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INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**REGIONALISM AND THE MOVEMENT OF LABOUR IN THE EAST
AFRICAN COMMUNITY**

BY

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Declaration

This research project is my original work and has not been presented for a degree/diploma in any other University or any other award

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I confirm that the work reported in this project was carried out by the candidate under my supervision

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Dedication

To my dear children Sammy and Chris for being understanding and supportive throughout this programme. May this research work inspire you to scale the world of academia.

Acknowledgement

The successful completion of this project would not have been possible without the assistance, encouragement and cooperation of many people to whom I owe a tremendous debt of gratitude. I am most grateful to my supervisor Dr. Martin Ouma whose guidance and supervision made this work possible. I would also like to thank the State Department of East African Affairs for granting me the opportunity to undertake this study. I give thanks to my colleagues on this programme with special mention to Mwangi Kahenu and Mungere Joseph for the team spirit that kept me going throughout the programme. Thanks to the members of the regional committee on the implementation of the EAC common market for providing the primary data for this study and to all others who offered moral support and prayers, I am most grateful. To my Father, the Almighty God, be all the glory.

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Abbreviations

AEC:	African Economic Community
APSEA:	Association of Professional Societies for Eastern Africa
ASEAN:	Association of Southeast Asian Nations
AU:	African Union
CMP:	Common Market Protocol
COMESA:	Common Market for Eastern and Southern Africa
EAC:	East African Community
EACJ:	East African Court of Justice
EALA:	East African Legislative Assembly
ECA:	Economic Commission for Africa
ECOWAS:	Economic Community of West African States
EPAs:	Economic partnership Agreements
EU:	European Union
FTA:	Free Trade Area
GATS:	General Agreement on Trade in Services
GATT:	General Agreements of Tariffs and Trade
GDP:	Gross Domestic Product
ICT:	Information, Communication Technology
IGAD:	Intergovernmental Authority on Development
ILO:	International Labour Organization
LMI:	Labour Market Information
LPA:	Lagos Plan of Action

MRAs: Mutual Recognition Agreements
OAU: Organization of African Unity
PDF: Portable document format
RECs: Regional Economic Communities
RTA: Regional trade agreements
SADC: Southern Africa Development Community
US: United States
WTO: World Trade Organisation

Abstract

Regional integration took centre stage in the second half of the twentieth century making the world much more integrated. Integration in Africa is basic for the continent's competitiveness as it offers a mechanism for diversifying international competitiveness. Towards this end, free movement of labour was identified as a key obligation of the East African Community (EAC) as the region endeavours to achieve its vision of deepening and widening integration for the mutual benefit of all East Africans. Regionalism in East Africa has been faced with a number of challenges arising from policy and structural factors, low level of awareness on the provisions of the common market among the citizenry of the region, restriction imposed by partner states and lack of comprehensive information on the labour market in the respective partner states, factors that have hampered the free movement of labour. This study employed qualitative and quantitative methods of data collection and analysis and was to establish the extent to which the EAC common market has enhanced the free movement of labour within the region, how policy and structural factors has impacted on movement of labour and suitable methods of sharing labour market information. The study sought to contribute to the existing body of knowledge on the dynamics of regionalism and labour mobility and provide vital information for use by policy makers, workers, employers and the general populace in the East African Community. The study revealed that in spite of the EAC common market having been in existence for the last four years, there is no tangible evidence that the region in general and the partner states in particular have reaped the benefits of the free movement of labour. The fact that the protocol only permits the free movement of highly skilled workers and the slow pace of harmonizing the labour laws, challenges of portability of social security benefits as well as the often prohibitive work permit fees charged by some partner states act as limitations to the realization of the free movement of labour. The situation tends to be worsened by low levels of awareness on the requirements and benefits of the EAC common market protocol and the absence of labour market information systems to facilitate the sharing of information on the labour market which is itself key to the free movement of labour. The study recommends fast-tracking of the review of labour laws, completion of the EAC manpower survey and raising the level of awareness of the general populace on the benefits of the EAC integration in efforts to increase the movement of labour and achievement of the aspirations of the common market.

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.0 Introduction

This chapter introduces the background to the study on regionalism in the East African Community by presenting the relationship between the EAC Common market protocol and movement of labour. It further states the research problem that the study was centred around, the study objectives, the research questions that the study seeks to answer and provides the justification of the study. The chapter also reviews existing literature on identifying the literature gap on the study area. The chapter further describes the theoretical framework within which the study was undertaken, provides a theoretical model and explains the methodology employed to undertake this study.

1.1 Background to the Study

The second half of the twentieth century saw the world becoming much more integrated with successive rounds of negotiations under the General Agreements of Tariffs and Trade (GATT) resulting to significant globalization and a trend towards regional integration. In Africa, the Heads of States and Governments of the newly independent states recognized the need to harness the natural and human resources of the continent for the advancement of the African peoples¹. Additionally, the continent tried to intensify cooperation and to promote the Pan-African spirit in efforts towards achieving better lives for its peoples.

¹ Organization of African Unity, *Organisation of African Unity Charter* (Addis Ababa, Ethiopia, 1963)

The integration arrangements in Africa may be viewed from two broad perspectives; those that fall into the Lagos Plan of Action (LPA) adopted by the Organisation of African Unity (OAU) through the Economic Commission for Africa (ECA) and others that were already in existence as well as those that came about outside the LPA arrangement and so do not fit into the action. The OAU envisioned integration where there would be convergence of the regional arrangements of the sub-regional groupings.

In most African countries including the East African Community (EAC) region, unemployment, under-employment and poverty levels have continued to increase despite considerable efforts to promote sustainable development by national governments and development agencies². The high unemployment is worsened by the supply-demand mismatch which continues to affect many young people who constitute an important segment of able bodied human resource that has potential to move the economy of the region forward.

The EAC is the regional intergovernmental organisation of five states including Burundi, Kenya, Rwanda, Tanzania, and Uganda with its headquarters in Arusha, Tanzania. The treaty for establishment of the East African Community was signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the original three Partner States. The members conduct business activities at the bilateral and multilateral levels. The free movement of labour is a key obligation of EAC Partner States who

² *Haji Semboja Haji Hatibu, The Youth Employment in East Africa: An Integrated Labour Market Perspective African Integration Review Volume 1, No. 2, July 2007 P. 2*

commit to adopt appropriate measures to ensure the enjoyment of the right of establishment and residence of their citizens³. In efforts towards achieving this provision of the treaty, the Community negotiated the Common Market Protocol (CMP) which came into force on 1st July, 2010.

The protocol is anchored on four main principles; non-discrimination of nationals of the partner states on grounds of nationality; accord nationals of other partner states treatment not less favourable than the one accorded to third parties; transparency in matters concerning the other partner states; and sharing of information for the implementation of the protocol⁴. Through the Protocol, the Community guarantees her citizens the freedom to move within the territories of any partner state without discrimination on the basis of nationality. In addition, the EAC partner states made commitments to liberalize services and to progressively open various professions in efforts to implement the Annex to the free movement of workers which is a constituent part of the common market protocol. Additional commitments have also been negotiated to allow people access more service the regional market.

The terms movement of labour and labour mobility are used interchangeably to refer to the movement of people in search of economic opportunities. Labour mobility results in a win-win situation for all actors as it offers an opportunity for skills transfer, remittances to sending states, creation of business and trade networks for host of origin as well as

³ East African Community, *The Treaty for the Establishment of the East African Community* (Arusha, Tanzania: EAC Secretariat, 2002) P.79

⁴ Ibid

bridging the capital and skills gaps in the receiving state⁵. Indeed, the free mobility of skilled labour within the EAC, will lead to optimal utilization of this rare factor of production; benefit Partner States to easily obtain skills that are locally scarce from each other; and provide an opportunity for technological advancement as the community strives to achieve its stated objective to widen and deepen cooperation among the Partner States⁶.

The East African community CMP is a major milestone as it presents the region with an opportune strategy for employment and job creation particularly for the relatively youthful population. It also offers a platform for East Africans to build a strong capital base for investment, promote technological transfer as the region endeavours to position itself as an economic hub in the continent and globally.

1.2 Statement of the Problem

The EAC common market has been in implementation for the last four years but East Africans are yet to enjoy the benefits of the free movement of labour as envisaged in the protocol. The manpower survey which was initiated before the protocol took effect has not been undertaken in three of the partner states hence the region lacks a database on the labour market. In the meantime, the region is characterized by high unemployment with most partner states in the region recording double digit levels of unemployment, for instance Kenya at 12 percent in 2012 and Tanzania at 11 percent by 2011 with the

⁵ Economic Development in Africa Report ; *Strengthening Regional Economic Integration for Africa's Development*, UNCTAD(2009) P.86

⁶ East African Community, Protocol on the Establishment of the East African Community Common Market (Arusha, Tanzania: EAC Secretariat, 2009), P. 6-7

exception of Rwanda at 1.2 percent in 2012 being the only state to have recorded a single digit level of unemployment in the region⁷. Furthermore, the first manpower survey to establish the skills gap in the region has not been undertaken in some partner states while partner states continue to maintain restrictions to free movement of persons, movement of services and movement of workers a fact that contravenes the CMP⁸.

There are low levels of awareness on the EAC integration among the citizens of the region and there is lack of a mechanism to share labour market information which is important for the citizens of the region to take advantage of the movement of labour as offered by the protocol. This study sought to gather information on the success of the EAC common market with respect to the free movement of labour and propose suitable approaches to increase access to labour market information by the East Africans a necessity for labour movement.

1. 3 Objectives of the Study

The aim of the study was to establish the success of the common market, the second pillar of the EAC Integration in promoting the movement of labour in the region and to suggest possible interventions.

1. 3.1 Specific Objectives

- i) To determine the success of the EAC common market in relation to free movement of labour;

⁷ EAC Secretariat, *EAC Facts and figures 2013*, Arusha 2013. P.30

⁸ East African Community, *20th meeting of the Council of Ministers responsible for EAC Affairs and Planning* (EAC Secretariat, July 2014, Arusha Tanzania)

- ii) To investigate how policy and structural factors impact on the movement of labour within the EAC; and
- iii) To explore suitable methods of sharing labour market information amongst by EAC partner states.

1.4 Research Questions

- i) To what extent has the CMP been successful in realising the free movement of labour in the EAC?
- ii) How have policy and structural factors affected the movement of labour within the EAC?
- iii) What methods of sharing labour market information best suits the East African Community?

1.5 Justification of the Study

The study sought to establish the extent to which the EAC regional integration and especially the Common Market has succeeded in promoting the movement of labour in the region. It investigated how policy and structural factors impact the mobility of labour in the region. The study sought to explore suitable methods of sharing labour market information among EAC partner states in efforts to bridge the information gap on labour trends and the demand and supply of labour which is fundamental to labour mobility.

The study will contribute to the existing body of knowledge for use by scholars on the dynamics of regionalism and labour mobility. The study findings provide vital information for use by workers, employers and the general populace in the region and particularly the workers and professional associations as they engage with their counterparts in the region. In addition, the study findings will inform the EAC Secretariat and the policy organs the progress of the CMP with respect to free movement of labour and to inform them on suitable policies even as the region undertakes tripartite negotiations with other regional integration communities in the continent.

1.6 Literature Review

In the ideal, labour market refers to a relatively self-contained market where the factors determining the supply and demand of labour make the supply-demand equilibrium result to a uniform wage level and the employment rate across the labour market⁹. In this case, integration would reflect the merger of the different labour markets with distinct sets of supply-demand determinants and differing labour market indicators thus resulting into a new single market whose dynamics and features are constant. Nevertheless, this never happens in reality since labour is not a homogenous factor but consists of a series of workforce groups some of which are skilled, other un-skilled and it also has disparities in-terms of gender, age- groups and specialization¹⁰.

⁹ Raines P. *The impact of European integration on the development of national labour markets*, International Labour Office Geneva (2000) P.3

¹⁰ Ibid P4

Labour markets can also operate at different overlapping levels ranging from local, national to supra-national levels thus, the dynamics of the different markets tend to have fragmented outcomes and the web of interactions are very extensive making it difficult to identify clearly defined supply- demand determinants for any particular labour market¹¹. Consequently, the definition of labour market integration can vary as it largely depends Market seeks to integrate markets of the Partner States into a single entity in which there is free movement of labour, goods, persons, services and capital and also provides for the rights of establishment and residence and is guided by the fundamental and operational principles of the EAC and as enshrined in the relevant articles of the treaty¹². In addition, using the ILO classifications, EAC partner states committed to open the following categories of services: Burundi for professionals by 1st July 2010; Kenya for managers, professionals, technicians and associate professionals by 1st July 2010; Rwanda for professional and technicians and associate professionals by July 2010; Uganda for managers, professional and craft and related trade workers by 1st July 2010; and Tanzania for professionals and technicians and associated professionals ranging from 1st July 2010 to 2015¹³.

A study undertaken by the Society for International Development on labour and employment inequalities in the East African regional integration process identified the

¹¹ Ibid. P4

¹² East African Community, Protocol on the Establishment of the East African Community Common Market (Arusha, Tanzania: EAC Secretariat, 2009), 3.

¹³ Ibid

employment inequalities within the EAC regional integration process with a focus on equity in terms of working age population in the region, gender gaps and other inequalities¹⁴. Thus, the study provided vital information on the employment and labour trends in the region between 1980 and 2008 and noted that there existed cross-country and gender gaps in the labour force participation.

The movement of labour per-see encompasses the different aspects of labour mobility for economic purposes including the movement of workers and trade in services. The EAC negotiated Annexes to address the movement of workers and trade in services. The Annex on the free movement of workers provides the regulations for the implementation of article ten of the protocol and ensures uniformity among the partner states and to enable the process to be transparent, accountable, fair, predictable and consistent with the provisions of the protocol¹⁵. The free movement of services on the other hand guarantees the movement of services supplied by nationals of partner states as well as free movement of service suppliers based on the World Trade Organisation (WTO) classifications of services¹⁶.

¹⁴ Society for International Development, *East African Integration; Dynamics of Equity in Trade, Education, Media and Labour* (Nairobi 2011)

¹⁵ East African Community, *Annex 11: The East African Community Common Market (Free Movement of Workers) Regulations* (EAC Secretariat 2009) P.3

¹⁶ World Trade Organisation, *The General Agreement on Trade in Services, An Introduction* (2013)

According to the (WTO) classification of services under the GATS, there are four main modes of services which include: cross-border supply a situation where there is flow of services across territories of members; consumption mode which entails movement of the consumer to obtain a service; commercial presence in which case the supplier of the service owns or leases premises in another territory; and the presence of natural persons who enters the territory of another member to provide a service or to seek to access employment thus the concern of residence becomes critical¹⁷. The free movement of labour is particularly relevant to mode four where citizens of one partner state physically move and reside in another state to for work or to provide a service.

Ganguly observes that the rapid progress in telecommunications since the Uruguay round of negotiations coupled with other forms of technological advancement has changed the dynamics of intermodal linkages within the four modes. Some developing countries like India, China and Philippines have positioned themselves as hubs for outsourcing and supplying low cost option to firms in developing countries through mode one or cross-border supply of services. Further, mode one has the potential to complement and sometimes substitute mode four¹⁸. In addition, Onduko in her research project observes that although the treaty establishing the EAC guarantees free movement of workers without exception, only the highly skilled professionals enjoy the freedom. The study recommended harmonization of labour and migration laws among other policies¹⁹.

¹⁷ http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm Accessed July 18,2014

¹⁸ Ganguly D, Indian Council for Research on International Economic Relations. Working Paper No. 169 (September 2005)

¹⁹ Onduko E, *Regional Integration and professional Labour Mobility; a case of the East African Community* (University of Nairobi, Institute of Diplomacy, 2013)

The last two editions of the EAC facts and figures, annual regional publications by the EAC Secretariat on integration trends, contain little information on movement of labour per se making it difficult to assess any impacts on labour trends by the CMP in the region. In particular the reports for 2012 and 2013 are both short of regional data on key indicators on movement of labour and contain even much less information on the movement of labour in the four years the Protocol has been in operation and indication that indeed the region is short of information on the success of the CMP²⁰.

Existing literature on policy and structural factors that impact the movement of labour indicates that in recognition of the importance of free movement of people in Africa, the Abuja treaty establishing the African Economic Community (AEC) urged member states to, among other things, to adopt employment policies that allow the free movement of people in Africa and RECs commit to promote free movement of persons, rights to residence and establishment through consensus on visa relaxation, single tourist visas and regional passports²¹. Stalker notes that many professionals migrate because there are simply no jobs available and especially in developing countries often produce more people than their economies can absorb. He holds the view that labour policies are mostly shaped by the interests of the receiving country for example the US Immigration Act which he argues was changed to admit people based on occupations and skills²².

²⁰ EAC Secretariat, *EAC Facts and figures 2013*, Arusha 2013. P.29

²¹ African Union, *Treaty establishing the African Economic Community* (Abuja 1991)

²² Stalker Peter, *The Work of strangers; A survey of International Labour Migration*, (Geneva, International Labour Office, 1994) P. 121

Another scholarly work by Rupa notes that restrictions to the movement of natural persons may be seen in terms of; immigration related regulations concerning entry and stay of service providers; regulations concerning recognition of qualifications, work experience, and training; differential treatment of domestic and foreign service personnel; and regulations covering other modes of supply, particularly on commercial presence which indirectly limit the scope for movement of natural persons. The scholar therefore sees structural factors as critical in directing labour mobility²³.

Similarly, Zimmerman identifies migration policies to be of great importance as labour mobility reacts strongly to differences in regional welfare and that the higher educated tend to migrate more. The study prioritizes social security system, exchange program and education policy program and recognition of professional qualification as key to the free movement of labour²⁴. Vagac on the other hand sees economic conditions as critical to labour mobility key among which are; wages, gross domestic product (GDP) per capita, taxation policies and infrastructural policy. The study notes that welfare policies including housing policy such as differential in housing prices also contribute to dampening labour mobility²⁵. Ganguly on the other hand cites policy factors such as taxation policies, government preferences, non-recognition of professional qualifications and security policies to be barriers to the free movement of people²⁶.

²³ Chanda Rupa, Indian Council for Research on International Economic Relations November, 1999. P 10

²⁴ Zimmerman F Klaus, *Labour mobility and integration of European Labour markets* (IZA,DIW Berlin 2009)

²⁵ Vagac L. *European employment observatory: Internal labour mobility in Slovakia*

²⁶ Ganguly D, Indian Council for Research on International Economic Relations. Working Paper No. 169 (September 2005)

In his scholarly work, Wandera examines the provision of the EAC common market protocol and its practicability towards providing the free movement of labour. He observes that although the EAC common market guarantees the right of mobility of labour, article 7 (5) of the same protocol subjects the right to limitations by national laws and policies imposed by Partner States especially on grounds of public health and security policy which he concludes is an undoing on regional efforts to harmonize laws and policies relating to labour mobility²⁷.

From available literature, the concept of labour market information (LMI) may be understood from the perspective of qualitative and quantitative information on the past present and the future size, composition and characteristics of the supply and demand for labour. A LMI system is useful in that it helps to provide detailed information on the labour demand and supply; skills gaps; deficits in manpower training thus helps to inform policy formulation on education and training, employment, income earnings and other interventions to address imbalances in the labour trends. However, in most instances adequate reliable data for public policy formulation, implementation and monitoring and evaluation is not readily available, a trend that is common in most developing countries where getting data from authoritative sources is difficult²⁸.

In similar vein, Woods and O’Leary on the Conceptual Framework for an Optimal Labour Market Information System identifies the key components of an LMI system as

²⁷ Wandera M, *The East African Common Market Protocol and free movement of labour: achievements and challenges of implementation in Uganda* (Friedrich Ebert Stiftung 2012)

²⁸ Government of Ghana, Ministry of Manpower, Youth and Employment, *Report on Establishment of a Labour Market Information System*

including information on skills requirements, skills and knowledge, methods of disseminating the information, capacity of analysts. Also critical is the employment relationships, general incentives and working conditions. Equally important when considering an LMI system are the roles of analysts and intermediaries ²⁹.

1.7 Summary of the Literature Gap

From the foregoing literature, the scholarly work undertaken in the field of labour mobility focussed on other regions such as Europe, Asia and America for example Zimmerman's work on labour mobility and integration of European labour markets. The studies explain impacts of policies on integration but there is little information to confirm their applicability in RECs whose membership is drawn from developing economies like the EAC. In addition, most studies undertaken in the field of labour market information including Woods and O'Leary assume the existence of functional LMI systems which is not the case with the EAC region. Arising from these gaps this study sought to identify the extent to which the EAC common market has led to the free movement of labour in the region; how policy and structural factors affected mobility of labour and explored suitable methods for sharing labour market information which constitute the objectives of the study.

1.8 Theoretical Framework

The main objective of this study is to investigate regionalism and the movement of labour in the East African Community. The research was guided by the theory of neo-

²⁹ Woods J.F and O'Leary C. *Conceptual Framework for an Optimal Labour Market Information System* Upjohn Institute Technical Report No. 07-022 (December 2006)

functionalism as advanced by Ernest B. Hass in the 1960s. According to the theory, the process of state cooperation is aimed at solving conflicts arising between members and gradually giving up national sovereignty. It assumes that regional integration is characterized by multiple, diverse and changing actors who are not restricted to the domestic political realm but also interact and build coalitions across national frontiers and bureaucracies³⁰. The theory views integration from the point of progressive development through the spillover effects which eventually leads to; increased number of transactions and negotiations; transfer of domestic allegiance as the pace of integration gets deeper and leading to greater regulatory complexities and other regional institutions ³¹.

This theory was applied in this study to scrutinize the extent to which the EAC partner states have integrated under the common market to achieve the regional goals and create the spillover effects leading to the realization of free movement of labour across the region. In addition, the transfer of domestic allegiance explained in the theory was used to establish how the regional framework synchronized with national institutions, policies, programmes, information systems, qualifications and regulatory frameworks among other parameters of integration with the aim of rationalizing national initiatives to meet the goal of deeper and wider integration in the provision of the free movement of labour in the region.

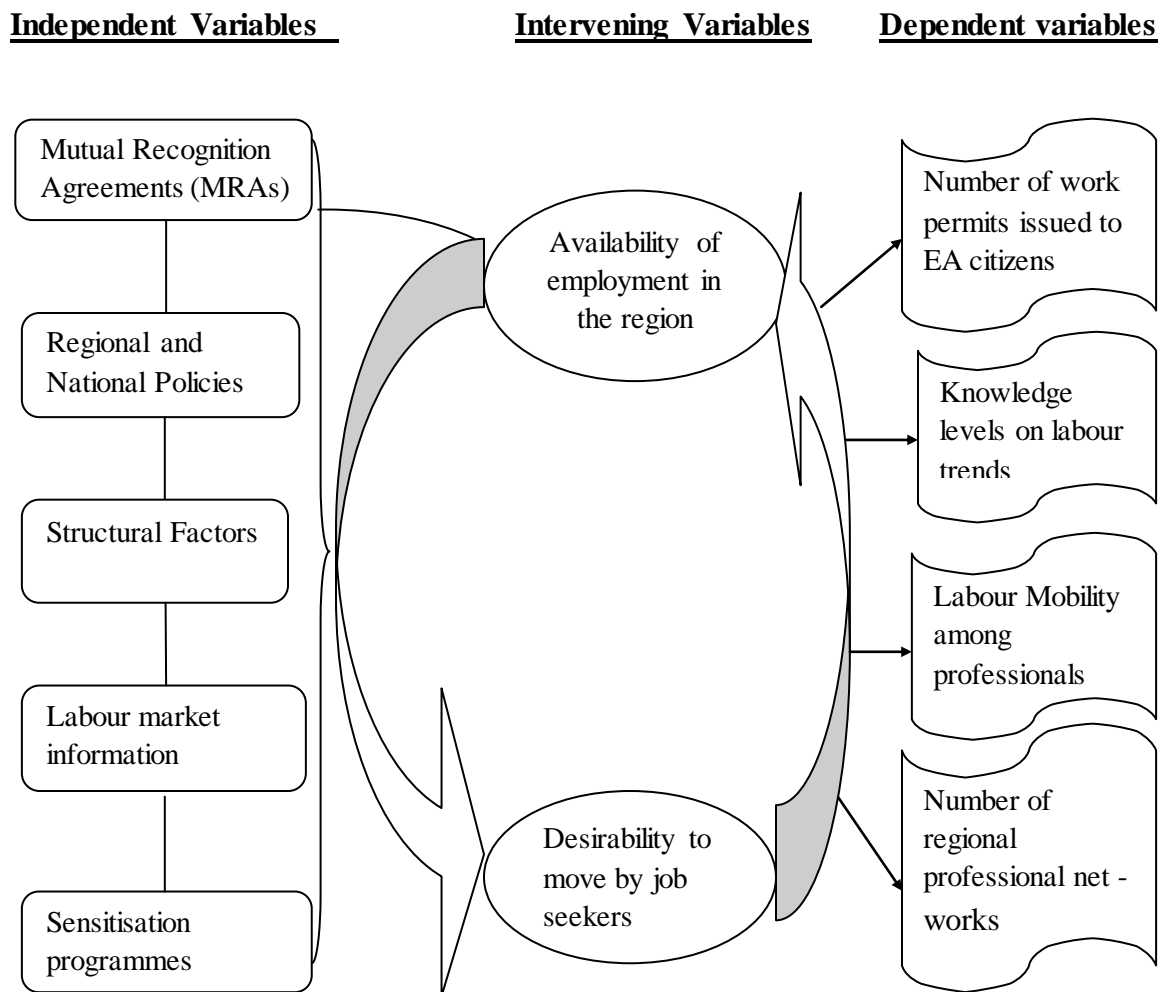
³⁰ Niemann, A. & Schmitter, P. *Theories of European Integration*, Oxford: Oxford University Press (2009) P.4

³¹ Thomas Gehring, *Integrating integration theory; Neo-functionalism and International Regimes*, Global Society Vol. 10 No. 3 1996

1.8.1 Theoretical Model

The concepts in the figure below were derived from the theory of neo-functionalism discussed above. The independent variables were; regional and national policies, structural factors, mutual recognition agreements, labour market information and sensitization programmes. The study examined how these independent variables which are critical to the functioning of a common market influenced the dependent variables which were; number of work permits issued to East Africans, knowledge levels on the labour trends in the region, mobility of labour and the number of regional professional networks. These dependent variables constituted the key indicators of labour mobility and their relationship with the independent variables were assumed to have operated within the framework of the two intervening variables; the availability of jobs in the regional market and the willingness or desirability by East Africans to move to other countries. The inter- relationship among the variables is presented in figure one below.

Figure 1: The Research Theoretical Model



Source: Researcher, 2014

1.9 Research Methodology

The study employed qualitative and quantitative research and relied on data collected from primary and secondary sources. Primary data was collected through interviews. According to Mugenda and Mugenda, the interview method refers to oral administration of a questionnaire or interview schedule undertaken through face- to-face interaction

between the researcher and the subjects and the researcher uses an interview schedule as the main instrument of data collection³². The interviews were held with key informants selected from amongst individuals who have played key roles in the negotiation and implementation of the EAC common market protocol while such informants provided up-to-date information on the movement of labour in the region.

Data collected from secondary sources was used to supplement information collected through interviews and was gathered using desk top research. The secondary data was collected from various books on regional integration and movement of labour, previous research papers, regional publications, government policy documents, reports of the Council EAC Ministers, journals and magazines, official communication, minutes, speeches, and formal policy statements, reports of technical working groups, quarterly reports and other reports published by international agencies such as the United Nations, the World Bank, and International Labour Organization (ILO). The study generated both qualitative and quantitative data hence descriptive statistics was used to analyze the data obtained. The findings have been presented in chapters two, three and four while the summary, conclusions and recommendations are in chapter five.

³² Mugenda and Mugenda, *Research Methods: Qualitative and Quantitative approaches* (Acts Press 1999) P.83

CHAPTER TWO

THE EAC COMMON MARKET PROTOCOL AND THE FREE MOVEMENT OF LABOUR

2.0 Introduction

This chapter seeks to establish the extent to which the EAC regional integration under the common market has contributed to the achievement of the free movement of labour, one of the freedoms provided in the EAC common market protocol. The chapter interrogated the free movement of labour from the perspective of free movement of persons on the basis of the assumption that some of the people granted visitors passes could actually seek and secure job opportunities in the host state; free movement of workers; and the free movement of services under mode four of the GATS. It was assumed that the presence of the natural persons under mode four requires mobility of suppliers to the territory of the receiving state albeit temporarily while the movement of workers calls for the workers to reside in the receiving state thus both constitute aspects of labour mobility across the borders of partner states.

2.1 Dynamics of Movement of Labour in the EAC

The European Union (EU) offers a model case of how the free movement of labour and persons can affect the economies of both the sending and receiving countries as the freedom offers significant opportunities and insurmountable challenges to the migrant and resident workers. Labour migration tends to provide unlimited mobility and brings many benefits to the migrants. The freedom allows workers to move from one industry to

another and where such privileges are implemented, migrant workers can move to those areas least hit by unemployment but which are least attractive to nationals of the host country. This helps to avoid competition between the migrant and the resident workers and still meet an economic need for both the receiving state and themselves³³.

Labour mobility affects both the supply and the demand sides of the labour market of the receiving country and in case of oversupply in the receiving countries the free movement of labour is met with varying degrees of resistance. This was best manifested by the resistance demonstrated by the EU when some of the original members states, commonly referred to as the EU 15 showed resistance towards opening up their labour markets to Romania and Bulgaria and even Spain who had opened its labour doors to the two new members of the union chose to institute restrictions to Romanian workers in the face of hard economic times and rising unemployment³⁴.

The protocol guarantees the right of establishment and residence to the citizens of the region whereby a national of a partner state is entitled to; take up and pursue economic activities as a self employed person; set up and manage economic undertakings in the territory of another partner state; join a social security scheme of the host state as a self employed person in accordance with the laws of that partner state³⁵. The two rights are aimed at facilitating the implementation of the freedoms with the right to residence allowing nationals of a partner state to reside in another partner state while engaging in

³³ Ogalo Victor, *Achievements and challenges of Implementation of the EAC Market Protocol in Kenya: the case of free movement of Labour* (2012) P.17- 20

³⁴ Ibid P.17- 20

³⁵ Ibid P8

economic activities. The right to establishment enables those willing to establish businesses in a state that is not their home country to do so without restrictions.

According to the East African Business Council, the East African passport was introduced as a travel document within East Africa for the citizens of the region to offer six months' multiple entry validity. However, a majority of East African citizens who cross borders for business opportunities do not use the East African passport which is issued by the partner states at a cost of ten US dollars or its equivalent³⁶. The interview established that for a national of a partner state to move within the EAC, valid travel documents are required including; either the EAC passport, a national passport or a temporary permit which has validity of six months. A visitor's pass is issued to East Africans who travel to another partner state and is valid for six months. Thus a person who travels to another state in search of employment may use the visitors pass during their stay in the host state while he/she looks for the job.

Additionally, the protocol guarantees the right of establishment and residence to the citizens of the region whereby a national of a partner state is entitled to; take up and pursue economic activities as a self employed person; set up and manage economic undertakings in the territory of another partner state; join a social security scheme of the host state as a self employed person in accordance with the laws of that partner state³⁷. The two rights are aimed at facilitating the implementation of the freedoms with the right to residence allowing nationals of a partner state to reside in another partner state while

³⁶ The East African Business Council, Report on Non Tariff Barriers

³⁷ Ibid P8

engaging in economic activities. The right to establishment enables those willing to establish businesses in a state that is not their home country to do so without restrictions.

The study established that while the movement of labour is handled under regional integration initiatives as provided in the common market protocol, bilateral and tri-lateral arrangements between some of the partner states exist under the principle of variable geometry provided in the EAC treaty. Such initiatives include the bilateral agreement between Kenya and Rwanda to waive the work permit fees and the tri-lateral arrangement by Kenya, Rwanda and Uganda to fast track the integration of the respective partner states including labour mobility and therefore allow their citizens to cross borders using their national identity cards³⁸. The study further revealed that the bilateral and trilateral arrangements have impacted on the free movement of labour since other partner states who are not in the arrangement have started developing a softer stance on issues that had taken long negotiation processes to be realised through consensus for instance the waiver of work permit fees³⁹.

The movement of labour as per the protocol allows the citizens of the region to travel reside and stay in territories of partner states by providing a predictable legal environment for the movement. In this regard, the citizens must undergo normal immigration processes at the points of entry and exit and be in possession of valid travel documents. It is notable that the initiatives made by the region and efforts by clusters of countries within the region have led to varying degrees in the promotion of the movement of labour for example the case of the bilateral and trilateral efforts which allow their

³⁸ An interview with the Desk officer for Labour and Migration

³⁹ Interview with a member of the Regional Committee for the Implementation and Monitoring of the CMP

national to cross the respective borders using a basic identification document at the points of entry and exit, an effort that encourages mobility of their nationals seeking to move to the other state(s) for work and other economic activities.

The EAC has been in the process of engaging with other RECs on the continent as seen in the ongoing tripartite negotiations with between the COMESA and SADC, a process initiated in October 2008 when the heads of states of the three RECs met in Uganda to discuss broader objectives of the three regional trading blocs. The negotiations are geared towards achieving accelerated economic integration in the continent in line with the Abuja treaty and the African objective of the formation of one continental bloc⁴⁰. The tripartite focuses on the harmonisation of the programmes in the different RECs in order to expand trade in efforts to accelerate economic integration of the region, alleviate poverty and improve the quality of life of the people of Eastern and Southern Africa⁴¹. It can only be hoped that the tripartite arrangements will contribute to the EAC endeavours of enhancing the movement of labour for better livelihood of the East African people.

2.2 Free movement of persons

The right to enter the territories of EAC Partner state without a visa, to move freely, stays and exit without restrictions and the right to full protection by the laws of the host state are some of the benefits that East Africans are provided for by the common market. Other benefits include; free issuance of a pass to stay up to six months, permission to accept

⁴⁰ Kalaba M. *Exploring the COMESA-EAC-SADC Trilateral Free Trade Area: An Approach to Rules of Origin Trade and Industrial Policy strategies* Working papers series 2009-05

⁴¹ <http://www.comesa-eac-sadc-tripartite.org>

employment within any EAC partner state without discrimination on basis of nationality, and the right to social security benefits. The fact that the workers are also allowed to be accompanied by a spouse and a child is quite beneficial to the workers in the region⁴².

The extent to which the free movement of workers in the region has been realised is shown in the table below.

⁴² The Common Market Booklet: *What you need to know about the East African Community Common Market*, A Common Market Booklet, East African Community.

Table 1: Number of Citizens from other EAC Partner States Granted the Right to Stay by the Respective States since 2010

Reporting period	Burundi	Kenya	Rwanda	Tanzania	Uganda	Total
As at 30.06. 2010	9,993	109,874	48,046	193,474	41,028	402,415
July 2010- June 2011 (Jan-Dec)for Tanzania	No data	194,125	160,122	257,537	669,444	1,281,228
July 2011- June 2012	89,991	248,352	198,393	257,124	1,393,858	2,187,718
July 2012- June 2013	71,658	270,901	238,416	261,241	No data	842,216
July-Dec 2013	120,314	No data	1,292	314,076	413,088	848,770
Total	291,956	823,252	646,269	1,283,452	2,517,418	5,562,347

Source: The EAC Common Market, June, 2014

From the information above, it can be deduced that; the free movement of persons in the region increased significantly in the first year of the CMP. However, the trend has been inconsistent with some years recording numbers of citizens granted stay in excess of two million and other years showing less than one million people crossed the borders for purposes of stay. Patterns of disparity were noted amongst the partner states with the republic of Uganda recording high numbers during the first two years of the CMP while Burundi recorded the least cumulative total. The inconsistencies noted in the collection and submission of data pertaining to the movement of persons in the region is an issue of great concern as reflected by information gaps recorded by the three partner states except Rwanda and Tanzania.

The right to free movement of persons refers to categories of citizens who travel to another partner state as visitors, persons on transit, students persons seeking medical treatment and persons entering a partner state for any other lawful purpose other than as a worker and therefore does not relate to the movement of labour direct. However, the study established that persons travelling on the visitors pass are allowed to stay in the host state for a period of six months, a period some visitors have used to seek for employment in the host state. In the event of them securing job opportunities they go ahead and apply for work permits in compliance with the schedule on free movement of workers⁴³. In the light of this information, the right on free movement of persons has a relationship albeit an indirect one with the free movement of labour in the EAC.

⁴³ Interview with the Desk Officer for Labour and Migration

2.3 Movement of Workers

The relaxation of the restrictions on the movement of workers in the developed countries has contributed to increase in the proportion of migrants in the workforce by up to three percent. Migration delivers massive economic benefits which could lead to poverty reduction through remittances sent home by immigrants and informal transfers. However, migration issues in East Africa have always been complex and challenging. The migration in the region has for a long time been characterised by a large refugee population, internally displaced persons for a number of reasons, labour migrants and migrants in an irregular situation. These challenges coupled with negative mindsets for some segment of the population and the poor infrastructure, all contribute to the slow achievement of free migration. The Common market protocol was put in place in efforts to solve existing challenges and ensure free movement of people in the region⁴⁴.

The EU offers a classic example of regional integration where one is considered to be a worker if such a person gets remuneration and is engaged in work that is not subsidiary, for instance a student who takes part time job. A worker in the EU enjoys many rights based on the principles that govern social advantages provided on the basis of the common theme of free movement that a member state may not discriminate on the basis of nationality. The introduction of a European citizenship hopes to promote the aspirations of the principles of non-discrimination and is therefore considered a worthy

⁴⁴ Kanyangoga *Research paper on Integrating migration with development in EAC: Policy challenges and Recommendations*, Part of a series published by CUTS GRC in conjunction with National States and GTZ (2010) P6

initiative towards the internalisation of the market and facilitation of the free movement of workers⁴⁵.

The free movement of workers in the EU tends to favour people who are economically active as this group is considered citizens of the Union and are guaranteed transnational rights. The ability to move as an economically active migrant offers the citizens the opportunity to secure permanent residence in another member state with guarantees of equal treatment in every respect with nationals of the host member state. Such citizens are not required to acquire work permits or any other form of permission to enter, reside and remain as a worker⁴⁶.

In contrast, the free movement of workers as provided in the EAC common market protocol provides that partner states guarantee the free movement of workers who are citizens of the partner states within their territories. Thus a worker who secures a contract of employment for a period of more than ninety days in the territory of another partner state should apply to the competent authority for a work permit within fifteen days from the date of entry into the territory of the host state and present a valid standard travel document⁴⁷. For that reason, unlike the European Union, a person who is a national of an EAC partner state and who wishes to secure employment from another partner state to which he/she is not a citizen is required to secure work-permits. Furthermore, three of the

⁴⁵ http://www.wssm.edu.pl/files/free_movement_of_workers.pdf Accessed August 11th 2014

⁴⁶ White Robin, *Revisiting Free Movement of Workers*, Fordham International Law Journal Volume 33, Article 10 Issue 5 2011

⁴⁷ East African Community, *Protocol on the Establishment of the East African Community Common Market*, EAC Secretariat (Arusha, Tanzania) P..

partner states have been charging the work permit fee ranging from five hundred to two thousand US dollars.

The table below, presents information on the numbers of work permits granted which is itself a measure of extent to which partner states allowed East African citizens the right to work without restrictions.

Table 2: Number of Work Permits issued by the Respective Partner States since 2010.

Reporting period	Burundi	Kenya	Rwanda	Tanzania	Uganda	Total
As at 30.06. 2010	10	No data	1018	No data	397	1425
July 2010- June 2011 (Jan-Dec)for Kenya and Tanzania	No data	457	1724	No data	367	2548
July 2011-June 2012	No data	730	2319	No data	703	3752
July 2012-June 2013	7	740	2084	No data	607	3438
July-Dec 2013	28	No data	2651	433	240	3352
Total calculated on available data	45	1927	9796	433	2314	14,515

Source: The EAC Common Market, June 2014

The data above indicates that the number of citizens from other EAC partner states who were issued with work permits by the respective partner states since the common market commenced increased marginally in the first year of the CMP to two thousand, five hundred and forty eight (2,548) while the second year (2011-2012) recorded an improvement of slightly over a thousand in the issuance of work permits at three thousand, seven hundred and fifty two. The numbers issued in the last two years was steady at just above three thousand work permits. Three partner states recorded information gaps in some of the years, an indicator of weak mechanisms of collecting information on movement of workers except for the Rwanda and Uganda who provided data for all the years. The information gaps are pointers to a weakness in the maintenance of information on the number of work permits issued.

The study further revealed that during the same reporting period, partner states indicated that there was no data on cancellation of work permits while all partner states gave a nil return on the number of complaints launched by workers in relation to unequal treatment while working in other partner states. In addition the EAC partner states had not established programmes for exchange of young workers except for Rwanda who reported that plans were underway to initiate the programme in the 2014/2015 financial year. In the same vein, the EAC Secretariat had not initiated regional programmes to facilitate exchange of this group of workers among the partner states.

The study revealed that the European citizenship has a tendency to cushion workers in the EU against discrimination on nationality basis and hence the potential to facilitate the flow of labour force from areas of high concentration to areas with shortage of skills since the workers enjoy transnational rights. This is unlike the EAC where nationals of

partner states are viewed as nationals of another state a fact that may explain the low levels of cross border mobility of labour in the region. Furthermore, the non-citizens may be seen as intruders who are likely to take up the entitlements of the nationals a fact that limits the movement of labour among the general workforce.

2.4 Movement of Services

The General Agreement on Trade in Services (GATS) under the WTO rules provides for cross-border movement of persons under mode four which involves the supply of a service from one collaborator through the presence of the natural person in the territory of any other member state. Services covered under this particular mode include; self employed persons supplying services in the host state, employees of a foreign services company without commercial presence in the host who enter the territory of another member to supply a contract based; employees of a foreign company with a commercial presence in the host country transferred to the establishment, and foreign natural persons seeking to set up a commercial presence. Arising from this the service suppliers often require temporal mobility to the host state which translates into temporal migration⁴⁸.

The commitments made by EAC partner states to liberalize services under mode four is in accordance with the schedule of commitment on the free movement of workers in which the partners have identified the category of workers in the different sectors to be opened progressively between 2010 and 2015. The liberalisation of the trade in services was therefore linked to the commitments the members made to implement the free

⁴⁸ Rubia Kathleen, The Inter-Regional Mobility Aspects of the Proposed Tripartite Free Trade Area Accessed August 22, 2014
http://www.kas.de/upload/auslandshomepages/namibia/MRI2010/MRI2010_chapter3.pdf

movement of services a fact that complicates the implementation of the free movement of services through temporal movement of natural persons to the receiving states⁴⁹.

The EAC integration is an evolving process that will be realized gradually arising from which the partner states committed to progressive liberalization of services to allow for trade in services. The study revealed that schedule five on free movement of services includes the notation ‘in accordance with the schedule on the free movement of workers’ thus linking the two schedules. The linking of the schedules has implications on the movement of professional services like doctors who cannot move because the schedule on movement of workers does not provide for the movement of medical. Additionally the schedule on movement of services does not specify the exact duration of the temporal stay by those who cross borders to offer services in other partner states leading a situation that some partner states are apprehensive about⁵⁰.

Negotiations on the free movement of services among EAC partner states followed a positive list approach with the states scheduling those subsectors they were willing to commit in efforts to negotiate ‘substantial’ liberalization commitments in accordance with article five of the GATS although the EAC common market protocol does not explicitly mention the GATS. The partner states agreed to address seven priority sectors

⁴⁹ Mbithi Mary and Chekwoti Caipha, *Assessment of services sector in the East African Community (EAC) Partner State Countries*, *International Journal of Education and Research* Vol. 2 No. 5 May 2014 Accessed August 22, 2014 <http://www.ijern.com/journal/May-2014/24.pdf>

⁵⁰ Interview with the Chairperson of the Regional Committee on implementation and monitoring of the CMP.

in the first phase of regional services negotiations including business, communication, distribution, education, finance, tourism and transport services⁵¹.

Consequently, out of the one hundred and thirty six (136) sub-sectors specified in the WTO classification in the seven selected priority sectors, the region took a non-standardized approach to the scheduling by committing different sub-sectors and modes of supply as follows; Burundi scheduled seventy three (73), Kenya sixty one (61), Rwanda one hundred and four (104), Tanzania sixty one (61) and Uganda ninety nine (99). Additionally, the partner states agreed to progressively remove restrictions and committed not to introduce any new restrictions⁵². However, despite this obligation, partner states have not addressed all the subsectors comprehensively

The partner states acknowledge that there are restrictions to the movement of services in the region and in efforts to remove the restrictions the respective states have made several initiatives including: plans to undertake a full institutional reform; review and removal of restrictions on legal services sector by republic of Kenya; and the republic of Rwanda's effort in conducting business law reforms in the spirit of harmonization with the commitments of the annex. In addition, the experts in the region have identified a number of inconsistencies, technical errors and legal discrepancies for instance linking the schedule on free movement of services and the one on the free movement of workers a

⁵¹ Chaitoo Ramesh, *Analysis of issues regarding linking or delinking the schedule on the free movement of workers from the schedule on the free movement of services in the East African Community*, Technical Paper, EAC Secretariat (May, 2012)

⁵² Ibid

fact that has created an impasse that stalled the process of making additional commitments in the liberalization of services⁵³.

The movement of services is relevant to the free movement of labour since the service providers under the mode on presence of natural persons has a component of migration even though on temporal basis as the service providers cross the borders to supply the services in the territories of the host states. In addition, the schedule on movement of services is linked to the one for the free movement of workers implying that only those professions that partner states have committed to open under the schedule on movement of worker are allowed to provide professional services by the respective partner states. The linking of the two schedules tend to affect the movement of labour in the region in many ways as any restrictions imposed on one tends to be replicated in the other.

2.5 The EAC Common Market and the Movement of Labour

Labour mobility has been viewed as one of the most obvious indicators of the operation of a single labour market otherwise referred to as the common market. It is assumed that when markets are integrated, labour flows increase from regions of high unemployment and low per capita income to regions of low unemployment and high per capita income. An examination of the degree of migration within a REC and its changes over the years, should accordingly determine the extent to which the national labour markets have been integrated. This is best seen in the intra- community relative to the labour migration

⁵³ EAC Secretariat, Report of the Regional monitoring group on the Common Market protocol; Status of implementation of the Protocol on the establishment of the EAC Common Market, as at 31st December, 2013 (Arusha, Tanzania, June 2014)

between member states⁵⁴. Labour mobility in the EAC can be viewed in terms of migration trends of the citizens of the region as they move in search of opportunities to improve their economic status.

The theory of Neo-functionalism anticipate that after the integration of national economies and markets into one supranational organizational framework, the loyalties of people would be directed from national level to the supranational thus creating a new regional political community that transcends the limits of a nation state⁵⁵. The Regional Committee for the implementation and monitoring of the common market protocol noted that the implementation of the EAC common market with respect to the free movement of labour faces a number of hurdles including; knowledge gaps among key stakeholders and implementers of the protocol on their role in implementing the commitments within their areas and the fact that negotiations for additional commitments in various areas especially trade in services had stalled due to the slow pace of delinking the schedules of trade in services and from the schedule on workers⁵⁶.

According to the East African, the biggest challenge faced by EAC partner states at the moment is certainly that of unemployment among the youth and the region can only justify its claim to be a progressive economic bloc when it translates the principles of the common market into jobs and increased economic activity. However, the region is faced

⁵⁴ Raines P. *The impact of European integration on the development of national labour markets*, International Labour Office Geneva (2000) P.23

⁵⁵ Perceptions Journal of International Affairs, Çinar Özen *Neo-Functionalism and the Change in the Dynamics of Turkey-Eu Relations* (Volume iii No.3 1998)

⁵⁶ EAC Secretariat, Report of the Regional monitoring group on the Common Market protocol, Arusha, Tanzania (June 2014)

with a major challenge in that movement of labour is still restricted and countries with abundant manpower do not supply other partner states with skills without restrictions⁵⁷.

The study established that the right to free movement in the protocol is a privilege of only the highly skilled and professional workers since the schedule for the free movement of workers under annex two of the protocol only permits the free movement of highly skilled workers such as corporate managers, engineers, lawyers, teaching professionals and metal and related trade workers. This does not reflect the spirit of articles 76 and 104 of the treaty that guarantees the free movement of workers without exceptions. The decision for selective freedom of movement of workers can be viewed from different perspectives; the loophole provided by the protocol in allowing progressive implementation of the protocol; the fear of the unknown hence adoption of strategic choices by partner states and the sensitive nature of employment of migrants an issue that is politicized in all East African countries⁵⁸.

East Africans seeking to work in another partner state are required to secure a work permit and although the protocol does not provide for elimination of work permit fees but provides for harmonization, the Republic of Kenya and the Republic of Rwanda waived the work permit fees for all East Africans. The other three partner states have been charging work permit fees ranging between 500 and 2000 US dollars applicable for a period of two years. The study revealed that, the cost of the work permit fees upon the

⁵⁷ The East African, *Fight terror, create jobs for youths* (The Nation Media Group July 26th-August 1, 2014)

⁵⁸ Wandera M, *The East African Common Market Protocol and free movement of labour: achievements and challenges of implementation in Uganda* (Friedrich Ebert Stiftung 2012) P12

endorsement of the passport is usually met by the employers a fact that makes firms or companies seeking to recruit personnel to be cautious when recruiting personnel from the region. In addition, the work permit fee waiver is on reciprocal basis a fact that tends to encourage a higher mobility of labour between the two partner states who have been implementing the waiver⁵⁹.

While the EAC integration has progressed over the years, many stakeholders and the general public have not been informed of the importance of the integration to them. The study established that there has been a mismatch between public expectations and the existing policies and that many citizens of the region have not appreciated the opportunities presented by the integration a fact that hinders the full participation of all stakeholders in the region⁶⁰. As well, there exists a huge awareness deficit on regional as opposed to national issues a fact that negatively impacts the EAC integration. The tendency by major players including the political leadership, the media and civil society to address issues that have a bearing on regional integration from a national perspective tends to limit awareness on regional issues and to create a national mind-set among the ordinary citizens⁶¹.

The existence of the knowledge gap on the benefits presented by the EAC integration was exemplified by Council of Ministers when they directed that the partner states should develop a strategy to educate their nationals on the EAC integration and ministries

⁵⁹ An interview with the Director of the Social Sectors , EAC Secretariat

⁶⁰ East African Community, *The East African Community Communication Policy and Strategy*

⁶¹ Extract of Speech by Juma Mwapachu, Former East African Community Secretary General, and Speaking during EAC Secretary General's Forum for the private sector, civil society and other interest groups in October, 2013.

responsible of EAC Affairs were urged to undertake massive education campaigns on the common market. This would bridge the EAC secretariat's limited capacity to undertake sensitization of all East Africans on the requirements of the common market protocol and the benefits its offers to the citizen of the region. The study revealed that the region has a limited capacity to undertake massive sensitization a fact that has restrained the EAC Secretariat from undertaking the regional sensitization while efforts made by partner states have been inadequate. Indeed, the lack of awareness on the provisions of the protocol and the rights and freedom of movement of workers and labour has been a hindrance to the success of the Common market⁶².

2.6 Chapter Summary

From the above findings, it is evident that the free movement provided for in the EAC common market protocol is a privilege of only the highly skilled and professional workers since the protocol only permits the free movement of highly skilled workers. The protocol therefore fails to reflect the spirit of the EAC treaty to encourage free movement of labour across all cadres of the labour force. In spite of the fact that the EAC common market has been in existence for the last four years, there is no tangible evidence that the region in general and the partner states in particular have reaped the benefits of the free movement of labour. The cost of the work permit fees is prohibitive to companies which would otherwise recruit from the region thus acting as a hindrance to free labour mobility. This is compounded by the low levels of awareness among the general populace

⁶² Interview with the Director of the Social Sectors , EAC Secretariat

on the benefits of the EAC integration and the opportunities presented by the common market to the citizens of the region a fact that impedes on the free movement of labour.

CHAPTER THREE

THE IMPACT OF POLICY AND STRUCTURAL FACTORS ON THE FREE MOVEMENT OF LABOUR WITHIN THE EAC

3.0 Introduction

The chapter addresses the second objective of the study which was to investigate ways in which policy and structural factors have impacted the free movement of labour within the EAC. The chapter sought to answer the important question on how the policy and structural factors have impacted movement of labour in the EAC thus it examined the EAC policy system, the EAC Legal framework and the regional structural framework visa-vis the movement of labour. The chapter concluded by providing a chapter summary.

3.1 The EAC Policy System and movement of labour

In order to pave way for accelerated integration in the global economy while at the same time integrating her regional economy, Africa needs coordinated actions at different levels based on the reality of the global market place. Africa should pay attention to the domestic policy equation and even as regional integration advances countries need to accelerate the pace of removing trade restrictions. Integration in Africa is basic for the continent's competitiveness and also as a mechanism for diversifying international competitiveness and should be hinged on the Abuja treaty, the continent's blueprint for regional integration⁶³. The treaty urged member states to, among other things, adopt

⁶³ Economic Commission For Africa, *Globalization, Regionalism and Africa's Development Agenda* UNCTAD Bangkok, Thailand February 12-19, 2000 P9-10

employment policies that allow the free movement of people in Africa and RECs commit to promote free movement of persons, rights to residence and establishment through consensus on visa relaxation and regional passports.

In efforts to facilitate the free movement of labour within the community, the protocol provides for partner states to; harmonize labour policies, laws and programmes; review and harmonize national social security policies, laws and systems to provide for social security for self-employed persons who are citizens of other partner states. Further, partner states mutually recognize the academic and professional qualifications granted, experiences obtained and certifications granted in other partner states and to harmonize curricula, examinations, standards, certification and accreditation of educational and training institutions⁶⁴. In addition, the partner states undertake to coordinate and harmonize social policies to promote and protect decent work and improve the living conditions workers and undertake programmes aimed at promoting employment creation and strengthen labour laws and improve working conditions⁶⁵.

The study revealed that the region has not harmonized the policies, laws and programmes to facilitate the free movement of labour in the region. In addition there was delay in the harmonization of national laws and other administrative procedures required by the protocol a fact that was cited by the sectoral council for ministers responsible of EAC Affairs and planning as the main cause why partner states maintained restrictions in regard to the free movement of persons, free movement of capital, free movement of

⁶⁴ East African Community, *Protocol on the Establishment of the East African Community Common Market*, EAC Secretariat (Arusha, Tanzania) P.8

⁶⁵ Ibid. P39

services and the free movement of workers leading to non-compliance with the common market protocol and the directives of the Council to harmonize national laws and align them to the CMP⁶⁶.

In addition, the social security systems in the partner states is characterised by different social security schemes, movement of benefits across funds, different periods of coverage, different contribution rates and lack of a mechanism for the portability of accrued social security benefits. The Council of ministers noting the level of legal and policy diversities concluded that it was not possible to conclude the coordination of social security benefits in the region thus directed the EAC Secretariat to hire a consultant to consolidate the various actuarial studies undertaken by social security organizations to address among other things the financial and economic implications of the coordination of social security benefits taking into account the current systems, policies and laws in the partner states⁶⁷.

The interview revealed that the need to review the labour laws in the respective partner states was important to allow national of other partner states to work in the host state(s). While the review of labour policies provided in the protocol was to be undertaken within the first year after the protocol came in to force, the process of review has been very slow. The study established that the republic of Rwanda is the only state that has since finalized the review and indeed it is the only state in the region that allows East African citizens to secure jobs within the public sector although the protocol does not commit

⁶⁶ EAC Secretariat, *Report of the 20th meeting of the Sectoral Council of Ministers Responsible for EAC Affairs and Planning*, Arusha, Tanzania (July 2014) P 10

⁶⁷ East African Community, *Report of the 22nd Council of Ministers*, (Arusha, Tanzania April 15, 2011) P.65

partner states to open the public sector for East Africans citizens. It was further established that all the partner states have identified the necessary laws to facilitate movement of labour but the review process has been painfully slow and the harmonization process is yet to be undertaken⁶⁸.

In addition, the study has established that while the protocol provides that movement of labour should be undertaken in accordance with the laws of the host state, the issues of the different schemes, calculation of benefits and the portability of social security benefits remain outstanding in all the partner states. This is compounded by the fact that the region has not agreed on the way forward on portability of benefits amongst other issues of concern⁶⁹. Moreover, the partner states have not yet harmonised the migration policy to allow the respective to partner states accord East African citizens' treatment similar to the one accorded to their nationals. The study established that East Africans are referred to by the terms 'alien' and 'foreigner' in some of the partner states which indicates that non-discrimination of the citizens of the region is still far from reality⁷⁰.

The study established that undertaking the actuarial study in the region would not be tenable since only the Burundi and Tanzania had actuaries in their system while Kenya and Rwanda made use of specialised chartered bodies to generate data specified areas. Furthermore, information from actuarial studies in the partner states did not reflect the mobility of labour in the region but was designed to serve specific purposes. The fact that

⁶⁸ Interview with the Director of the Social Sectors , EAC Secretariat

⁶⁹ Interview with the Chairperson, Regional Committee for the implementation of the CMP

⁷⁰ Interview with the desk officer for Labour and Migration

the republic of Uganda did not have a national social security fund compounds it further⁷¹.

The slow process of slow progress in harmonisation of labour laws has hindered the movement of labour since the policy environment in the partner states is not friendly to the East African migrants a fact that has impacted on the common market. The regional and national policy environment is relevant to the free movement of labour under the EAC common market because existing policies in the partner states provides for the employment and working conditions for their respective nationals. In order for labour to move freely in the region, there is need for partner states to review their respective laws to accord all East Africans treatment similar to their one accorded to their nationals. There is also need to provide for a regional policy framework that provides a favourable administrative and policy environment for the movement of labour within the region as well the necessary enforcement mechanisms.

3.2 The EAC Legal framework and the movement of labour

Gallerizzo and Wemitzki observe that while the EAC aims to harmonize partner states' laws, there are some gaps in the scope of the rights which are likely to have an adverse effect on the implementation of the protocol. These gaps include; the fact that the informal sector is not covered by the freedom of movement and a work permit is required for one to secure a business contract; the right of residence is not yet harmonized; there may arise uncertainties due to the provision that in case of a worker does not take up employment, the work permit may be cancelled and requesting of the work permits to

⁷¹ Interview with the Director of the Social Sectors , EAC Secretariat

national authority may be seen to be discriminative. These are compounded by the fact that partner states are allowed to determine additional documents for entry⁷².

In addition, the CMP protocol does not specify the enforcement mechanisms to implement Directives of the Council; Annex eleven of the CMP guarantees for the movement of high skilled workers ignoring the majority of the citizens who are semi-skilled hence not fulfilling the spirit of the free movement of workers; that the protocol refers to terms like worker, employer and professional without giving their definitions; and that the protocol has linked self-employment with establishment which requires heavy investments yet majority of the citizens of the region are small-scale traders who are self-employed mostly in the 'jua-kali' sector with little merchandise⁷³.

According to Ogola, free mobility of labour in EAC may not be realised due to public policy restrictions to immigration that are imposed by the protocol. By indicating that the free movement of workers shall be subject to limitations imposed by the host state on grounds of public policy, public security and public health, the protocol makes an opening for East Africans to be denied the freedom to move on the guise of public policy. Thus, the CMP seems to lack in understanding of the policy architecture of the partner states that could defeat the objective of the protocol⁷⁴. This view is shared by Wandera

⁷² Gallerizzo Angela and Wernitzki Nils-Johannes, *The functioning of the East African Community: Common market, Court of Justice and fundamental rights, a comparative perspective with the European Union*, A research paper, Universiteit Leiden

⁷³ East African Business Council Monthly E-Newsletter Common Market Protocol Commitments on the free movement of labour in EAC how far? Issue no 9 (January 30, 2013)

⁷⁴ Ogalo Victor, *Achievements and challenges of Implementation of the EAC Market Protocol in Kenya: the case of free movement of Labour* (2012) P21

who notes that although the EAC common market guarantees the right of mobility of labour, the same protocol subjects the right to free movement to limitations by national laws and policies imposed by Partner States especially on grounds of public health and security policy which he concludes is an undoing on regional efforts to harmonize laws and policies relating to labour mobility⁷⁵.

The reporting system in the region is spelt out The EAC treaty; the Summit of heads of State or government of EAC States as the top decision making organ that gives general direction; the Council of Ministers responsible for regional cooperation in Partner States and such other ministers of the partner states is the policy making organ and oversees the promotion, monitoring and implementation of programmes of the community. Other organs include the coordination committee comprising of permanent secretaries and sectoral committees. The East African legislative Assembly (EALA) is the legislative organ of the community while the East African Court of Justice (EACJ) ensures adherence with the law. The Secretariat headed by a Secretary General is the executive organ of the Community⁷⁶.

The EALA, the legislative organ of the community is faced with the challenges of inadequate institutional framework between the regional and national parliaments for enforcement and communication; capacity constraints as a result of the expanded

⁷⁵ Wandera M, *The East African Common Market Protocol and free movement of labour: achievements and challenges of implementation in Uganda* (Friedrich Ebert Stiftung 2012) P.22-23

⁷⁶ East African Community, *Treaty for the Establishment of the East African Community* (Arusha, Tanzania: EAC Secretariat, 2002) P17

mandate; insufficient resources and weak oversight roles. The EACJ on the other hand is mandated to ensure adherence to law in the interpretation and application of and compliance with the treaty and it is faced with statutory challenges including its limited jurisdiction and the fact that it works on ad hoc basis a fact that limits its effectiveness in serving the East African people⁷⁷.

Arising from the above cited weaknesses, there has been incidence of existing jurisdiction of interpretation and application of the treaty being conferred on other judicial and quasi-judicial bodies like the national courts in the case of the common market, a situation that is worsened by the fact that the CMP gives very limited role to the court as far as dispute settlement is concerned⁷⁸. The study established that the fact that the EAC treaty does not provide for EACJ to address human rights issues poses a limitation since the region lacks an authority to address human rights violations as citizens of the region move and work in partner states to which they are not nationals thus impacting on the movement of labour across the region.

The Council of Ministers is the policy making organ to which the sectoral councils and committees give regular reports. The EAC common market is implemented under the watch of the sectoral council of ministers responsible for EAC Affairs and planning. The fact that decision making process in the region is by consensus tends to make the negotiation process to be protracted as the negotiators reach concurrence on various issues relating to harmonisation of policies, laws and programmes. The study has

⁷⁷ East African Community, *EAC Development Strategy 2011/12-2015/16* (Arusha, Tanzania 2011) P 47-48

⁷⁸ Ibid P 48.

established that the use of consensus as a method of making decisions tends to slow the decision making process and regional policy formulation⁷⁹. A case in point is the negotiations to de-link the schedule on movement of services from the schedule on movement of workers that has taken years for the partner states to agree on thus delaying the realisation of the free movement of labour.

3.3 The EAC Structural framework and the movement of labour

The General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO) allows members to set up bilateral or plurilateral mutual recognition agreements (MRAs). MRAs are a prerequisite for facilitating the movement of professional service suppliers across borders and represent powerful tools for economic integration. The mutual recognition process requires a thorough understanding and acknowledgement of how professionals in different countries acquire and assess their professional qualifications while shared high standards of qualifications are of paramount importance. Mutual recognition of academic qualifications concerns recognition of curricula and degrees while recognition of professional qualification relates to the evaluation of credentials for entry into and for practice of a profession. It thus involves recognition of formal and informal education, work experience and expertise⁸⁰.

EAC partner states committed to mutually recognize the academic and professional qualifications granted, experiences obtained and certifications granted in other partner

⁷⁹ Interview with the Chairperson of the regional committee for the implementation of the CMP

⁸⁰ UNCTAD, *Moving professionals beyond national borders: Mutual Recognition Agreements and the GATS(2005) P.3-4*

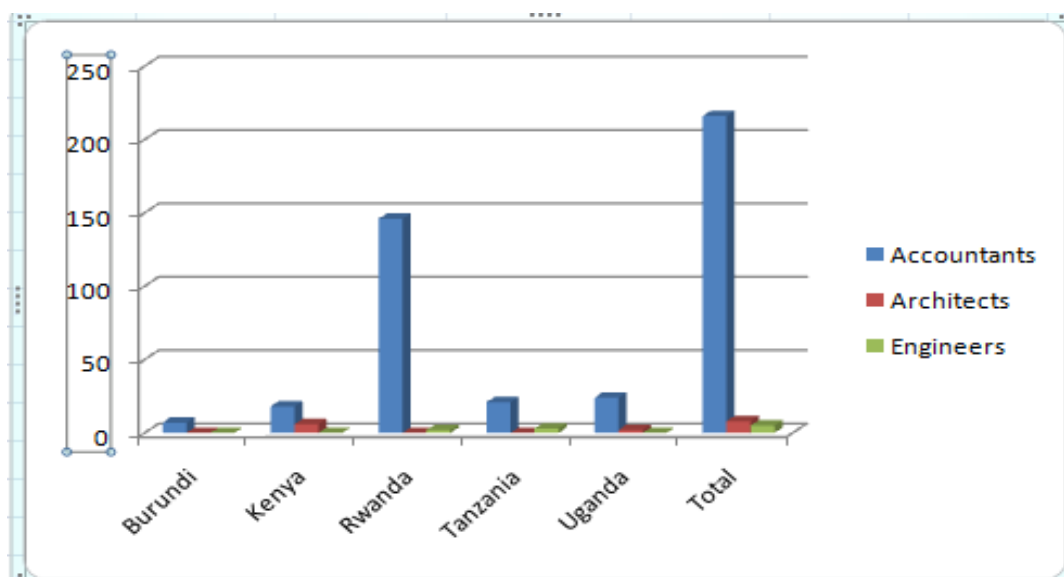
states⁸¹. The study revealed that the sectoral council on Legal and Judicial affairs identified a number of outstanding issues that may affect the implementation of the free movement of services including; the legal status of MRAs; the applicability of the MRAs concluded and how they would bind partner states; the need to define ‘the term professional’; and the implementation of MRAs may conflict with some municipal laws in the partner states. Consequently the 23rd Council of ministers directed all sectoral councils to urge professionals in their sectors to develop MRAs. However, so far three professions in the region have signed MRAs including accountants signed in September 2011, architects from Kenya, Rwanda, Burundi and Uganda and engineers from Kenya, Uganda and Tanzania⁸².

The selective signing and adoption of mutual recognition agreements amongst partner states has impacted on the mobility of services in the region as illustrated in the figure below which illustrates that two hundred and sixteen (216) accountants have pursued practice opportunities in other partner states having been requested and granted licences under their mutual recognition agreements; followed by eight licences granted among the architects and five among the engineers. Thus the accountants had the highest number of professionals pursuing practice in the region and thus indicating a higher level of mobility than other professions.

⁸¹ East African Community, *Protocol on the Establishment of the East African Community Common Market*, EAC Secretariat (Arusha, Tanzania) P.8

⁸² Ministry of the East African Community, *Report on the workshop on support in trade negotiations for Professional Regulatory Bodies and Professional Associations (GOK 2012)*

Figure 2: Licences and Admissions Granted through the MRAs in the Region



Source: The Assessment Studies of EAC Accountants, Architects and Engineers, November 2013

The study established that the high mobility among the accountants is attributable to the fact that accountancy was the first profession in the region to get into a mutual recognition agreement on September 7th 2011 and the agreement involves all the five partner states. In the same vein majority of the accountants who sought to practice in Rwanda due to the fact that there was a skills gap in the country and they were mainly drawn from Kenya and Uganda⁸³.

More detailed information on the mobility of professionals in the region in terms of the number of workers, whose academic qualifications, experiences, licences and certificates were recognised for the period of operation of the CMP up to December, 2013 is as tabulated in the Table below.

⁸³ Interview with a member of the Regional validation Team

Table 3: Numbers of Workers Whose Academic and Professional Qualifications were recognised by Partner States

Period	Burundi	Kenya	Rwanda	Tanzania	Uganda
July 2010- June 2012	No Data	Burundi - 11	Kenya 368	No Data Available	Data not available
		Rwanda - 29	Uganda 348		
		Tanzania - 197	Tanzania 59		
		Uganda - 216	Burundi 69		
Total		453	844		
July 2011- June 2012	No Data	Burundi - 1	Kenya 367		
		Rwanda - 90	Uganda 348		
		Tanzania - 284	Tanzania 51		
		Uganda - 336	Burundi 78		
Total		711	844		
July 2012- June 2013	No Data	Burundi 6	Kenya 502		
		Rwanda 92	Uganda 2641		
		Tanzania 314	Tanzania 52		
		Uganda 301	Burundi 298		
Total		713	1493		
July- Dec,	Kenya 1	Burundi -	Kenya 264	Kenya -	

2013	Rwanda 6	Rwanda -	Uganda 274	Rwanda -	
	Tanzania 0	Tanzania -	Tanzania 22	Rwanda -	
	Uganda 0	Uganda -	Burundi 264	Uganda -	
Total	7		824		

Source: The EAC Common Market, December 2013

The figures are indicative of the extent to which partner states allowed East African citizens who are providers of services in the region and the data revealed that during the period under review, Rwanda had maintained updated data on the academic and professional qualifications of workers from other partner states recognised Uganda provided no data while Tanzania gave a nil return and Kenya had an information gap in the last six months under review.

A high number of professional working in Rwanda seemed to come from mainly Uganda and Kenya followed by Burundi a fact that may be interpreted to mean either: that Rwanda was more receptive to workers from other partner states and especially those from Uganda, Kenya Burundi; Rwanda had a good system of collecting, processing and managing information on the movement of workers; or that the nationals of Kenya, Uganda and Burundi perceived Rwanda as a country with job opportunities and a friendly working environment. The study established that the higher number of professionals from the region working in the republic of Rwanda is indeed as a result of the country's policy since she was quick to identify the skills gap which she has been out to bridge

through tapping into the skills existing in the region with the aim of technology transfer to her citizens undertaken through purposeful mentorship programmes⁸⁴.

The study further revealed that the professionals in the region have always crossed borders to offer services and that while the MRAs are a timely response to advance the free movement of services as envisaged in the East African CMP, the MRAs in place have had minimal impact on the movement of professional services due to the fact that there are no mechanisms for the operationalization of the MRAs a fact that is worsened by the existence of barriers in the form of residence permits, work permits, requirement for yellow fever certificate by one partner state and different forms of police harassment in of service providers by host states⁸⁵. The removal of barriers to trade in services and the conclusion of the ongoing efforts by the region to de-link the schedule on free movement of services from the one on the free movement of workers are bound to grant the region millage in the movement of professional services which are a critical constituent of labour mobility.

Membership to multiple RECs tends to undermine effectiveness of communities since it affects the commitment by members and increases to the burdens of member states. A member belonging to multiple economic communities must cope with different policy decisions, instruments, procedures and schedules. However, the multiple memberships can have positive and have significant impact on bilateral intra-RTA trade thus, trade

⁸⁴ Interview with the Chairman, East African Professional Services Platform and Executive Committee Member, Association of Professional Societies in East Africa (APSEA)

⁸⁵ Interview with the Chairman, East African Professional Services Platform and Executive Committee Member, Association of Professional Societies in East Africa (APSEA)

agreements could be broadened and strengthened to positively impact bilateral intra-RTA trade ⁸⁶. On the other hand, Braude argues that conflicting regional and trade agendas in the context of SADC, EAC and COMESA are not always useful and has potential to generate problems, uncertainties and conflicts in jurisdiction and at times conflicting policies⁸⁷.

The above view is shared by Odongo who argues that one of the major huddles to the free movement of labour in the EAC is the overlapping membership by partner states to other regional blocs such as COMESA and the SADC coupled with the fear of loss of sovereignty among partner states in the process of regional integration and⁸⁸. The membership to multiple RECs has had an impact on free movement of labour since the policies of the different RECs are not always compatible a fact that makes partner states be caught between divergent policies.

Another structural factor that impacts on the EAC Common market is the existence of bi-lateral and tri-lateral outfits within region. While the treaty provides for the principle of variable geometry and thus allows partner states to engage as sub-groups in a variety of areas and at different speeds, the recent tri-lateral initiatives by Kenya, Uganda and Rwanda did not go well with other partner states who felt that they were being sidelined. However, though such negotiations may initially have strained relations among the

⁸⁶ Afesorghor and Bergeijk A.G. *Multi-membership and the effectiveness of regional trade agreements in Western and Southern Africa A comparative study of ECOWAS and SADC* International Institute of Social Studies (Working Paper No.520 2011) P.21

⁸⁷ Braude W Institute for Global Dialogue, SADC, COMESA and the EAC: *Conflicting regional and trade agenda.* (2008)

⁸⁸ Odongo Mary, *Towards an East African East African Community Common Market: Challenges and opportunities.* Institute of Economic Affairs,

partner states, the tri-lateral negotiations have born fruits as seen in the positive response by Uganda's commitment to waiver work permit fees with effect from July 2014 on reciprocal basis. Similarly, some partner states have in the past taken a hard stance on the outstanding issues of de-linking of the schedule on free movement of services from the one on free movement of workers and joining the MRAs have since displayed accord on the issues⁸⁹.

3.4 Chapter Summary

From the above findings, it is evident that the slow pace of harmonizing the labour laws, portability of social security benefits as well as the lack of mechanisms to operationalize existing MRAs continues to plague the region in her endeavours to attain the free movement of labour. Additionally, the partner states maintain restrictions in the form of residence permits, work permits and different forms of police harassment thus limiting the free movement of labour while the linking of the schedule on free movement of services to free movement of workers is a major drawback to the movement of professionals who constitutes a critical aspect of the movement of labour. The fact that the EAC common market protocol subjects the right to free movement to limitations by national laws and policies imposed by partner states especially on grounds of public policy, public health and security policy which is an undoing on regional efforts to realize free movement of labour.

⁸⁹ Interview with a member of the Regional Committee on implementation of the CMP.

CHAPTER FOUR

SHARING OF LABOUR MARKET INFORMATION IN THE EAC

4.0 Introduction

The chapter addressed the third objective of the study which was to explore suitable methods of sharing labour market information amongst the EAC Partner States. The study enquired on the methods of collecting information on the labour market; the status of LMI in EAC; and explored suitable methods of sharing labour market information in EAC. The chapter concluded by providing a chapter summary.

4.1 Methods of collecting information on the labour market

Labour market information includes information relating to industries and industry sectors such as workforce size, recruitment methods, conditions of employment, prospects for growth of labour force; occupational information such as prospects of employment, type of work undertaken, workforce size, conditions of employment, employer expectation and hiring methods and labour market trends. It also identifies areas of high employment and unemployment, business and economic forecasts, emerging labour market developments, services, products and levels of competition and other distinguishing information supporting labour market related decisions⁹⁰. Methods of gathering information includes but is not limited to; surveys, use of internet and intranet,

⁹⁰ Australian Government, *Collect, analyse and apply labour market information* (May 27th 2012)

focus groups, individual research, use of libraries, client interview, networking, publications and workplace visits⁹¹.

The generation and use of LMI requires the involvement of social partners in order to establish an efficient LMI since such involvement creates a culture of joint responsibility thus encouraging long-term commitment to problem solving and greater harmonization of manpower policies and programmes. The ability to identify the function of different stakeholders and networking to pool together their experiences and resources are recipes to a mutually enriched LMI systems while collaboration and partnership with research institutions, higher education institutions and government departments enhances the generation of LMI. Records on labour administrative systems hold a wealth of information and can encourage greater statistical utilisation of administrative sources and the administrative sources can be enhanced through synchronisation of definitions used in administrative data with terms used in other sources of LMI to enhance comparability from various sources and setting up national standards for defining concepts and units used in the generation of LMI⁹².

Labour-force survey is the main instrument of data collection on employment, underemployment and unemployment as it provides for the collection of consistent and comprehensive information for both the self-employed and the employed segments of the population. In addition, the concepts and definition in the survey are based in the ILO recommendations and they therefore offer suitable yardsticks for international

⁹¹ Ibid. P

⁹² The African Capacity Building Foundation, *Situation Of National Labour Market Information Systems In The Participating Countries* (December,2004) P.7-8

comparison. A population census is also another though a complex and enormous method of collecting LMI though the method. It is suitable in gathering information on demographic and social characteristics, geographical, educational and economic among other key characteristics of labour⁹³.

The research established that the LMI in the EAC partner states is collected through different methods including; manpower survey which has been completed in Rwanda and Kenya and is supposed to have been undertaken in the other three states. Other methods include use of employment and training study for instance the ongoing study in Burundi and information from a variety of administrative records is used in all partner states. The study revealed that the manpower surveys are the most suitable method of collecting LMI since information collected through surveys is the most comprehensive in identifying the skills existing in each state, the skills being developed and inform future projections. The findings of the survey also facilitate establishment of national databases by the partner states and subsequently the regional database by the EAC Secretariat and these would be conduits for sharing labour market information and deepen the integration process⁹⁴.

The methods of collecting labour market information are significant to the free movement of labour in the EAC because availability of quality information on the labour market helps to enlighten the workers on the skills requirements of various industries, the jobs available and the working conditions in the respective partner states. The use of appropriate methods have a higher probability of providing reliable information that

⁹³ International Labour Organisation, *Seminar report and guidebook on: strengthening labour market information to monitor progress on Decent work in Africa*, Addis Ababa, (July 2009) P.27-28

⁹⁴ Interview with the Director of the Social sectors, EAC Secretariat

enlightens the labour force on the availability of jobs and provide linkage between the demand and supply for labour in a region economic community thus promoting the movement of labour within the REC.

4.2 Status of Labour Market Information in EAC

The EAC initiated the regional exercise of undertaking the manpower survey in 2008, the output of which is to inform policy development and identify existing skills in the region need and skills gaps. The exercise is expected to generate data on the characteristics of skilled manpower, vacancies and provide information to help match the demand and supply in the national and regional economies, inform current and future labour shortages and establish the development of an accessible human resource database for policy planning at national and regional levels. By October 2012 two partner states, Kenya and Rwanda were on the final phase of report preparation while the Tanzania and Burundi had finalised the pilot phase and Uganda was yet to commence the pilot phase⁹⁵.

The process of finalizing the survey has been slow and by end of 2013 only the two partner states completed the undertaking the survey and analysis with Rwanda having released the report of the study to the general public and Kenya yet to launch the report. In the meantime, the study had commenced in Burundi; while Uganda was to undertake the study in the financial year 2013/2014 Tanzania could not commence the process due to budgetary constraints⁹⁶. The study established failure to finalise the manpower survey,

⁹⁵ Makoffu M., *EAC pushes for finalization of Manpower survey*, EAC Update issue No 63 (October 31, 2012)

⁹⁶ East African Community, *Report of the CMP Implementation Committee: Annex Framework for monitoring and evaluating the implementation of the EAC Common Market Protocol (June, 2014)* (EAC Secretariat, June 2014) 16

led to delay in establishment of national databases except for the republic of Rwanda where a manpower database exists. Arising from this scenario, the EAC Secretariat has not developed a regional database to facilitate monitoring of the labour market and to submit regular reports to the Council⁹⁷. The lack of databases on the labour market at regional and national levels has adverse effects on the free movement of labour in the region.

According to the Regional committee for the implementation and monitoring of the CMP, four partner states reported having LMI in place except for the republic of Burundi where the employment and training observatory exercise was in progress. In addition, the partner states had registered private agencies to collect and disseminate information of job vacancies. The numbers of registered agencies were; one hundred and forty nine agencies for Kenya, sixty for Tanzania and in Uganda fifty four among which twenty nine were external and twenty five were internal private recruitment agencies. On the same vein Rwanda has a manpower database in place to facilitate monitoring of the labour market⁹⁸.

According to Omolo, the EAC as a region and its members individually lack up-to-date labour market information a fact that makes partner states to rely on piecemeal, ad-hoc, uncoordinated and less expensive sectoral surveys to generate labour market information

⁹⁷ Ibid. 17-18

⁹⁸ East African Community, *Report of the CMP Implementation Committee: Annex Framework for monitoring and evaluating the implementation of the EAC Common Market Protocol (June, 2014)* (EAC Secretariat, June 2014) 17-18

for specific uses⁹⁹. This opinion was corroborated by the interview which established that partner states do not have labour market information and what is in place in the four states is not comprehensive enough and that only the republic of Rwanda who had completed the manpower survey could be said to have a proper LMI in place¹⁰⁰. The lack of an updated skills' inventory and all its facets limits labour market search, job-searching and hinders the region from realising the full benefits of the free movement of labour.

The interview revealed that the absence of the databases at regional and national levels has had adverse effects on free movement of labour for a number of reasons; firstly, partner states are not able to compare the skills existing, the demand-supply gaps and identify countries with excess skills; secondly, new skills have emerged in the region for instance the ICT related skills which require documentation for effective technological transfer; and thirdly, some skills have disappeared as training systems in the region are more skewed towards academic rather than technical skills which were previously offered by intermediate and technical institutions. The lack of the data bases tends to limit the capacity of the region to absorb the highly skilled professionals who eventually seek job opportunities in other parts of the world thus contributing to loss of these vital skills as skilled labour seeks alternative employment opportunities in other parts of the world in this error of globalisation¹⁰¹.

⁹⁹ Omolo Jacob, *Labour and Employment inequalities in the context of the East African Regional Integration Process*, Society for International development

¹⁰⁰ Interview with the Director for the Social Sectors, EAC Secretariat

¹⁰¹ An interview with the Director of the Social Sectors , EAC Secretariat

The fact that the partner states had private agencies registered by the relevant authorities to collect and disseminate information of job vacancies indicate that there exists some mechanisms for facilitating access to employment opportunities within the respective partner states. However, the LMI system in the EAC is not developed enough to provide information on the available jobs and vacancies aspects that are crucial for free movement of labour to be realized. The absence of national and regional databases which would otherwise provide critical information for the employees, employers, opportunities in the informal sector, the diaspora and the training institutions in each partner state have been a great undoing for the region thus it has been difficult for the region to absorb excess skills thus impacting on the free movement of labour in the region and hindering technological transfer that is important for the development of community.

In fulfilment of the Article fifty of the East African CMP which requires the development of a framework for monitoring and evaluating the implementation of the protocol, the region developed a monitoring system dubbed the East African Common Market Score card, the first of its kind in the EAC for purposes of tracking the progress of partner states in fulfilling their commitments as provided in the protocol. The score card is major milestone and an important part of the journey towards the realisation of the common market since it examines selected commitments made by the partner states. It is expected to contribute to better compliance with commitments made under the protocol and facilitate the adoption of best practice in the EC region¹⁰².

¹⁰² EAST African Community, *The East African Common Market Score card 2014* The World Bank/ EAC Secretariat (2014)

The above achievement was reverberated by the Ministers responsible of EAC affairs who noted that the scorecard is the first of its kind in Africa noting that the initiative is a fulfilment of Article 50 of the CMP which requires the development of a framework for monitoring and evaluating the implementation of the protocol and that it will contribute to the effective monitoring of the implementation of the common market¹⁰³. Thus the score card is a major milestone to the regional efforts of implementing the protocol.

The status of EAC labour market information is relevant to the movement of labour because the state of the LMI in a regional economic community would influence the methods of sharing the information on the markets which is critical to the movement of labour given that a citizenry that is well informed of opportunities is likely to make an informed decision on where to move to for purposes of work while the information shared plays an important role in the formulation of effective regional policies leading to the attainment of the free movement of labour within the REC.

4.3 Suitable Methods of Sharing Labour Market Information in EAC

LMI systems in Africa are characterised by multiple institutions that are in possession of useful but often un-used data. In addition, although the informal sector plays a significant role in economic development, qualitative information on the number of jobs, skills, salaries and other working conditions in the sector is hardly available. Such data is important for effective labour policy formulation thus the need for African countries to

¹⁰³ EAC Secretariat, *Report of the 20th meeting of the Sectoral Council of Ministers Responsible for EAC Affairs and Planning*, Arusha, Tanzania (July 2014) P 8

engage this sector in a bid to gain a clear understanding of the sector and to inform the formulation of effective labour policies¹⁰⁴.

Information, communication and technology (ICT) have the potential to improve the availability and usefulness of LMI for effective manpower and employment planning and the availability of ICT makes it easier to update automated records as new information is reported and dissemination in a much faster way¹⁰⁵. There is evidence of countries around the world making increasing use of information technology to enable labour market systems for example in North Carolina a system was developed to enable employers post vacancies and job seekers access information electronically¹⁰⁶. Consequently, ICT offers the East African community a possible route to disseminate and share information pertaining to the labour market.

The study established that there was need for partner states to explore possibilities of creating integrated-coordination and harmonisation units for LMI systems based on the spirit of social dialogue. Such systems would best be achieved by establishing formal consultation mechanism on collection, analysing and disseminating LMI through the national inter- sectoral institutions or the national social dialogue structure which acts as

¹⁰⁴ The African Capacity Building Foundation; *Regional Project for improving labour market statistics and strengthening the management of labour market information and systems for monitoring poverty in Africa: Developing and Implementing a Labour Market Information System* Training Manual (July 2007) P.36

¹⁰⁵ The African Capacity Building Foundation, *Situation Of National Labour Market Information Systems In The Participating Countries* (December,2004) P.8

¹⁰⁶ P.31-32

the coordination and harmonisation unit of the LMI. The unit should work towards reducing the fragmentation effects and thus identifying and filling the critical LMI gaps by consolidating the labour market research studies undertaken by key public and private stakeholders¹⁰⁷.

It was further established that regional efforts to harmonize labour market information system are realisable through collecting and consolidating the national LMI analytical reports and drawing up regional labour market factsheets and profiles which form a basis for data to be a permanent input to the regional conferences of ministers responsible of labour and employment; conduct exchange/ sharing activities through meetings of experts of labour statistics and building regional networks; and enhance capacity of LMI systems at regional and national level¹⁰⁸.

The interview revealed that the EAC is best placed to borrow the best practices from other regions for instance the experience of China when she joined the WTO, she shared information on labour with other members of the organisation. Thus partner states can devise ways of sharing the labour market information with other members of the community to facilitate awareness on the skills available and other information relating to the labour market in the respective partner states. The region should also endeavour to provide the information in different languages and especially so in Kiswahili and French in addition to English in efforts to reach out to all potential workers in the region. In

¹⁰⁷ African Union, *8th Ordinary session of the Labour and Social Affairs Commission of the African Union: Harmonization and coordination Framework for the Labour Market Information System in Africa*. African Union, Addis Ababa Ethiopia (January, 2011) P 6-7

¹⁰⁸ Ibid P 7

addition such information needs to be presented in a variety of ways including internet, the radio, print and electronic media¹⁰⁹.

It can be seen from the study that the experience of the EAC region has disintegrated data on the labour market from administrative and other sources a fact that requires the region to devise suitable methods of sharing labour market information to bridge the existing information gaps. Such methods should consolidate the administrative information held by different players including the ministries responsible for labour and manpower development; industrialization; and university and vocational education; employer association; trade unionists; the national bureaus of statistics and the private sector associations. The essence of these collaborative efforts is to consolidate the disintegrated data sources and disseminate data that addresses all the segments of labour market. The data should then be shared with the EAC Secretariat in form of a uniform reporting system or framework adopted by the region for use by all the partner states.

The study established that the completion of the Regional Manpower survey is critical to identify existing skills in EAC states, and facilitate formulation of policies that will facilitate the movement of labour as provided in the EAC common market protocol and to also address the movement of labour beyond the region. The study observed that the establishment and use of a regional based website where partner states can post information on labour market in the partner states is a possible option. In order to facilitate the sharing of the data, a link on information of labour can be included in the regional database on trade or alternatively a specific website can be created for the

¹⁰⁹ Interview with the desk officer for Labour and Migration

regional labour force where the information can be posted in portable document format (PDF) to control alteration¹¹⁰. The region in general and partner states in particular has experienced tremendous improvement in the use of ICT and knowledge on the use of ICT by the citizenry has been increased over the years thus the region can take advantage of these developments to share LMI.

The status of EAC labour market information is relevant to regionalism and the movement of labour in the EAC because the state of the LMI impacts the movement of labour since the more advanced the LMI system, the higher the probability of information access by various interest groups leading to more integrated the labour markets of the partner states thus impacting on the free movement of labour.

4.4 Chapter Summary

From the above findings, it is evident that the region lacks national and a regional data bases on the labour market and only Rwanda has in place a comprehensive labour market information system. This state of affairs makes the region to rely on piecemeal, ad hoc, uncoordinated approaches to generate LMI and tends to limit the capacity of the region to share information on the labour market and ultimately its capacity to fully benefit from the free movement of labour as provided in the EAC common market protocol. As the region awaits the completion of the manpower surveys, an integrated approach to consolidate the administrative information available in partner states would offer a suitable platform for sharing LMI, the essence of which is to consolidate the disintegrated data sources. In addition such information can be presented in different languages and

¹¹⁰ Interview with the chairperson of the committee for the implementation and monitoring of the CMP

especially so in Kiswahili and French in addition to English in efforts to increase access to LMI which is key to the promotion of the free movement of labour.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter recapitulates the study on regionalism and the free movement of labour in the East African Community. The first section seeks to re-examine the three objectives to ascertain the extent to which the set out tasks have been met while seeking to respond to the three research questions that informed the study. The second section anchors the conclusions drawn from the study and the third offers research based recommendations. To this end, the chapter is organised in three sections with each addressing the respective mandate.

5.1 Summary of Findings

Based on objective one, the study revealed that whereas the EAC treaty guarantees the free movement of workers without exceptions, the free movement provided for in the protocol is a privilege of only the highly skilled and professional workers since the schedule for the free movement of workers only permits the free movement of highly skilled workers. In addition the linking of the schedule on free movement of services to the schedule on movement of workers has limited the mobility of professional services thus the citizens of the region have not benefitted from the free movement of labour as envisioned in the EAC treaty and as provided for in the protocol.

The study further revealed that in spite of the fact that the EAC common market has been in existence for the last four years, the requirement for East Africans to acquire work permits is a barrier to the free movement of labour while the work permit fees charged by some partner states are prohibitive a fact that makes firms or companies seeking to recruit personnel to be cautious when recruiting personnel from the region thus acting as a hindrance to free labour mobility. The situation is worsened by the low levels of awareness among the general populace on the benefits of the EAC integration and the opportunities presented by the common market a fact that impedes on the free movement of labour. These factors have therefore hindered the success of the EAC common market to realize free movement of labour in the region.

Based on the second objective the study established that there was delay in the harmonization of national laws and other administrative procedures required by the protocol and the republic of Rwanda is the only state that had finalized the review process. The delay in the review of laws created an environment where partner states maintained restrictions as their laws do not accord other East African citizens treatment similar to the treatment of their nationals. In addition, the process of review and harmonization of policies as envisioned in the CMP, has been slowed by the structural and legal systems in the partner states and the fact that the regional institutions including the EALA and the EACJ which have limited capacity to exercise their mandate in the implementation of the common market and harnessing the efforts towards the free movement of labour.

The study further established that, whereas the EAC common market protocol guarantees the right of mobility of labour, the same protocol subjects the right to free movement to limitations by national laws and policies imposed by partner states especially on grounds of public policy, public health and security policy which is an undoing on regional efforts to formulate policies and programmes that can ease labour mobility and thus acting as a limitation to the attainment of the free movement of labour in the region.

The findings on the third objective showed that the EAC as a region and the individual partner states with the exception of Rwanda do not have up-to-date labour market information and they therefore, rely on piecemeal, ad-hoc, uncoordinated and less expensive means of generating labour market information employed on a needs basis thus the region did not have a comprehensive and coordinated mechanism for collecting reliable, adequate and updated information on all aspects of the labour market. The lack of an updated skills' inventory and all its facets limits job-searching and hinders the region from realizing the full benefits of the movement of labour.

The study further revealed that as the region awaits the completion of the manpower survey in all partner states, consolidation of the disintegrated data sources on all the segments of labour market offers the region the only option. In addition the region has witnessed technological advancement that can offer the region a platform for sharing information on the labour market which is a critical element to the realization of the free movement of labour in the region.

5.2 Conclusions

As predicted in the theory and in the literature review, the EAC integration is a progressive process attained through the spillover effects. The study made the following conclusions;

1) Based on the first objective, the nexus between the EAC common market and free movement of labour has not yielded tangible results. This is mainly as a result of the free movement provided for in the protocol is a privilege of only the highly skilled and professional workers since the schedule for the free movement of workers; the linking of the schedule on movement of services to the one on movement of workers tends to limit the free movement of labour; the cost of the work permit fees charged by some partner states is prohibitive; and the low levels of awareness among the general populace on the benefits of the EAC integration tends to make East Africans to hold some fears towards each other a fact that impedes on the free movement of labour.

2) Pertaining to objective two, the study concludes that the policy and structural factors have had adverse effects on the movement of labour within the EAC since the process of reviewing the national policies, laws and programmes has been painfully slow and only Rwanda has finalized the process an accomplishment that attracts workers from the region both in the private and the public sector. Further, the fact that the EAC common market protocol subjects the right to free movement to limitations by national laws and policies imposed by partner states on grounds of public policy, public health and security policy is an undoing on regional efforts to harmonize laws and policies relating to labour

mobility and thus acting as a limitation to the attainment of the free movement of labour in the region.

3) Based on objective three, the study concludes that the region lacks national and regional data bases on labour market information a fact that tends to limit the capacity of the region to absorb the skills existing in the region a situation that is worsened by the absence of LMI systems leading to reliance in on piecemeal, ad-hoc, uncoordinated approaches to generate LMI. This has limited the partner states capacity to share information on the labour market and ultimately the capacity of the region to fully benefit from the free movement of labour as provided in the EAC common market protocol. Suitable methods to consolidate the otherwise scattered LMI are critical for the EAC to achieve its stated vision of deepening and widening the integration and improve the livelihood of their citizens.

5.3 Recommendations

Based on the first objective, the study recommends that the ongoing negotiations to review the protocol in order to de-link the two schedules be fast-tracked to allow the movement of professionals in the region and thus cushion the possibility of excess skills in any one partner state seeking jobs in other regions of the world a fact that contributes to brain drain in many parts of the African region. Efforts should be made to eliminate all barriers to movement of labour especially the work permit fees charged by some partner states.

In similar vein the study recommends that the EAC Secretariat and the partner states' government prioritise sensitization of the citizens on the EAC common market protocol and consider allocating resources towards the creation of awareness and to intensify collaboration with other players including; the media, employers, civil societies and other interest groups to raise the knowledge levels among the East Africans in order for them to reap maximum benefits from the EAC integration and especially with respect to the free movement of labour.

Based on objective two, the study recommends that the region devises mechanisms of following up the partner states as they make concerted efforts to fast track the process of harmonisation of the laws of the respective partner states to allow workers from the region to enjoy similar treatment as the nationals of the receiving states as envisaged in the protocol establishing the EAC common market. On the same vein considerations should be given to the clauses that limit the movement of labour to the laws of the host state by enacting regional laws to govern mobility in the region.

Additionally, the EAC institutions need to be reformed and strengthened in terms of capacity and funding in order to exercise their mandate effectively. The reinforcing of these institutions will involve restructuring, increase the staff establishment and address institutional framework and address the existing jurisdiction of the EACJ with respect to human rights issues to enable the court take an active role in addressing abuses of various forms on the workers from other partner states thus facilitate the realization of the free movement of labour.

With respect to objective three, the study recommends that a regional mechanism be put in place to ensure the process of undertaking the manpower survey is fast-tracked and finalized in all EAC partner states to facilitate the establishment of comprehensive labour market information systems in all partner states and at the regional level.

In the meantime, the study recommends the establishment of a website to host the consolidated information on labour and all its facets and due considerations be given to translate existing administrative data on the labour market in partner states into the three main languages in the region including Kiswahili, French and English.

5.4 Suggested areas for further research

Further research may be undertaken to identify how the region in general and partner states in particular can establish a framework and programmes to address the plight of young workers. The study would identify how such programmes would facilitate the exchange of the young workers and how the relatively youthful and technologically savvy East African population can be fully engaged in efforts to incorporate innovation within the agenda on free movement of labour while promoting the free movement of labour among the youth in the region.

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Appendix I: Interview Schedule

Regionalism and the movement of Labour in the East African Community

Dear interviewee,

I am a student of the University of Nairobi and I am carrying out a research on Regionalism and the movement of labour in the East African Community. This interview is aimed at collecting your views on: the success of the EAC Common Market in promoting the movement of labour; the impact of policy and structural factors on the movement of labour within the EAC; and suitable methods of sharing of labour market information amongst by EAC Partner States.

All your responses will be treated with confidentiality and will be used for the purpose of this research only.

Phyllis Watwana

Researcher, University of Nairobi

SECTION A

This section seeks to capture basic details

Interviewee's Job Title (in the EAC integration or Labour matters) and level of Education

- a) 'O' Level b) 'A' Level c) Bachelors Degree d) Masters Degree e) PhD f) Others

SECTION B

The impact of the EAC common market on the movement of labour in the region

- 1) a) What are the dynamics of movement of labour in EAC?

b) What are your views on the trends of labour mobility within the EAC in the last four years since the CMP came into force?
2. a) To what extent has the EAC Common Market achieved its set objectives as far as the movement of labour is concerned?
3. a) What are some of the impacts of the CMP on the movement of labour in the region?

b) Have workers in the region benefitted from the EAC Integration?

SECTION C

Impact of policy and structural factors on the movement of labour within the EAC

4. a) Which Policy factors have MOST affected the movement of labour within the EAC and how have they factors impacted the movement of labour within the EAC?
5. a) In your opinion how have structural factors that have affected the movement of labour in the EAC?

b) What is the best approach to addressing the structural factors that affect labour mobility?

6. a) Would you say the EAC partner states are responsive in terms of harmonizing the policies? Please Explain.

b) What are your thoughts on the effectiveness of the organs and institutions of the East African Community in exercising their mandate with respect to the movement of labour?

7. In your opinion, have the ongoing trilateral and bilateral negotiations between some groups of the partner states promoted the movement of labour within the EAC?

SECTION D

Methods of sharing of labour market information among EAC partner states

8. a) What is the status of labour market information in the EAC

b) What is the status of the EAC manpower survey and how has the status impacted on the movement of labour in the region?

9 a) what are some of the methods of collecting labour market information

b) Suggest methods you would consider suitable for the collection and sharing labour market information in the EAC region.

10. a) In your opinion, does membership to different RECs by EAC partner states affect the free movement of labour?

11. What in your opinion is the way forward for the EAC integration as far as movement of labour is concerned?

Thank you for sharing your views.

Appendix II: Study Work Plan

Activity	April	May	June	July	August	September
Proposal Writing						
Departmental Defence						
Corrections on Proposal						
Seeking permission for Research						
Piloting of Instruments						
Data Collection						
Data Analysis and report Writing						
Binding of the Report						
Submission of Bound copies of report						