthen the EAC through full implementation of common markets protocol have provided hope in the protocol implementation. The concerted diplomatic efforts have been led by President Samia Suluhu and Uhuru Kenyata in trying to resolve the diplomatic impasse between Rwanda and Uganda.

5.3 Recommendations

In line with the study findings on the analysis of the free movement of persons in Africa through the case of East Africa, the study makes the following recommendations. As a general

recommendation, there has to be a shift in thinking towards the movement of people in the SADC.

5.3.1 Increased Awareness to Change Negative Attitudes

In Africa, the free movement of persons protocol is still being implemented. One of the causes for this is officials' and people' negative attitudes toward the protocol's implementation. According to Wakhungu, altering policymakers' views and assuaging their anxieties about migration is the key to successful responses and the realization of a progressive regional human mobility instrument. As a consequence, many member states to regional groupings adopt a protectionist approach to the implementation of free movement protocol. To address this, it is important that the regional economic grouping raise the awareness of the people on the likely benefits of free movement of persons through mainstream and social media. Increased awareness will likely impact positively on attitudes of citizens and policymakers thus making them more receptive to open economy principles that favor free movement protocol. To this extent, there is a need for development and international relation experts to be involved in developing a sensitization plan across the regions targeting all the countries. Through this, the potential and expected benefit of the free movement of person protocol will be better elaborated to the citizens, political leaders, and policymakers.

5.3.2 Increased Donor Support in Realization of Free Movement of Persons Protocol

The remittance from member states to most regional economic communities (RECs) is relatively low. This has made most regional economic communities depend on the donor community to finance most of their budget and operations. This has given the donor community leverage in determining the RECs commitments that they will help implement. This is an opportunity that can be tapped by both the international relations experts and private business community in the

region to lobby the donor community to prioritize the implementation of free movement of persons. International donor communities such as the EU have experienced the benefits of free movement of the person through the Schengen area, and thus they can prove useful in pushing for free movement of a person in the region in their funding commitments.

5.3.3 Undertaking of Reform for Progressive Free Movement of Persons

The goal of free movement of persons can only be realized if all the countries in the region are in harmony on facilitating free movement. However, the resistance from some of the Key countries suggests the importance of undertaking reforms that will bring all countries on board to implement the protocol. The member countries must undertake a reform agenda on the pillars of free movement of person protocol as a way of incorporating all the concerns of member states and to strike balance on the minimum progressive efforts to realize the protocol. Ever since the protocol was passed in 2009 and operated in 2010 no efforts have been made to introduce some reforms on the pillars despite some members developing resistance to its full implementation. This thesis proposes that as part of the flexible report agenda EAC should prioritize reform agenda on the free movement of labor first and only embark on the free movement of persons after realizing free movement of labor.

5.3.4 Development of a Regional Migration Policy

The protocol on the free movement of persons is implemented under the common market protocol of EAC and the national laws and policies of members states. In as much as member countries have made efforts to develop policies on migration, most of them are still at the draft stage while the existing national laws are yet to be fully harmonized with the protocol regulation. To help with the harmonization of regional migration policies by member states, the study recommends that the EAC secretariat, the council of ministers, and EALA develop a regional

migration policy framework. This will help ease the burden of policy and regulation harmonization by member states since the member countries will all have documents acting as a point of reference.

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APPENDICES

Appendix I: Questionnaire

Dear Respondent,

RE: COLLECTION OF DATA.

PART A

1. Have you heard of any regional economic community in Africa A? Yes B. No If yes, could you briefly explain one or more regional economic communities that you are aware of ?

2. In what ways do you think free movement of persons in Africa has helped facilitate regional economic integration in Africa?

3. Are you aware of some milestones and challenges in the realization of the free movement of persons in Africa? If Yes briefly explain

PART B

Implementation of EAC Protocol Treaty on Free Movement of Persons?

4. Have you heard of the EAC protocol on the free movement of persons A? Yes B. No If yes, could you briefly explain.

5. In what way do you think the protocol is helpful to citizens of member countries?

6. In your understanding what are the prospects of Free Movement of People in EAC?

7. Do you know about the implementation of the EAC free movement Protocol? A. Yes B. No If yes, are you satisfied with the implementation of the protocol?

8. Do you have any issue with the implementation of the EC free movement protocol? Briefly explain

9. Given an opportunity, is there any part of the EC free movement protocol you would change?
A. Yes B. No 21. If yes, which part of the protocol would you change?

PART C

Challenges that Hinder the Effective Implementation of the EAC free movement of persons

10. Are there any challenges associated with the implementation of the protocol? A Yes B. No If yes, what are some of the challenges the protocol has with its implementation?

11. Are there any political challenges associated with the implementation of the protocol? A Yes B. No If yes, what are some of the political challenges the protocol has with its implementation?

12. Are there any technical challenges associated with the implementation of the protocol? A Yes B. No If yes, what are some of the technical challenges the protocol has with its implementation?

13. Are there any economic challenges associated with the implementation of the protocol? A Yes B. No If yes, what are some of the economic challenges the protocol has with its implementation?