

AN ASSESSMENT OF THE IMPLEMENTATION OF THE EAC COMMON MARKET PROTOCOL COMMITMENTS ON THE FREE MOVEMENT OF WORKERS (EABC/RFP/008/2012)

A Technical Paper Commissioned by the East African Business Council (EABC) & the East African Employers' Organisations (EAEO)

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ACRONYMS AND ABBREVIATIONS

BOU	Bank of Uganda
BSOs	Business Support Organisations
BSIs	Business Support Institutions
COMESA	Common Market for Eastern and Southern Africa
CMP	EAC Common Market Protocol
EABC	East African Business Council
EAE0	East African Employers' Organisation
EPA	Economic Partnership Agreements
EU	European Union
FDI	Foreign Direct Investment
FES	Friedrich-Ebert-Stiftung
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GOU	Government of Uganda
IBMS	Integrated Border Management Systems
ICTs	Information Communication Technologies
ITC	International Trade Centre
MDAs	Ministries, Departments and Agencies
MoW&T	Ministry of Works and Transport,
MRNIs	Machine Readable National IDs
MTTI	Ministry of Tourism, Trade & Industry
NSPR	National Services Policy Review
OECD	Organisation for Economic Cooperation & Development
PSFU	Private Sector Foundation-Uganda
UBOS	Uganda Bureau of Standards
UNCTAD	United Nations Conference on Trade and Development
UNBS	Uganda National Bureau of Standards
UPTOP	Uganda Programme for Trade Opportunities and Policy
USAID	United States Agency for International Development
URT	United Republic of Tanzania
VAT	Value Added Tax
WTO	World Trade Organisation

EXECUTIVE SUMMARY

- 1) The Common Market Protocol's twin provisions on the Movement of Persons and Workers were deliberately designed to bring the people to the centre of the East African Community. However, nearly three years since the commencement of the implementation of the CMP, employers are still constrained in their attempts to recruit competent labor from other partner states. What should be done to cause the effective implementation of the Protocol provisions to ease cross border recruitment of workers?
- 2) This study is a private sector assessment of the implementation of the EAC Common Market Protocol provisions by Partner States of the EAC. It is a joint effort of the East African Employers' Organisations (EAEOs) and the East African Business Council (EABC) to develop an advocacy agenda on the movement of workers within the EAC integration framework.
- 3) The main objective of the study was to assess the level of implementation of the Common Market Protocol provisions on the free movement of workers by the Partner States.
- 4) Specifically the study; examined the extent to which the CMP has facilitated the movement of workers within the EAC; ascertained if Partner States had taken specific measures to meet their CMP commitments by identifying those measures and establishing whether the measures were consistent with the CMP; highlighted constraints faced by workers moving across the EAC and has made recommendations for their mitigation. The study findings together with its recommendations are expected to inform an advocacy agenda of the EAEO and the EABC on the free movement of workers.
- 5) This report is compiled from a wide range of reports, studies, policy documents, statutes, regulations and laws related to workers; requirements for the movement of workers in the EAC with specific emphasis on the CMP provisions and Annex II. The materials reviewed as part of this study are listed in the References Section of the report. A detailed critical analysis of the CMP provisions on workers and Annex II has been undertaken.
- 6) A research team of two experts conducted the study in 8 weeks. The experts visited Ministries, Departments and Agencies (MDAs) in the 5 EAC Partner States. A total of 34 wide ranging key informant interviews with 40 key respondents drawn from 32 Institutions and Organizations in the Republic of Kenya, the Republic of Burundi, Republic of Rwanda and the Republic of Uganda were conducted. Employment and labor relations are not union matters in the URT and as such the Tanzania Mainland and Zanzibar were reviewed separately. The experts travelled by road from Kampala to Bujumbura to make on spot assessment of labour movement across borders, validate information obtained from interviews with capital based

immigration officers and get firsthand experiences of workers going across border points. A list of the institutions and respondents is included in Section 7 of this report.

- 7) In addition, a mini-survey of employers was carried out in all the EAC Partner States at the request of EAE O to capture the views of employers with regard to labor mobility and recommend solutions to address the challenges impeding labour mobility. The mini-survey also highlighted the challenges faced by workers and employers while attempting to take advantage of the CMP provisions on workers, as well as identifying the causes of these challenges.
- 8) A case study on the Workers' PAS was included in the study to showcase a private sector driven initiative on non-college acquired competence and skills certification.
- 9) The review of the CMP provisions relating to workers revealed that; (a) although the CMP empowers the Council of Ministers to issue directives to ensure the harmonisation and progressive implementation of the CMP, many Council directives and decisions issued had not been enforced; (b) whereas the CMP guarantees the free movement of workers without exception, the schedule for the movement of workers (Annex II) was found to be strongly biased towards highly qualified and skilled workers to the exclusion of the majority of the workers who are semi-skilled in the majority of the partner states; (c) the CMP links Annex V with the liberalisation commitments in Annex II by the expression "in accordance with the Schedule on the free movement of Workers"; (d) whereas, effective and beneficial integration is hinged on existence of timely and reliable labor market data, the EAC lacks updated data on its stock of skills, characteristics, distribution, and skill supply and demand which has limited the development of labor market search, job matching and employment.
- 10) The cost of work permits emerges as the most fundamental implementation issue. Instead of becoming cheaper and easier to access, the cost of work permits has remained high and increasing and the duration of work permit approval is unpredictable. Kenya's high rejection rate for work permits had eroded its gratis value.
- 11) Certification of Non-College Competences and Skills is necessary to allow EAC workers without formal training but with skills and competencies to perform different jobs in the region.
- 12) Although over 75% of the employers surveyed reported awareness of the CMP and its provisions on workers indicating a high level of awareness of the CMP Provisions on workers among employers in the EAC. The lack of awareness about the CMP, its provisions on Workers and the measures taken by Partner States to implement the CMP is overwhelming among workers. All the Trade Unions covered by the study demanded for deliberate efforts to increase awareness to enable workers know about the CMP its opportunities and advantages.

- 13) Work Permits should be appropriately utilized as tools that facilitate orderly movement of workers and not immigration control tools; the cost of work permits for East Africans should be reduced over an agreed time frame, subject to standard procedures in cost and format, decentralized and their fees charged in local currencies. Non-college acquired competences should be recognized and certified to broaden the scope of the CMP to cover the excluded semi-skilled workers.
- 14) Harmonization of labour policies and laws should be prioritised, not just for Social Security but other benefits as well.
- 15) The CMP needs to be reviewed with a view to delink Annex 1I and V in the Schedule on Trade in services.
- 16) From the CEPGL experience, all EAC Partner states should ensure that their participation in different regional economic arrangements should not disadvantage East Africans and contravene the MFN principle since the EAC is at a higher level of integration.

1.0 BACKGROUND

The East African Community Common Market Protocol was adopted and signed on 20th November 2009 by Heads of State. It was entered into force on July 1, 2010. In accordance with the provisions of Articles 76 and 104 of the Treaty, the Protocol provides for the following Freedoms and Rights: free Movement of Goods; free Movement of Capital; free Movement of Services; free Movement of Workers; and free Movement of Persons. The Protocol provides for the Right of Establishment and the Right of Residence.

The EAC countries premise employment on GDP growth. The region's employment elasticity ranged between 0.3 and 0.4 in the period 1992-2008. Specifically, Burundi's employment elasticity ranged between -0.15 and 1.18 while that of Kenya was between 0.5 and 1.28. Uganda had an employment elasticity of 0.34-0.54 with that of Tanzania being 0.23-1.04 (Shakaba, 2012). Though there is no universally accepted benchmark for elasticity, the ILO contends that elasticities in LDCs should be 0.7 until they attain upper-middle income status (ILO, 2008). However, employment elasticity for most EAC countries has been low and declining. This means that the countries require phenomenal growth for them to realize significant growth in employment.

Free movement of labor is enshrined in the East African Community Treaty. In Article 104 of the Treaty, the Partner States agreed to adopt measures to achieve the free movement of persons, labor and services to ensure the enjoyment of the right of establishment and residence of their citizens within the Community. To operationalise these treaty provisions the Partner States negotiated an EAC Common Market Protocol to establish a Common Market. The Common Market Protocol establishes the freedom of Movement of Persons aimed at fast tracking regional integration of East Africa. The Protocol reviewed the then existing policies on movement of workers with a view of establishing and harmonizing the policies among the EAC Partner States.

Article 10 guarantees free movement of workers who are citizens of other Partner States within their territories without discrimination based on their nationalities in relation to employment, remuneration, and other conditions of work and employment. The Article further entitles workers to apply for employment and accept offers, to move to take up employment, stay in those territories, and enjoy freedom of association and collective bargaining for better working conditions, according to national laws in the Partner States and to enjoy rights and benefits of social security as accorded to the workers of the host Partner State.

In addition, Article 7 of the East African Common Market Protocol guarantees the free movement of persons who are citizens of the Partner States. All Partner States have undertaken to guarantee entry without visa, free movement within their territories and the right to stay within their territories to citizens of other Partner States.

Based on the principle of progressive liberalization, Articles 7 and 10 of the Common Market Protocol are to be implemented in accordance with Annex I and Annex II of the Protocol respectively, which document the specific commitments undertaken by each of the Partner States.

Domesticating the Common Market Protocol especially the freedom of movement of workers faces major obstacles which are hampering the evolution of the common market as envisaged in the Treaty establishing the EAC. Recent World Bank findings show that the sub-region would greatly benefit from unfettered trans-border flow of labor. Such flow, would allow for a more efficient allocation of skills which are relatively scarce in some Partner States while at the same time providing employment to idle skill resources in other Partner States (Wandera, 2012)¹.

1.1 The Study Problem

The EAC Treaty puts people and the market at the top of the priorities for EAC cooperation. The Treaty provides “People centred and market driven cooperation” as the first operational principle of the EAC. The Common Market Protocol’s twin provisions on the movement of persons and workers were deliberately designed to bring the people to the centre of the East African Community. However, nearly three years since the commencement of the implementation of the CMP, employers are still constrained in their attempts to recruit competent labour from other partner states. What should be done to cause the effective implementation of the Protocol provisions to ease cross border recruitment of workers? The Protocol assumes the existence of a large pool of workers and their requisite skills in some Partner States and their shortage in others. Ideally, the movement of workers from one end of the scale to the latter should have been freed by the CMP’s Provisions and enabled by the regulations in Annex II. The provisions and Annex II need to be systematically scrutinized to understand what could be frustrating the movement of workers and solutions identified through a private sector prism to address these shortcomings. Moreover, the movement of workers is not for its own sake but the long term sustainability of the Common Market, the private sector and the workers. This movement cannot be sustained over the long term without a pool of skilled employable workers. These conditions are the imperative for the CMP provisions on free movement of workers and the Regional Manpower Surveys that should have preceded them. Except for Rwanda and Kenya, the National Manpower Surveys have only been partially done and in one Partner State have not been conducted at all. The failure to conduct these manpower surveys has not been critically examined nor alternative approaches identified.

1.2 Purpose and Objectives of the Study

1.2.1 Overall Objective

The main objective of the study was to assess the level of implementation of the Common Market Protocol provisions with respect to the free movement of workers by the Partner States.

1.2.2 Specific Objectives

The specific study objectives were to:

- a) Examine the extent to which the Common Market Protocol has facilitated the movement of workers among the Partner States of the EAC.
- b) Ascertain whether EAC Partner States have taken measures to meet their protocol commitments. Identify the measures (laws, policies, regulations, guidelines etc.) taken by Partner States to implement the Protocol and whether they are in tandem with the CMP and identify any constraints they may be facing.

1 See also, The East African Common Market Protocol and Labour Mobility in Uganda, Sept., 2012

- c) Identify constraints met by workers in moving across the region and the causes of these constraints.
- d) Analyse the constraints in (c) above and make recommendations for their mitigation.
- e) Basing on the study findings and the analysis above, recommend actions which will form an advocacy agenda of the EAEO and the EABC on the free movement of workers.

1.3 Rationale and Policy Impact of the Study

The study articulates a private sector assessment of the progress of implementation of the Common Market Protocol provisions by the Partner States. This study is part of the efforts by the East African Employers’ Organisations (EAEOs) and the East African Business Council (EABC) to develop an advocacy agenda on the movement of workers. This assessment is undertaken against a background where the EAEO’s members as primary stakeholders did not participate directly in the negotiations to conclude both the CMP provisions on workers and their enabling annexes.

2.0 RELEVANCE OF THE EAC LABOR MARKET FOR EMPLOYMENT

The dynamics of the EAC labor market indicate low labor force participation rates and hence high dependence rates characterized by relatively high levels of labor force inactivity rates. The inactivity rates represent the working age population that is outside the labor market. This portion of the population is neither working, unemployed nor actively seeking for work. As of 2008, the EAC had a labor force inactivity rate of 13.7 per cent. The country specific figures were 18.3 per cent for Kenya, 15.4 per cent for Rwanda, 14.3 per cent for Uganda, 10.4 per cent for Burundi, 10.1 per cent for Tanzania.

Table 1: Trends in East Africa's Economically Active Population

Country	1980	1990	2000	2010	2015	2020
URT	9,978	13,758	18,860	24,891	28,833	33,623
Kenya	8,133	11,963	17,550	23,362	26,760	30,845
Uganda	6,625	9,205	12,353	17,331	20,713	24,788
Rwanda	2,783	3,633	4,314	5,925	6,749	7,740
Burundi	2,282	3,106	3,479	5,289	5,933	6,586
EAC	29,802	41,665	56,558	76,799	88,987	103,582

Source: ILO, Labour Statistics Database, LABORSTA

The table above illustrates the trends of East Africa's economically active population since 1980 and projects its likely trend up to 2020. The EAC's labor force grew by 20.2 Million between 2000 and 2010. However, it's projected to grow at an accelerated rate of 26.7 Million people by 2020. The policy challenge with these incredible numbers is how to use effective coordination of employment services, matching of skills, addressing the youth bulge and youth unemployment so as to reduce the inactivity rates and its resultant negative effects (Shakaba, 2012)².

Labor force surveys provide baseline data on employment and unemployment in the region. The National Bureau of Statistics in Rwanda reported unemployment at 1.2 percent in 2005/6, which doubled to 2.5 percent among Rwandans, aged 21-30. Uganda's UBOS reported an increase in the total labor force from 10.8 million people in 2006 to 13.4 million people by 2010, the unemployment rate among Ugandans aged 14-64 was 4 percent, with the majority of the labor force classifying themselves as self employed. In 2006, Tanzania's National Bureau of Statistics reported an unemployment rate of 12 percent with 1.7 million people employed in the informal sector and 2.2 million unemployed Tanzanians (FES, 2012)³. Majority of EAC employment is in agriculture. As of 2008, agriculture accounted for 90.1 percent of the employment in Rwanda. This was compared to 74.7 percent for Tanzania, 68.7 percent for Uganda and 17 per cent for Kenya.

The service industry explained much of the employment in Kenya at 63.7 percent. Industry explained 19.3 per cent of employment in Kenya. The implication is that the EAC employment sectors are not in synch.

² Mr. Chiboli I. Shakaba, is the Permanent Secretary of Kenya's Ministry for EAC Affairs

³ The East African Community Common Market Protocol for Movement of Labor: Achievements & Challenges of Implementation of the Protocol, Friedrich-Ebert-Stiftung, 2012, pp.6

3.0 METHODOLOGY

3.1 Introduction

This report is compiled from a review of a wide range of reports, studies, policy documents, statutes, regulations and laws related to workers/labor employment; requirements for the labor/workers movement across the region with specific attention put on the CMP provisions and Annex II of the EAC Common Market Protocol listed in the References Section of this report.

3.1.1 Review of Literature

Extensive review of existing literature, including documents, and reports in the areas of labor and employment; requirements for the movement of workers in the EAC has been carried out. Emphasis has been given to the critical analysis of the CMP provisions on workers and Annex II. The analysis has taken special interest in the relationship between the two freedoms namely; the freedom of movement of workers and the right of establishment with respect to the rights of the self employed. A big collection of documents has been extensively reviewed including, the Treaty for the Establishment of the East African Community; the EAC Common Market Protocol and *East African Community Common Market (Free Movement of Workers) Regulations* in Annex II of the Protocol, Reports of the EAC Council of Ministers and especially those with substantive coverage of workers issues have also been reviewed. The Immigration laws, policies and regulations for the Partner States have been reviewed as well as legislations, policies and regulations on social security and workers' benefits for each of the Partner States. Special attention has been given to liberalisation reforms and the legal and institutional reforms in the social security and other benefits sector (both under implementation and proposed) in Kenya and Uganda.

Other research studies, reports and publications on labor/employment and migration in the EAC and elsewhere have been scrutinised and made reference to. They are comprehensively listed in the End Notes to this report.

A total of 34 wide ranging key informant interviews with 40 key respondents drawn from 32 Institutions and Organizations in the Republic of Kenya, Zanzibar, Tanzania Mainland, the Republic of Burundi, Republic of Rwanda and the Republic of Uganda have been conducted using an interview guide. A comprehensive list of all the institutions and the respondents are included in Section 7 of this report.

3.2 Study Approach

The study has relied on primary data and both quantitative and qualitative data collected in all five EAC Partner states in Kenya, Burundi, Rwanda, Uganda and Tanzania. Employment and labor relations are not union matters in the United Republic of Tanzania and as such the two constituent jurisdictions of the URT (Tanganyika and Zanzibar) have been reviewed separately.

3.2.1 Adjustments to the Study Approach

The study approach as originally proposed was adjusted during execution. The Focus Group discussions could not be conducted due to time limitations. One case study on the Workers'PAS⁴ has been used to profile a private sector driven initiative on non-college acquired competence and skills certification.

3.2.2 Employers and Workers' Organisations

Employers and Workers' organisations in the EAC Partner States were visited to identify key issues related to the implementation of the CMP together with the Annex II liberalization commitments. The Federation of Kenya Employers (FKE) and the Central Organisations of Trade Unions – Kenya (COTU); The Zanzibar National Chamber of Commerce, Industry & Agriculture (ZNCCIA), and the Zanzibar Trade Union Congress (ZATUC), the Association of Tanzania Employers (ATE) and the Trade Union Congress of Tanzania (TUCTA), the Chambre Federale De Commerce Et D'Industrie Du Burundi and the Burundi Association of Manufacturers, the Federation Du Seteur Prive Rwanda, the Federation of Uganda Employers (FUE), the National Organisations of Trade Unions (NOTU) and the Central Organisations of Free Trade Unions (COFTU), were covered in Kenya, Zanzibar, Tanzania Mainland, Burundi, Rwanda and Uganda respectively.

3.2.3 Government Ministries, Departments and Agencies (MDAs)

Visits were made to Government Ministries, Departments and Agencies (MDAs) in the EAC Partner States. Key informant interviews were conducted with officials in these institutions and have been extensively covered in the field findings section of this report. This study has covered a total of 10 institutions excluding social security institutions and regulators.

3.2.4 Social Security Institutions

Social Security Institutions in the Partner States have been surveyed to inform the study recommendations on portability of social security benefits and other reforms related to social security in the EAC. The statutory regulators of social security and other benefits in Uganda and Tanzania Mainland have been covered.

The Social Security Regulatory Authority (SSRA) and Uganda Retirement Benefits Regulatory Authority (URBA) were visited. The National Social Security Fund – Kenya, Zanzibar Social Security Fund (ZSSF) and the National Social Security Fund – Tanzania (NSSF-Tanzania) have been covered in Kenya, Zanzibar and Tanzania Mainland respectively.

3.2.5 Field Observation Visits (Border Crossing Points)

The consultants travelled by road from Kampala to Bujumbura in order to make on spot assessment of labour movement across borders, validate information obtained from interviews with capital based immigration officers and try to get firsthand experiences of workers going across border points. Subsequently, visits were made to Gatuna and Kayanza Haut at the border crossing points on the Uganda – Rwanda and Rwanda-Burundi borders.

⁴ Workers'PAS refers to a document issued by the Directorate of Industrial Training (DIT) - Uganda's statutory authority on vocational/technical training to workers as proof of their Practically Acquired Skills. These skills and competences are acquired through informal means and apprenticeship.

3.2.6 Limitations of the Study

Though the Common Market Protocol covers a wide scope of elements comprising all the factors of Production labor being only one of them, the terms of reference for this exercise are limited to only to the free movement of labor. In practice however, an effective common market is as effective as the depth and seamlessness of the interaction among the factors of production. An assessment of the extent of this interaction among the factors is not part of this exercise.

Immigration Authorities: Notably, the primary information for this exercise is related to immigration and work permits which key respondent institutions have treated as extremely sensitive. The necessary authorizations needed to access this information required more time and a lot of this information and data has not yet been provided by the relevant MDAs. The report design was to have a tabulation of work permit applications and approvals for each of the countries in the EAC covered. Only Zanzibar in the URT had responded with comprehensive data in this regard the rest of the Partner States have not been forthcoming (Refer to Table 2). The immigration authorities have not been as responsive as had been anticipated. The role of the immigration authorities in the Partner States, their buy-in and cooperation are critical to the successful operationalisation of the CMP provisions on free movement of workers and the success of the advocacy efforts of the EABC and EAEO on these matters.

4.0 THE COMMON MARKET PROTOCOL AND FREE MOVEMENT OF WORKERS

This section addresses the question; Does the Common Market Protocol facilitate free movement of workers? The section therefore examines the various provisions of the Protocol to determine the extent to which the provisions enable or do not enable free movement of workers in the EAC in accordance with the Treaty.

4.1 The EAC Treaty and the Free Movement of Labor

Free movement of labor is enshrined in the East African Community Treaty. The Partner States agreed 'to adopt measures to achieve the free movement of persons, labor and services to ensure the enjoyment of the right of establishment and residence of their citizens within the Community (EAC, 1999)⁵. To promote the objectives of the Community as required by the Treaty, the Partner States agreed to conclude a Protocol on the free Movement of Persons, Labor, Services and the Right of Establishment and Residence and establish a common market as an integral part of the EAC⁶.

With respect to cooperation on labor and employment the Treaty provisions require the EAC Council of Ministers to make directives to ensure that Partner States; maintain common employment policies, harmonise labor laws, policies and programmes on occupational health and safety, the exchange of information on the availability of employment opportunities among others.

4.2 The CMP: The Free Movement of Workers & the Right of Establishment

The Common Market Protocol signed by the EAC Heads of State on 20th November, 2009 was ratified by all partner states and became effective from 1st July, 2010. The Common Market Protocol established the twin freedoms of movement of persons and workers and the right of establishment for self employed persons.

The Partner States of the EAC guaranteed the free movement of persons in Article 7 of the Common Market Protocol and hence undertook to allow entry without visas, free movement in their territories and the right to stay to all EAC citizens in other Partner States of the Community.

Partner States in Article 10 of the CMP guaranteed 'the free movement of workers who are citizens of other Partner States within their territories'. Partner States further undertook to ensure 'non discrimination of workers from other Partner States on the basis of their nationalities in relation to employment, remuneration, and other conditions of work and employment'⁷. The Protocol entitles workers to apply for employment, move to take up employment, stay in the territories, enjoy the freedom to associate and collectively bargain for better working conditions, according to national laws in Partner States other than their own and enjoy rights and benefits of social security as accorded to the workers of their host Partner State. The Protocol enjoins Partner States to review and harmonise their policies, laws and programmes on social security, to cover self employed persons in their territories including their own nationals and nationals from other Partner States.

⁵ See also Article 5(2) of the EAC Treaty, pg.13

⁶ *ibid*

⁷ See also Article 13: 3 (a) (i),(ii) and (b) of the EAC Common Market Protocol

The Common Market Protocol empowers the Council of Ministers to issue directives to ensure the implementation of Article, 12 of the CMP. The CMP provides that the implementation of the provisions on the free movement of workers and the Partner States commitments in respect to those provisions would be progressive and in accordance with the CMP (Free Movement of Workers) Regulations specified in Annex II of the Protocol.

The CMP guarantees the free movement of workers who are citizens of the Partner States. However, Annex II of the Protocol permits the free movement of skilled workers and seems to exclude the semi-skilled and unskilled. This is inconsistent with the spirit of Articles 76 and 104 of the EAC Treaty that guarantee the free movement of workers without any exception.

The Self Employed and the Right of Establishment: The EAC Common Market Protocol in PART E establishes the right of establishment for self employed persons. Partner States guaranteed the right of establishment of nationals from other Partner States within their territories to take up and pursue economic activities as self employed persons and set up and manage economic undertakings (EAC, 2009)⁸.

The Protocol further enjoins Partner States to ensure that workers who are citizens of other Partner States employed in their territories are allowed to remain in that territory for the purpose of taking up economic activities as self employed persons.

4.3 The Linkage between Annex II and Annex V

This section focuses on the debate on the link between the schedules on the free movement of workers in Annex II and the Free Movement of Services in Annex V of the CMP. This *linkage* results from the notation "*In accordance with the Schedule on the Free Movement of workers*" featured in the Mode 4 Market Access column of Annex V of the CMP in all the schedules of the EAC Partner States.

The Treaty distinguishes between the '*movement of services suppliers*' (mode 4) and the '*movement of workers*' in Art.76 and 104 where the common market is defined to include: (a) the free movement of goods; (b) the free movement of persons; (c) the free movement of labor.; (f) the free movement of services and (g) the free movement of capital.

By not explicitly defining the length of stay for workers, the use of the term '*employment*' in Art. 10.3 (a), (b), (c),(d) of the CMP and the reference to '*enjoy the rights and benefits of social security*' the CMP refers to long term stay. In addition, Art. 10.5 provides that 'a worker shall have the right to be accompanied by a spouse and a child'.

The article goes further to entitle the spouse to employment in the territory to which she moves. Therefore, it can be safely concluded that the CMP clearly emphasises the length of stay for workers as opposed to *temporary movement* of services suppliers as elaborately stipulated and emphasized in the *GATS Annex on temporary movement of natural persons* (also known as *services suppliers*) and

⁸ See also Article 13: 3 (a) (i),(ii) and (b) of the EAC Common Market Protocol

the movement of workers as separate and different. There is neither legal provision nor instrument in either the Treaty or the Protocol that links the two (Chaitoo, R, 2012)⁹. Most countries are more hesitant to allow free movement of workers compared to the temporary movement of services suppliers. Consequently, Schedules for Movement of Workers (such as those in Annex II) are typically more restrictive than the Schedules for service suppliers (Annex V). Whereas workers of all Partner States had high ambitions in accessing employment opportunities in other Partner States, their readiness to open up their domestic labor markets to workers from other Partner States were not equally as ambitious. Referring all mode 4 market access commitments in Annex v that are comparatively more liberal to the more restrictive Schedules on workers presents implementation challenges for both annexes particularly the more liberal commitments in Annex V on movement of services suppliers. In practice, this implies that the two schedules must be read together and therefore it's not possible to understand any of the Mode 4 market access commitments in Annex V of the CMP without making reference to the commitments in Annex II.

Finally, the CMP provisions do not make any reference to work permits for service suppliers. Considering that work permits are a requirement for the realisation of the free movement of workers, it is not clear in light of the 'linkage' if services suppliers who temporarily move to provide services without the need for an 'employment contract' whether they also would require work permits. This certainly would negate the spirit of *Mode 4* market access commitments. Therefore, to free up and ensure effective realization of *Mode 4* liberalisation commitments but also enable any possible future review of the workers schedules in Annex II, there is need to delink the two schedules fundamentally.

4.4 Regional Manpower Surveys (RMS)

Effective and beneficial integration is hinged on existence of timely and reliable labor market data. However, there is dearth of labor market data in EAC. By 2012, none of the EAC Partner States have finalized their national manpower surveys. The implication is that the region lacks updated data on its stock of skills, characteristics, distribution, and skill supply and demand. This limits development of labor market search, job matching and employment. The lack of up to date labor market data also inhibits development of a regional Occupational Classification of Standards (Cladho, 2012)¹⁰.

The Protocol provisions on free movement of labor are premised on the presence of a large pool of workers with the requisite skills in some EAC Partner States and a shortage of workers and skills in others which would occasion the movement of workers from one end of the scale to the latter. Partner States identified regional manpower surveys as a key yardstick for their skill needs. Unfortunately, the manpower surveys were not conducted prior to the conclusion of the CMP negotiations and have not been fully conducted to date. Instead, Partner States continue to rely on piecemeal, sectoral surveys to generate labor market information for their own use.

The surveys would assist in generating data on the current stock and characteristics of skilled manpower, vacancies, and provide information that would assist in matching demand and supply

9 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 EAC, *A technical paper prepared for the EAC Secretariat*, Chaitoo, R (2012).

10 Harmonization of Social Security & Labor Legislations in EAC Partner States, pp. 67

in the national and regional economy in order to determine both current and future shortages and surpluses. The EAC initiated a regional process of conducting manpower surveys in 2008 whose expected output would have been critical in informing policy development in relation to skills needs and gaps at national and regional levels. The surveys would also facilitate the establishment of an accessible human resource database for development policy planning at national and at the EAC level.

The EAC Council of Ministers in August 2010 noted the slow progress in undertaking the pilot phase of the RMS and directed the Partner States to provide 50% of the required funds for the overall Manpower Survey and the EAC Secretariat to mobilize the remaining 50%. All the Partner States identified the lack of funds to undertake the exercise as a major challenge. As a result Partner States were not able to undertake and complete the exercise within a reasonable period; consequently comparability of the results of the survey whenever they would be completed would be compromised. (EAC, 2012)¹¹.

Presently, there is no current data on the stock of skills in the region. The lack of such data limits labor market search, job-matching and employment growth, without an updated stock of skills and all its facets, the region cannot fully benefit from the free movement of workers. It also cannot develop and implement occupational classification standards, a critical ingredient for an efficient labor market. Therefore the regional labor market remains inefficient because of the failure to conduct regional labor market surveys.

4.5 Labor Market Information Systems

The East African Community Common Market (Free Movement of Workers) Regulations in Annex II of the CMP contains elaborate provisions which require the EAC Partner States to establish Labor Market Information Systems to 'collect and disseminate information on job vacancies' in order to facilitate access to employment opportunities by the citizens of the community. The regulations task the Secretariat to collaborate with the competent authorities from the Partner States to share information on job opportunities, employment statistics among other labor matters¹².

The EAC lacks timely, reliable labor market data that can help both in the assessment of the effectiveness of the EAC integration, particularly the benefits accruing from the CMP's workers' provisions and addressing the challenges of information asymmetry that prevent the workers and businesses from taking advantage of the CMP's benefits.

This data cannot be available without a comprehensive and coordinated mechanism for collecting reliable, adequate and timely information on all facets of the labor market and social security. At the same time, without an updated stock of skills and all its facets, the region cannot fully benefit from the free movement of labor. Young people frequently lack adequate information; guidance and counseling on their job market prospects and about labor market opportunities. Effective and beneficial integration is hinged on existence of timely and reliable labor market data (Wandera, 2012)¹³.

11 See also <http://www.eac.int>

12 Regulation 12 (1) and 12 (3) of the East African Community Common Market (Free Movement of Workers) Regulations.

13 See also, *The East African Common Market Protocol and Labour Mobility in Uganda*, Sept, 2012

The lack of a systematic and comprehensive Labor Market Information System for data gathering, analysis and exchange on all aspects of the labor market in the EAC is one of the principal obstacles to effective labor mobility. It also facilitates the monitoring of market trends, patterns; the underlying factors of labor movements. Unfortunately, the infrastructure for capturing labor movement data at the border stations used most by ordinary East Africans and its analysis is either very weak or completely non-existent in all EAC Partner States (FES, 2011).

Active Labor Market Policies (ALMPs) including effective job search and job matching, require the existence of accurate, timely, reliable and up-to-date labor market information. This is crucial as it will support the EAC integration process and contribute to an effective supply of labor by ensuring that the active pursuit of employment opportunities by the EAC's unemployed segments of the labor force is facilitated. In addition, an effective Labor Market Information System contributes to preventing marginalization and long-term unemployment by ensuring that the employed, the unemployed and underemployed can acquire, enhance and maintain their qualifications to remain relevant to the labor market requirements and the changing industry dynamics (Omolo *et al*, 2004)¹⁴.

4.6 The Common Market Protocol and the 'highly qualified bias'

Whereas both the EAC Treaty and the Common Market Protocol guarantee the free movement of all workers without exception¹⁵, the schedules to implement the protocol in the *East African Community Common Market (Free Movement of Workers) Regulations* of the Protocol instead only permit the free movement of highly qualified professionals. The effect of the schedules is that the freedom of workers is a privilege of only the highly qualified and professional workers. The skilled yet less qualified seem to be excluded in the Schedule. Similarly, the majority of workers in East Africa who are semi skilled are disadvantaged by the Schedule (Wandera, 2012)¹⁶.

More specifically, the schedule for the free movement of workers in Annex II of the CMP is strongly biased towards a select level of workers to the exclusion of the majority of the workers for the majority of the partner states. More specifically, the bias seems to be mainly towards; Administrators and Managers (Managing Directors, Executive Secretaries, University Vice chancellors, finance managers, planning); Professionals (engineers, medical doctors, lawyers, performing artists) and craft related trade workers (air traffic and ship controllers and technicians, metal, machinery etc. Entrenching the work permit regime in the CMP seems to negate the freedom it was designed to facilitate unlike for example in the EU where work permits are used as an instrument for preferential treatment to EU nationals.

The EU stands out as the most successful regional integration model in the world and the common labor market of the European Community is the most profound benchmark for the EAC's free movement of workers. Unlike the EAC, the European Commission extends preferential treatment to EU nationals and the regulations on definition of 'workers' and work permit requirements are only

14 "Is Minimum Wage Policy Effective in Kenya?" IPAR. Discussion Paper Series, No. 54/2004, Omolo, O.J and Omiti, J (2004): Nairobi.

15 See also Articles 10 (1) of the Common Market Protocol: "The Partner States hereby guarantee the free movement of workers who are citizens of other Partner States within their territories"

16 The East African Common Market Protocol and Labour Mobility in Uganda, Sept, 2012, pp. 12.

applicable to non-nationals of the EU (Gabel, 2008)¹⁷. In the case of the EAC, the CMP provisions on workers though decreeing against distinguishing among EAC nationals seem not to give any regional preference to EAC nationals.

The continuation of the current work permit regime is likely to act as a barrier to attracting workers regionally to fill labor gaps that arise as it is largely characterised by lack of regional preference (GOU, 2010)¹⁸.

Furthermore, there seems to be an issue with regard to the definition of a "worker". The definition of 'worker'¹⁹ is limited and excludes a large population of workers currently working across Partner State borders for their livelihood. Specifically, the definition excludes the self employed workers who are recognised and provided for in the same Protocol and represents a category of workers that is likely to increase to significant levels in future especially women. The Schedule in Annex II also makes extensive reference to the term "professional" but the CMP does not define the term. For example in Burundi's schedule, the term "related professionals" is extensively used which leaves the scope of the levels covered by the term vague. Ordinarily, the definition of a professional is undertaken by competent authorities in the jurisdiction of the practice. But such authorities seem to be lacking for most of the lower level of professional practice in most of the EAC Partner States.

4.7 The Mobility of Workers and the EAC Mid-Level Skills Shortage

Available data tends to suggest that Eastern Africa is facing a middle level skills vacuum. This can be illustrated for Tanzania: middle level professionals account for only 12 percent of the total number of professionals in engineering and barely 6 percent in accounting. The figures for accounting seem particularly low if compared with Kenya where accounting technicians exceed the number of qualified accountants by a factor of 4 while for Tanzania qualified accountants exceed accounting technicians by a factor of 16 i.e for every 16 qualified accountants there is only 1 accounting technician which reverses the normal pyramidal labor structure in a modern economy. There is therefore a serious shortage of mid-level skills in a host of other occupations in most of the EAC Partner States typified by Tanzania. In the context of skill shortages faced by the EAC Partner States, the absence of mid-level professionals needs to be addressed. Middle level professionals do play a crucial role in providing services to a large portion of the clientele in emerging and low income economies. In the EAC, for example accounting technicians, paralegals and machine operators can more appropriately provide the bulk of services needed by SMEs and self employed persons as opposed to qualified certified public accountants, advocates and enrolled engineers (Dihel, 2010)²⁰.

The mobility of workers would have mitigated this skills' shortage in the short to medium term, had it not been for the highly qualified bias in the occupational categorisation of the Schedule in the *East African Community Common Market (Free Movement of Workers) Regulations*.

17 The Political Economy of Remittances: What Do We Know? What Do We Need to know? Working Paper Series (pp.1-52). Amherst, MA: Political Economy Research Institute, Gabel, I (2008).

18 Economic Policy Impact Assessment of the EAC Common Market Protocol, GOU (2010), Kampala

19 The Common Market Protocol defines a 'worker' as a person who performs services for and under the direction of another person in return for remuneration.

20 Towards an East African Reform and Regional Integration in Professional Services, Nora Dihel, Ana M. Fernandes, Aaditya Matoo and Nicholas Strychacz, Sept., 2010, pp.30.

4.8 Harmonization of Social Security

The Common Market Protocol defines the free movement of workers to include ‘the enjoyment of the rights and benefits of social security as accorded to the workers of the host partner state’²¹ for all workers in the EAC.

The CMP further enjoins the Council of Ministers to issue directives and make regulations on social security benefits, the portability thereof as an effect of the mobility of workers and the review and harmonization of *their social security policies, laws and systems to provide social security for self employed persons*.

In Sub Saharan Africa, 90 percent of the population is generally not covered under any social security scheme (Wouter van Ginneken, 2003)²². A review of the EAC social security landscape suggests that there is a clear absence of laws and policies which means that whatever social security programmes exist they are not the product of coherent, co-ordinated and participatory policy making processes (Hakijamii Trust, 2007)²³. Even where laws and policies exist, these are often at variance with international human rights standards and principles on the right to social security²⁴.

The exclusion of the self employed, who immensely contribute to the development of the region means that the growth engines of the economy do not have the assurance of social security including many of the rights afforded internationally to employees (GOU, 2010). These are concerns for nationals from other Partner states desirous to leverage the CMP to establish themselves as self employed persons in other Partner States of the EAC.

Given, the current exclusion of the self employed from the EAC’s social security arrangements with the exception of Kenya as revealed by this study, one of the most fundamental reforms occasioned by the CMP is the undertaking by all Partner States of the EAC to *“review and harmonise their social security policies, laws and systems to provide social security for self employed persons who are citizens of other Partner States”*²⁵. The portability of social security benefits refers to the ability of workers to preserve, maintain, and transfer acquired social security rights in the process of transferring from one private, occupational or public social security scheme to another (Cruz, Armando 2004)²⁶.

4.9 Summary of Observations

The CMP links the Mode 4 market access issues for trade in services in Annex V with the liberalisation commitments in the Schedule on free movement of workers in Annex II by the expression *“in accordance with the Schedule on the free movement of Workers”* Trade in services is governed

21 Article 10 (f) and 12 (2) of the EAC Common Market Protocol.

22 Extending Social Security: Policies for Developing Countries, ESS Paper No.13, Wouter van Ginneken, 2003 Geneva, pp.7

23 The Right to Social Security in Kenya: The Gap between International Human Rights and Domestic Law and Policy, Parallel Report to Committee on Economic, Social and Cultural Rights, Article 9 of the Covenant, Hakijamii Trust, 2007, Nairobi

24 Ibid, pps 2-3.

25 See also Articles 12 (2) of the Common Market Protocol.

26 See also <http://www.issa.int/pdf/kuwait04/2cruz.pdf>

under the WTO’s WP120 and its Annex on temporary movement of natural persons whereas the free movement of workers is based on the ILO’s ISCO framework. The two are separate and incompatible. The CMP needs to be reviewed with a view to delink the two in the Schedule on Trade in services.

The definition of ‘worker’²⁷ is limited and excludes a large population of workers currently working across Partner State borders for their livelihood. Specifically, the definition excludes the self employed workers who are recognised and provided for in the same Protocol *and represents a category of workers that is likely to increase to significant levels in future especially women*.

There is extensive reference to the term *“professional”* but the CMP does not define the term. Ordinarily, the definition of a professional is undertaken by competent authorities in the jurisdiction of the practice. But such authorities seem to be lacking for most of the lower level of professional practice in most of the EAC Partner States.

The CMP guarantees the free movement of workers who are citizens of the Partner States. However, Annex II of the Protocol permits the free movement of highly qualified workers and seems to exclude the semi-skilled. This contradicts the spirit of Articles 76 and 104 of the EAC Treaty that guarantee the free movement of workers without any exception.

The schedule for the free movement of workers of the CMP is strongly biased towards a select level of workers to the exclusion of the majority of the workers for the majority of the partner states.

The CMP entrenches the work permit regime which seems to negate the freedom it was designed to facilitate unlike for example in the EU where work permits are used as an instrument for preferential treatment to EU nationals.

27 The Common Market Protocol defines a ‘worker’ as a person who performs services for and under the direction of another person in return for remuneration.

5.0 FIELD FINDINGS

5.1 Implementation Measures for Operationalisation of the CMP

The CMP provides for measures to be undertaken by EAC Partner States to cause its implementation. These measures include among others; (a) harmonization of national labor policies, laws and programmes within the EAC; (b) Harmonise their curricula, examinations, standards, certification and accreditation of educational and training institutions; (C) review and harmonise their national social security policies, laws and systems to provide social security for self employed persons who are citizens of other Partner States.

In addition there are measures that are not specific to the free movement of workers but impact their movement. These measures include issues of national identification and travel documents and Mutual Recognition Agreements (MRAs). Among others Partner States were meant to start issuing machine readable National IDs as well as negotiate MRAs across various disciplines

5.2 The Republic of Kenya

Immigration and Issuance of Work Permits; The Department of Immigration is the authority responsible for immigration and work permit issues in Kenya. Officials of the Department of Immigration in Kenya reported that a total of 185,552; 375,468 and 107,165 nationals from other EAC Partner States had travelled to Kenya in the period 2010, 2011 up to May 2012 respectively. It was also reported that eight border posts namely; Jomo Kenyatta Airport (JKIA), Mombasa International Airport (MIA), Kisumu International Airport, Namanga, Lunga Lunga, Taveta, Malaba and Busia were operating on a 24hour basis, 7 days a week, are electronically interconnected and have Integrated Border Management Systems (IBMS).

The immigration authorities further reported that Kenya had enacted the Kenya Citizenship & Immigration Act No.12 of 2011 and Kenya Citizens & Foreign Nationals Management Act No.31 of 2011 to repeal the Kenya Citizenship Act (Cap 170), Immigration Act (Cap 172), Alien Restriction Act (Cap 173) and Visa Regulations to among others ensure non- discrimination against citizens of other Partner States. In addition, to facilitate the Free movement of workers with respect to employment and remuneration without discrimination based on their nationalities, immigration authorities in Kenya had adopted a number of measures including; The Employment Act No. 11 of 2007, Labour Relations Act No. 14 of 2007, Labour Institutions Act No. 12 of 2007, Occupational Safety and Health Act No. 15 of 2007, Work Injury Benefits Act, 2007, Industrial Courts Act No. 20 of 2011, in addition to ratifying ILO Conventions 100 and 111 to enhance free movement workers.

In addition, the Department of Immigration reported that Kenya had unilaterally waived work permit fees to all nationals of the EAC Partner States to facilitate labor mobility into its territory. However, they have continued using a generic work permit whose information does not generate specific data to inform policy processes that can positively impact the free movement of workers and specifically address the special needs of the self employed persons.

It was disclosed that a total of 2,755, and 810 work permits were applied for and issued to workers from other EAC Partner States by Kenya in 2011 up to May, 2012. In addition, 75 and 23 dependants had been employed in 2011 and 2012 respectively as required by the CMP. The authorities further

reported conducting a total of 11,297 labour inspections in 2011. However, the scope of these inspections did not examine whether workers from other partner States were given similar treatment as Kenyan workers. Therefore, it's apparent that workers have positively responded to the CMP and Kenya's unilateral move to waive work permit fees. However, over 70% of the applications have not been approved. Therefore Kenya has a high rejection rate for work permit applications from workers from the EAC.

The Kenyan Immigration authorities revealed that Kenya had extended the automatic 6 months stay guaranteed by the CMP to all EAC nationals holding East African passports to cover all nationals of the EAC irrespective of the travel documents they carried. This is a very positive development as this treatment would be ordinarily reserved for sky blue EAC Passport holders and not any other travel documents. This move facilitates movement of people but in particular favors the self employed persons.

Workers' Issues; The Central Organisation of Trade Unions (COTU) is the main workers' union in Kenya. Officials of the COTU expressed their dissatisfaction with the level of involvement of workers through their unions in the implementation of the CMP. COTU attributed the low level of awareness among workers with respect to the labor mobility provisions of the CMP to lack of active participation in its implementation.

Nevertheless, COTU observed that the occupational categories featured in the liberalization schedules on free movement of workers had excluded a large number of workers who were already working in other Partner States at the conclusion of the CMP. Subsequently, these workers continue to work illegally without work permits and as such can't leverage the benefits of the CMP triggered reforms including social security coverage. Moreover, the biggest number of workers in this category is vulnerable and semi-skilled, most of them being either women or disabled. The unionists disclosed that the majority of the market women selling *mitumba* and *bitenges* in Gikomba market and the news vendors along Ngong Road in Nairobi were such workers from the URT, whose stay would have been regularized by more inclusive occupational categorization in Annex II.

Social Security and Retirement Benefits; Though none of Kenya's policies laws or systems on social security had been amended at the time this study was conducted, the NSSF reported elaborate steps taken to effect some of the measures specifically to grant social security to the self employed and facilitate the portability of social security benefits among EAC Partner States. The NSSF revealed that Kenya had drafted a National Social Security Fund Bill, 2012 with explicit provisions to broaden the scope of social security to include the self employed. The bill in 4(d) aims to "*bring within the ambit of this Act, self employed persons to access social security for themselves and their dependants by contributing to a Provident Fund Scheme*"

Portability of Social Security Benefits; The NSSF revealed that the National Social Security Fund Bill, 2012 provides for Reciprocal Agreements [65 (1)-(8)] with Partner States of the EAC to guarantee the portability of benefits (exportability) for the Fund's members. In 65 (3) "*where the employee resides outside Kenya but within a member state of the EAC, the Board shall co-ordinate with the social security scheme of the Member State or a similar scheme of the Member State to ensure among others the (c) exportability of the benefits is guaranteed;*". When the bill is finally passed and enacted into law Kenya will have substantially addressed the issue of portability of benefits for workers.

Government Ministries, Departments and Agencies (MDAs); Among the MDAs surveyed for this assessment in Kenya was the Ministry of East African Community Affairs. The ministry reported that it had developed and published a popular version of the CMP to mitigate the information asymmetry which was limiting access to information on the CMP in general and the free movement of labor in particular to technocrats. However this seems to have been limited to government workers and did not cover employers and workers. This seems to have left a gap in the awareness campaign.

National Manpower Survey; The ministry further reported that in the framework of the Regional Technical Working Group (RTWG) on the East African Manpower Surveys, Kenya had substantially carried out its portion of the Regional Manpower Surveys as required by the CMP and the related Council Decisions. Accordingly, Kenya had completed the pilot phase of the manpower surveys and collected the necessary data for 2 of the 4 modules namely; the Public Sector and Private Sector modules of the RMS with only 2 modules (the *diaspora* and *self employed* modules) remaining to be undertaken. Other materials reviewed for this study indicate that Kenya intends to start disseminating its manpower survey reports by February, 2013 (EAC, 2012).

5.3 The Republic of Rwanda

Immigration and Issuance of Work Permits; Gratis Work Permits; Rwanda just like Kenya, issues work permits to all nationals of the EAC Partner States free of cost. Rwanda reported a substantial increase in the number of foreign nationals seeking employment. It was reported by the immigration authorities that Rwanda had issued a total of 4,655 work permits free of cost to workers from other EAC Partner States since July, 2010 to December 2012. In addition, 4, 857 resident permits were issued including to 1,106 spouses and children accompanying workers from EAC Partner States.

Green Cards; The RDB also reported that besides issuing free work permits to workers from other EAC Partner States, Rwanda will issue special Green Cards to identify foreign workers resident in its territory. At the time of undertaking this field exercise, Rwanda had just completed the census exercise for all foreign residents including EAC nationals, who will all be issued with identity cards.

Machine Readable National Electronic IDs; Although it was reported that Rwanda had not yet started issuing EAC Passports to its nationals, Rwanda has established a system for issuing machine readable National electronic IDs. At the time of conducting this study, it was reported that National electronic IDs had been issued to 1,030,000 Rwandan citizens.

National Manpower Surveys (RMS); The officials of Rwanda's Ministry of Public Service & Labor (MIFOTRA) interviewed for this study reported that Rwanda had completed its manpower surveys as mandated by the EAC. All the 4 modules of the manpower surveys as required were complete and what still remains to be done are the database and analytical report to update the Human Capital and Skills Strategy prior to the dissemination of the report which is planned for April 2013.²⁸

However, the MIFOTRA's officials complained about the failure by the rest of the EAC Partner States besides Kenya to reciprocate Rwanda's gesture of issuing free work permits to their nationals by easing work permit regulations indicating that some Partner States had instead increased work permit fees.

²⁸ See also <http://www.eac.int>.

Labor Market Information System (LMIS); The Rwanda Development Board reported that it operates a Labor Market Information System (LMIS) designed to provide both quantitative and qualitative information data on the Rwandan labor market to facilitate investors in making informed decisions, related to their human resource requirements, including; career planning, education and training, job searches, recruitment, labor policies and workforce investment strategies²⁹.

5.4 The Republic of Burundi

Immigration and Issuance of Work Permits; Work permits in Burundi are processed by the Ministry of Public Service Labor & Social Security. The officials responsible for receiving applications and processing work permits in Burundi interviewed as part of this study reported that Burundi's charges for work permits had remained unchanged since the coming into force of the CMP. They also reported that Burundi charges 3% of the annual gross salary of its foreign workers (including EAC Partner States), as the cost of its work permits. This is paid annually effective from the date of the visa of the work contract. It is not reimbursable to the worker³⁰. There are no indications that efforts are being made to reduce the cost of work permits for East Africans. Also, it was not possible to establish the period it takes to process a work permit. Burundi still does not have machine readable National IDs as required by the CMP. Burundi also has not yet started issuing EAC passports.

National Manpower Surveys (NMS); Officials from Burundi's Ministry of Public Service Labor & Social Security revealed that Burundi had started the process of conducting manpower surveys. Burundi was reported to have completed the pilot phase of the NMS and was planning to start the main phase of the manpower survey in March 2013 with a target completion date set within one year subject to availability of funds.

Concerns of the Private Sector; Chambre Federale De Commerce et D'Industrie Du Burundi (Burundi Chamber of Commerce and Industry) is the focal point of the EABC in Burundi and works closely with Burundi's Federation Employers. The Burundi Manufacturers Association is a significant employer.

The Burundi Chamber of Commerce and Industry and the Burundi Manufacturers Association reported a significant presence of Ugandan construction workers in Burundi. Interviews conducted with members of the Burundi Chamber of Commerce and Industry and the Burundi Manufacturers Association at an EABC sponsored workshop on the EAC integration programs in Bujumbura indicated that the main concern of the private sector with regard to movement of workers is the high cost of work permits, which significantly increases their pay roll costs. By charging 30% of the annual salary of a foreign worker as the cost of a work permit, the payroll cost is correspondingly increased by the same factor which makes it cheaper to continue hiring EAC nationals illegally. This explains the relatively large number of illegal workers from the EAC Partner States other than Rwanda. As an illustration of this fact, the respondents reported a large number of Ugandan construction workers and Kenyan doctors working in Burundi without work permits and official registration.

The other concern of the employers is the Linguistic Challenges (English) faced by both employers and workers. Most of the EAC workers to Burundi cannot speak French yet the general population

²⁹ See also <<http://www.imis.gov.rw>>

³⁰ Ministerial Ordinance No.660/086/92 of 17 February 1992

and the employers largely speak French, majority of workers from Uganda can neither speak French nor Swahili. As a result language barriers have failed the smooth movement of workers.

A number of potential employers in Burundi find it difficult to hire workers from the EAC because of existing language barriers. Officials of the Burundi Chamber of Commerce reported that an initiative for a deliberate effort to teach business English to 2,200 employers and workers over a two year period by the Williams School with assistance from Trade Mark East Africa was being undertaken. The program is designed to address the inability of the Burundian employers and workers to communicate in English with their staff and potential employers. However this program may not be sufficient to address the huge linguistic challenges faced in the medium to long term.

Communauté Economique des Pays des Grands Lacs (CEPGL)

Rwanda, Burundi and the Democratic Republic of the Congo (DRC) formed a regional economic community in 1980 and amended in 2011 called Communauté Economique des Pays Des Grands Lacs (CEPGL). The CEPGL is a framework with elaborate freedom of Movement of Persons provisions including Workers. The provisions are mainly embodied in the travel document of the CEPGL called the *Laissez-Passer* in two categories for individuals and also group movement pass.

The Laissez-Passer; Holders of the *laissez-passer* currently enjoy preferential treatment at border crossing points in both Rwanda and Burundi. It was observed at the border posts in Gatuna and Kayanza Haut in Rwanda and Burundi respectively that holders of the *laissez-passer*³¹ were cleared faster than other EAC nationals holding passports or other travel documents. In addition, holders of the group movement pass also enjoy preferential treatment over EAC passport holders and other temporary travel documents. It was also observed that a significantly large group of travelers that carried a single travel document made it easier for them to go through immigration procedures more than travelers with individual travel documents. Discussions with immigration authorities both in Rwanda and Burundi revealed that the *laissez-passer* is more commonly used than are passports for regional travel. The officials attributed this preference to the lower cost of *laissez-passer* documents in addition, the process of acquiring a *laissez-passer* is less complex and decentralized unlike passports, which are more expensive and centrally issued by the immigration authorities. It was not possible to obtain the cost of obtaining a *laissez-passer* in Burundi. The implication of the *laissez-passer* is that East Africans who are not *laissez-passer* holders are currently disadvantaged while *laissez-passer* holders enjoy preferential treatment with regard to cross border travel in Rwanda and Burundi. In addition, group travel in both Rwanda and Burundi is facilitated by the group movement pass while such a pass does not exist in the other EAC Partner States.

Treatment of workers from Rwanda and other EAC Partner States; Burundi currently accords more favorable treatment to Workers from Rwanda compared to Workers from other EAC Partner States. Workers from Rwanda tend to be mainly holders of the *laissez-passer* and this makes it easier for them to obtain work permits, because they are much cheaper although the actual cost was not established.

²⁸ According to Rwanda's 2011 Law on Immigration and Emigration, a *laissez-passer* is a "travel document issued in lieu of [a] passport to Rwandans (CEPGL nationals) wishing to travel to any of the CEPGL countries and in accordance with existing agreements among the countries" (Rwanda 2011a, Art. 2, No. 17).

On the other hand, most of the workers from Kenya, the URT and Uganda currently working in Burundi are doing so without work permits because they are much more expensive (paid annually, the work permit costs 3 percent of the foreign worker's gross annual salary) which discourages employers from obtaining work permits for their workers. This has put the benefits that would have accrued from the CMP beyond the reach of workers from Kenya, the URT and Uganda. Therefore, differential charges on work permits by Burundi among workers from the EAC contravenes the *Non-Discrimination Principle* as enshrined in Article 3 (a) of the CMP.

By trying to comply with the preferential treatment requirements of the CPGEL on movement of persons/workers from Rwanda, Burundi, is discriminating among EAC citizens by extending better work access terms to Rwandans than it does to workers from other EAC Partner States. In addition, by extending better treatment to Congolese nationals, the Burundi is in breach of the Most Favoured Nation (MFN) Principle enshrined in Article 3(b) of the CMP which requires Partner States to "accord treatment to nationals of other Partner States not less favorable than the treatment accorded to third parties". The high cost of work permits to EAC nationals when compared a lower price to Congolese and the latter's ease of getting work permits is a breach of the MFN Principle. Rwanda has solved these problems by making work permits free and easy to get for all workers from the EAC.

Workers' Issues – Social Security and Retirement Benefits; Information on these issues remains scanty. However secondary information from EACASSA shows that Burundi has three formal social security schemes namely; Institut National de la Securite (INSS)(National Institute of Social Security), Mutuelle de La Fonction Publique (MFP) and Office National des Pensions et Risques Professionnels (ONPR) [National Pension and work Place Insurance Services] Burundians covered by INSS and MFP are estimated at only 10 percent. Although Burundi's labour force was estimated at 3.6 million people the INSS coverage stood at 106,188 active insured members only. This means that a big fraction of the population in the workforce is excluded (Ngwila, 2012) . In Burundi, *Loi n° 1-010 de 16 juin 1999 Code de la Sécurité Sociale* (hereinafter "Code Sécurité Sociale") allows any person employed by a company to access social security. This allows legal immigrants the right to social security, once they are employed under a contract of service. Article 4 of the Code Sécurité Sociale prescribes that migrant workers are afforded rights in accordance with Burundi's international obligations.

5.5 The United Republic of Tanzania (URT)

Background

Tanzania is a United Republic with specific matters listed as union matters in the Constitution and other matters left for each part of the union to have full jurisdiction over. Matters of employment and labor relations are not union matters and hence are overseen by two distinct authorities along with separate sets of legislations enacted by two separate and independent legislatures in the URT. Each of the jurisdictions (Zanzibar and Tanzania Mainland) has full mandate of supervision.

On the Mainland, the Employment and Labor Relations Act (No. of 2004) is administered under the Ministry for Labor, while in Zanzibar there are two Statutes, namely the Labor Relations Act (No. 1 of 2005) and the Employment Act (No. 11 of 2005). The two Zanzibari Acts and the Employment and Labor Relations Act being implemented in the Mainland are in tandem in regard to their definition of an employee, and employee rights, duties and obligations. However, immigration in the URT is a union matter. It is regulated under the Immigration Act (Cap.54 of 2002) under the supervision of

the Ministry of Home Affairs. This Act, provides that foreigners must have permits prior to working in the United Republic of Tanzania.

For purposes of this study it was decided that Zanzibar and Tanzania Mainland would be separately treated except for Manpower surveys which the URT is conducting as a single entity.

Zanzibar

Immigration and Work Permits; In Zanzibar, work permits are the mandate of Ministry of Labor, Economic Empowerment Cooperatives (MLEC) under the Directorate of Employment. Interviews with the Directorate of Employment at MLEC revealed that Zanzibar's work permit fees had remained at US\$ 150 since the coming into force of the CMP.

Table 2: Work Permit Applications & Approvals (2009-2012)

Country	Applications			Approvals		
	2009/2010	2010/2011	2011/2012	2009/2010	2010/2011	2011/2012
Burundi	-	-	-	-	-	-
Kenya	137	153	111	137	153	111
Rwanda	05	-	-	05	-	-
Uganda	10	12	12	10	12	12
Total	152	165	123	152	165	123

Source: Directorate of Employment, Zanzibar

From the table, it's evident that workers from EAC Partner States particularly from Kenya and Uganda have been moving into Zanzibar. The table shows all applications received were approved in almost all the cases. Indicating that there is less or no barriers in work permit approval in Zanzibar. Workers from Mainland Tanzania do not require work permits to be employed in Zanzibar. However it was not possible to establish the duration it took to issue work permits.

The directorate further noted that the comparatively lower cost of the work permits had attracted a large number of workers from other Partner States especially into the tourism and hospitality sector. The MLEC officials noted that though Zanzibar had attracted foreign workers at all levels, it seems to be a net recipient of workers from the EAC Partner States with only a marginal number of Zanzibaris seeking employment opportunities in other EAC Partner States. The Ministry of Labor, Economic Empowerment Cooperatives (MLEC) reported that Zanzibaris have a long established tradition of pursuing employment opportunities overseas as demonstrated by a significant diaspora community in Oman which could indicate good prospects for Zanzibaris to take advantage of the CMP. However the main concern regarding labor mobility was pointed out to be information asymmetries between technocrats in charge of the integration process on one hand and the employers and workers on the other with respect to EAC integration in general and the Common Market Protocol in particular. Secondly, substantial lack of awareness was reported among the general population on the CMP opportunities that require to be addressed.

Private Sector and Employers' Concerns; The main private sector body in Zanzibar and the focal point of the EABC is the Zanzibar National Chamber of Commerce, Industry & Agriculture (ZNCCIA). The ZNCCIA reported that though Zanzibar had opened up to workers from other Partner States of the EAC, both employers and workers were not adequately informed about the export opportunities including for labor. "Zanzibar does not have to be condemned to be a destination for workers from the EAC but could also be a source of workers for the EAC". Therefore, the main hindrance to free movement of workers is reported to be lack of awareness of opportunities in the other EAC Partner States.

Workers and Trade Union Issues; The main workers' union in Zanzibar is the Zanzibar Trade Union Congress (ZATUC) Membership to Workers' Unions exclusive to natives; Interviews with officials of the Communication & Transport Workers' Union of Zanzibar (COTWU) and the Zanzibar Trade Union Congress revealed that membership to workers' unions in Zanzibar is still exclusive to natives of Zanzibar. This is happening amidst the presence of a large number of non native workers from other Partner States, which makes the workers vulnerable.

In addition, Trade Unions reported that the workers in Zanzibar were neither aware of the CMP nor the opportunities the Protocol provides for workers from the Islands in other Partner States of the EAC. The workers representatives highlighted the need for deliberate efforts to increase awareness about the CMP and the licensing of employment bureaus to find jobs and deploy Zanzibaris elsewhere in the EAC as has been the case with Oman, South Africa and the United Arab Emirates.

Therefore the environment for workers' in Zanzibar is still in contravention of the CMP provisions in Article 10.3(e) which entitle all workers to "enjoy the freedom of association and collective bargaining for better working conditions."

The very low levels of awareness of the CMP and the need to comply with its provisions seem to be major obstacles to the implementation of the Protocol in Zanzibar.

Social Security and Retirement Benefits; Interviews with officials of the Zanzibar Social Security Fund revealed that Zanzibar had one effective mandatory social security scheme. Zanzibar does not have a statutory regulator for the social security and benefits sector. However, ZSSF further noted that the debate over social security benefits had been narrowed to social security and its portability without considering other benefits which are equally important to the workers. The Portability debate should not be limited to social security but should be extended to cover the other benefits as well. The lack of a regulator may complicate Zanzibar's effective participation in a regional social security portability framework.

Tanzania Mainland

Immigration and Work Permits; The employment of foreign workers within the country falls under the guidance of the Department of Employment, which is responsible for employment issues in the country. As far as labor migration is concerned, the Department is vested with the power to determine the need for foreign workers in Tanzania³⁵. The Immigration Department, under the Ministry of

³⁵ Immigration Act No. 6 of 1995, Tanzania Investment Act No 26 of 1997, and National Employment Promotion Service Act No. 9 of 1999 regulate the entry of foreign workers to Tanzania.

Home Affairs, issues work permits after recommendations by a tripartite Work Permit Committee on Employment of Foreigners to process Class B (Foreigners' Work) Permits. The committee comprises Inter-Ministerial Departments and Social Partners. The social partners on the Committee are the Trade Unions Congress of Tanzania (TUCTA) and the Association of Tanzania Employers (ATE).

Tanzania Mainland at US\$ 2,000 probably has the EAC's most expensive work permit with very complicated regulations which emphasise the immigration control measures at the expense of work related measures. The Association of Tanzanian Employer's together with Labor Commissioner reported as part of this study that the high cost of the permit merely reflects the importance the immigration authorities in Tanzania attach to the permit's immigration control function at the expense of its function as a facilitator of labor mobility which yet is its primary responsibility.

Employers' Concerns; the Association of Tanzanian Employers (ATE) is a member of the EAEO and also a member of URT's tripartite committee that approves applications for Work Permits. Interviews with officials of ATE indicated that the cost of work permits and the complicated procedure for their approval were the biggest impediment to the free movement of workers in Tanzania. The officials observed that work permits in Tanzania have been misconstrued by the immigration authorities as an immigration control tool and not an instrument designed to facilitate systematic labor mobility. As such work permit issues continue to be dealt with as purely immigration matters instead of being accurately treated as both labor and immigration issues. This according to ATE is the reason, work Permits even after being reviewed by a tripartite body remain the sole responsibility of the Department of Immigration to issue. It was pointed out that reduction in the cost of work permits that was recently increased to US\$2,000 together with the simplification of the work permit regime should be addressed as a priority.

Another issue raised by ATE was that the 6% pay roll training levy applicable to all employers was excessive. The Government of the URT charges 6% of the pay roll on private sector employers as a training levy, 4% of this charge is allocated to finance higher education through the Student's Loan Board and only 2% accrues directly to the VETA³⁶. The employers further reported ATE's research indicates a low compliance rate to the levy from its members. And recommended that a reduction of the levy would increase compliance and correspondingly increase collections. The employers pointed out that Tanzania suffers critical shortage of vocational and technical skills and the need to mitigate this shortage should be reflected through increasing the portion of the levy allocated directly to VETA.

Therefore the main concern of employers is that the high cost of the work permits combined with the training levy complicates the employers' ability to attract skilled workers from both the EAC Partner States and the URT because training of local skills is underfinanced yet obtaining work permits for skilled workers is excessively high. It was reported that the low portion of the training levy allocated to Vocational and technical skills training when the cost of the levy is high attracting low compliance makes the overall funding available to skills production much lower than would otherwise be required to enable URT meet its domestic skill requirement and also take advantage of employment opportunities in the region.

³⁶ VETA is the Vocational Education and Training Authority. It was established by the Vocational Education and Training Act in 1994 as an autonomous government agency charged with responsibility to Coordinate, Regulate, Finance, Provide & Promote vocational education and training in Tanzania.

Workers and Trade Union Issues; Trade Unions Congress of Tanzania (TUCTA) is the umbrella body of the workers in Tanzania Mainland. Officials of TUCTA reported lack of awareness of the CMP as the biggest impediment to free movement of workers in Tanzania. It was established that the level of awareness is so low that even the officials of the workers' organisations were not aware of measures taken by other EAC Partner States to facilitate movement of workers in compliance with the CMP and also many other aspects of EAC integration. For instance, the officials were not aware that the cost of work permits had been waived in Kenya and Rwanda. Another concern of the workers was that Tripartite Committee on Work Permits had never been gazetted since it was formed in 2009. This implies that the functioning of the committee still largely depends on goodwill of the government which may ignore the interests of the social partners namely the workers and employers in the issuance of work permits. The recommendations from workers were that the EAC should adopt a system of equivalence for non- college qualifications as part of the proposed Harmonisation of Professional and academic qualifications. Another recommendation was to undertake a deliberate awareness campaign to popularise the CMP to employers, workers and school going children through chambers of commerce, private sector forums, workers' unions and schools respectively. On work permits, the workers recommended that the work permit regime should be simplified for ease, speed and low cost to make it less of a barrier to movement of workers.

Social Security and Retirement Benefits; The Social Security Regulatory Authority (SSRA) is the regulator of URT's social security and workers' benefits sector.

With respect to Tanzania, the *National Social Security Fund Act, 1997*, in Section 6, provides that "members of the Fund shall consist of self employed persons and employees in the private sector, other than in a body which is a parastatal organisation under the *Parastatal Pension Fund Act, 1978*. Non-pensionable employees of government and parastatal organisations are also members of the Fund. The Law further specifies that casual workers are excluded from the Fund, except otherwise decreed by an order of the Minister in the Gazette. The legislation provides that every person satisfying the requirements as outlined shall be members of the Fund. Therefore, the term "every person" implies that EAC workers moving to the URT would be allowed to contribute to the Fund and reap its associated associated benefits. Therefore in this regard the URT is compliant with the CMP requirements in respect to social security and other workers' benefits especially as they relate to the self employed.

The SSRA observed that free movement of labor without social security is suicidal and is at the detriment of the workers. The SSRA recommended the adoption of a common electronic interface among social security schemes in the EAC to allow for totalisation. It was further recommended that totalisation should be adopted and adopted as a CMP principle to feed into the portability debate. The SSRA also recommended that pension and other related social security benefits should be consolidated under a common labor platform and regulated separately from financial services.

Government Ministries, Departments & Agencies and Implementation of the CMP Provisions on Workers; While the URT was reported to be undergoing a constitutional review, there has not been mention of the EAC integration in general but domestication of CMP provision in particular.

Whereas the Ministry of Labour and Employment (MLEC) is required by law to undertake manpower surveys and publish skill audits annually and are willing to do so, they have not been able to carry

out any manpower surveys and skill audits due to lack of funding. The ministry is therefore unable to comply with the CMP provisions because of perennial funding constraints. The problem of acute lack of awareness among the general population regarding the Community, its processes, opportunities and advantages was also pointed out. It was recommended that specific time frames for conducting manpower surveys with clear deadlines should be set for all Partner States. It was also observed that to speed up the implementation of CMP provisions on workers, there is need to agree on a standard legislation with minimum criteria and thereafter emphasise coordination and not harmonisation as has been the case in the past.

5.6 The Republic of Uganda

Immigration and Work Permits; The authority to oversee employment of foreign workers in Uganda is the National Citizenship and Immigration Board under the Ministry of Internal Affairs. The relevant legislation is the Uganda Citizenship and Immigration Control Act, Cap 66 under which regulations are issued to give effect to laws and policies on employment of foreigners.

Interviews with officials of the National Citizenship and Immigration Board revealed that Uganda was yet to domesticate the CMP and its free movement of workers provisions in particular which require amending the Uganda Citizenship and Immigration Control Act, Cap 66. It was reported that the failure to amend this act means that practically, the CMP still remains without legal effect in Uganda.

The officials reported that work permit fees for all foreigners including EAC nationals had remained unchanged since September, 2009³⁷. However, the fees were set to increase soon following a Government of Uganda directive to all MDAs to increase the fees they charge to reflect the increasing costs and comply with a policy decision to maximize the government's non-tax revenues. The officials also revealed that Uganda had still not issued machine readable National IDs as required by the CMP.

Nevertheless, the officers reported that even with the law still not in compliance with the CMP, Uganda had reduced the duration period for issuing Work Permits to nationals from other EAC Partner States to less than 10 days instead of 30 days as provided for in the CMP.

Table 3: Work Permit Applications & Approvals (2009-2012)

Country	Applications			Approvals		
	2010	2011	2012	2010	2011	2012
Burundi	19	10	18	18	8	16
Kenya	339	348	647	343	327	579
Rwanda	35	14	21	33	12	21
URT	67	32	81	63	30	77
Total	460	404	767	457	377	693

Source: National Citizenship and Immigration Board, Uganda

³⁷ See also The Schedule to The Uganda Citizenship and Immigration Control (Fees) Regulations, 2009, 2nd Oct, 2009

Employers' Concerns; The Federation of Ugandan Employers is the focal point and member of the East African Employers' Organisations (EAEO). The FUE is a member of the Private Sector Foundation Uganda (PSFU), the focal point of EABC in Uganda.

A number of concerns were raised with regard to the movement of workers under the Protocol. First is the limited occupational-categories' list. The FUE reported that whereas Uganda had committed 133 occupational categories, the CMP schedule for the free movement of workers in Annex II specifies fewer occupational categories.

The Federation of Employers attributed this variation between the employers' liberalisation ambitions and the text in the schedules along with the schedule's timelines as a reflection of the lack of direct participation by the employers in the conclusion of the schedules. Therefore, future negotiations on the workers' provisions should have the direct participation of employers. Secondly, FUE pointed out the lack of progressivity in the schedule. According to the FUE, whereas the implementation of the CMP through its Annexes and schedules was meant to be progressive, the Ugandan schedule merely indicates occupational categories to be opened up at commencement of implementation, i.e 2010 and with no further time frames. This is inconsistent with the spirit of progressive liberalization.

In addition, the FUE raised the concern on the lack of a *built-in* agenda to broaden CMP liberalization commitments on labor mobility. The CMP labor mobility provisions do not have a built-in agenda to widen and deepen liberalization such as the requirement for additional commitments on free movement of services. Such a built-in agenda if included would have allowed for a wider scope for liberalization and ultimately increased the utility of the CMP and Annex II for Ugandan employers. Therefore a built-in agenda for free movement of workers was necessary.

Furthermore, it was observed that the CMP remains discretionary without an implementation obligation in Uganda. The FUE, reported that without domesticating the CMP's free movement of workers provisions by amending the Uganda Citizenship and Immigration Control Act, the implementation and use of the CMP had remained at the discretion of the immigration authorities. Moreover even if the parent act was amended on the basis of a defective schedule, the occupational categories of highest interest would not be included as they are not listed in the schedule. Therefore the CMP requires clear implementation provisions spelling out the obligations of Partner States and timelines within which to operationalise the provisions.

Finally, the FUE raised the concern on the absence of recognition for non-college competences. The majority of the blue collar workers possess skills and competences acquired from experience and other forms of non-formal training that enable them to perform a variety of jobs in different occupational categories. Some of the occupational categories are outside the ISCO classification but relevant across the EAC. However, these skills and competencies remain almost entirely uncertified and there is no system of certification recognized by Partner States that has been put in place.

In Uganda a tripartite initiative by the FUE, the Uganda Small Scale Industries Association (USSIA) and the Uganda Private Vocational Institutions (UGAPRIVI) known as The Workers' Practically Acquired Skills (The Workers'PAS) has been established to certify various non-college skills and competences across different occupations. While this initiative has been recognized by Directorate of Industrial Training under the Uganda Vocational Qualifications Framework (UVQF), it still requires recognition

by other Partner States of the EAC. Similarly, other comparable *juakali, kazi nguvu* initiatives should be adopted and included in a broader harmonisation of certificates framework extending beyond academic and professional qualifications.

Workers and Trade Union Issues; The main workers unions in Uganda are the National Organisations of Trade Unions (NOTU) and the Central Organisations of Free Trade Unions (COFTU). The main concern raised by the workers unions was the lack of awareness and ignorance of the CMP, its provisions among the workers.

Secondly, the free movement of workers remains aspirational without the harmonization of labor policies including portability of benefits, labor laws and other policies related to labor. On the operationalisation of collective bargaining and the freedom of association for workers as a right under the CMP, the trade unions observed that it required more than declarations and that the domestication of the provisions and updating of labor laws was more fundamental. For instance, despite the CMP on the right to collective bargaining, EAC workers in almost all Partner States cannot appear before industrial courts in the respective countries where they are working.

Trade unions also observed that the CMP in its current form restricts the number of occupational categories to the highly qualified to the exclusion of lower cadre workers. Accordingly this limits the extent of cross pollination and cross fertilisation of skills. Limiting the scope to the highly qualified may limit effective downward transfer of knowhow and skills. Trade Unions are urging for efforts to raise levels of awareness on the Protocol and its benefits and establishment of Labor Market Information System (LMIS). Relatedly, extensive language training in Kiswahili was considered necessary as poor linguistic skills in Kiswahili is one of the biggest impediments to movement of Ugandan workers across the EAC. In addition, urgent harmonisation of laws and policies on portability of benefits was considered essential. Review of the Annex on free movement of workers with a view to opening up the freedom to more occupational categories at the blue end of the scale.

Social Security and Retirement Benefits; The Uganda Retirement Benefits Authority (URBA) is the statutory regulator for the social security and other retirement benefits sector in Uganda. The effective legislations for the social security and other retirement benefits sector in Uganda include the NSSF Act, Retirement Benefits Liberalisation Act, 2012 and the Uganda Retirement Benefits Authority Act, 2011. The Uganda Retirement Benefits Authority Act, 2011 establishes the Uganda Retirement Benefits Authority (URBA) as a regulator for the social security and other retirement benefits sector in Uganda.

The URBA reported that in addition to the Public Service Pension Scheme which covers the pensions of the public service Uganda also had a National Social Security Scheme catering for the retirement benefits of the private sector besides other unregulated in-house occupational schemes. However, social security coverage in Uganda was hitherto limited only to employees in the formal sector under a contract of service³⁸. The NSSF Act does not include individuals moving to Uganda for a period of less than 3 years. The act further made eligibility for social security subject to resident requirements which meant that self employed individuals would ordinarily lose their social security coverage once they ceased to be Ugandan residents.

38 The National Social Security Fund Act, Cap 222

Under the Retirement Benefits Liberalisation Act, 2012; Uganda undertook to liberalise the retirement benefits sector, provide competition among licensed retirement benefits schemes and consolidate and reform the law relating to social security and retirement benefits. The URBA reported that the liberalization act extends retirement benefits to the self employed.

The URBA further reported that the Act has specific provisions to broaden social security and retirement benefits to all employees beyond the previous regime which limited coverage to employees in the formal sector and by firms with a minimum of 5 employees³⁹. The Act was reported to have special arrangement to extend social security and retirement coverage to self employed persons. It establishes voluntary schemes for 'self employed persons or persons in the informal sector'⁴⁰.

With respect to portability & transfer of retirement savings, the URBA noted that the Retirement Benefits Liberalisation Act provides for portability and transfer of retirement savings among retirement benefit schemes in Uganda in accordance with the Act. In addition, the Act allows for portability and transfer of retirement savings with Partner States of the EAC⁴¹. Therefore the act allows for seamless portability of benefits both within and with Partner States of the EAC.

Ministries, Government Departments and Agencies; The Lead government ministry responsible for implementing the Protocol provisions on labor mobility is the Ministry of Labour, Gender & Social Development. The Ministry has a broad mandate covering gender and social development issues which reduces its ability to provide adequate attention to labor and labor development issues. This broad mandate also implies that budgetary resources are spread wide leaving inadequate resources to finance labor development in particular to regional commitments. In addition to the MLGSD, the Ministry of Internal Affairs is responsible for the domestication of the critical CMP provisions on the free movement of workers by amending the Immigration and Citizenship Act. This has not yet been done. The Ministry for EAC Affairs is responsible for coordination of all MDAs on all EAC matters. However there appears to be general inertia in the implementation of provisions on free movement of workers.

Although some financial assistance for the manpower survey was received from the EAC Secretariat, additional funding to conduct the exercise has not been forthcoming. There is also confusion on which government agency should execute the survey which has caused further delays.

A proper Labor Market Information System as envisaged in the Protocol has not been established by the Ministry of Labour, Gender & Social Development what was reported to be currently in use is a notice board in a prime location at the ministry premises where newspaper adverts for jobs at the EAC Secretariat and other EAC organs and institutions are collected and posted. There are no indications on when or whether it will be done. Therefore, inadequate funding together with some coordination challenges seem to be the main impediments to implementation of the CMP provisions on free movement of workers.

39 The Retirement Benefits Liberalisation Act, 2012 – Clause 7(2) provides for every employer in the formal sector irrespective of the number of employees in accordance with the Act and its regulations.

40 The Retirement Benefits Liberalisation Act, 2012 – (8)

41 *Ibid*, II (1)

5.7 Case Study: The Worker'sPAS in Uganda

The Worker'sPAS is an initiative of UGAPRIVI, USSIA and the FUE. The initiative is financed by the European Union and technically backstopped by Swisscontact which runs the system on which the Workers'PAS is established. The Worker'sPAS the specific objective of developing a nationwide accreditation system for non-formal and informally acquired skills.

Worker'sPAS means "Worker's Practically Acquired Skills". The Worker's PAS is a competence based qualification that certifies and captures skills and competences of an individual in a particular occupation in a small booklet issued by the Directorate of Industrial Training (DIT). The Worker'sPAS is issued on the basis of practical tests – conducted by occupational experts and assessors of the Directorate of Industrial Training in authentic work situations. It certifies informal skills training and learning, regardless of where the skills were acquired including through work experience, skills trainings, or other ways of prior learning.

The imperative for the Worker'sPAS is a recognition, that although it's a proven fact that learning successfully takes place through informal means as well as on the job channels, the learning outcomes and qualifications acquired informally often remain unrecognized since they fall outside the formal accredited system. The Worker'sPAS approach provides an opportunity for a seamless transfer of skills and competences acquired informally (Non-College Acquired Competences and Skills) into the recognized formal qualification system, in the process enhancing the link between the informal and formal sectors. Through this linkage the Worker'sPAS provides a unique opportunity for people previously excluded from the formal qualification system including school dropouts to further pursue formal career paths based on their skills and competences as indicated in the Worker's Passport as well as re-enter the labour market.

5.7.1 National Recognition:

The Worker's PAS certificate is issued by the Directorate of Industrial Training (DIT) as an official document. It is mainstreamed into the Uganda Vocational Qualifications Framework (UVQF) standards of the Ministry of Education and Sports. UGAPRIVI was mandated to design the accreditation process and issue the Worker'sPAS on the DIT's behalf in 2011⁴². The Test Results are captured in a database and accessible online. The database captures: Contact details of the Worker'sPAS holder, assessment results by module assessed, occupational profiles, competence levels and modules, training locations / assessment centers, assessors and their contact details. Each Workers'PAS issued can be verified online in real time, through the owner's registration number on the program website at www.workerspaspas.org.

The results and personal details of each candidate are captured in an online database: (a) to protect the Worker'sPAS against forgery, (b) ensure the traceability of the assessment process (c) support the M&E activities of the skills training programme including identifying the best training providers, outstanding skill gaps, the best performers qualifying for post training support, etc.), and (d) enable the implementation of supporting measures like apprenticeship and job placement

⁴² BTVET Act 2008 mandates DIT to assess and certify non-formal and informal skills training

At present the Worker'sPAS are available for: Hairdressers, Tailors, Motorcycle Mechanics, Welders, Metal Fabricators, Carpenters and Plumbers. In the period January-December, 2012 a total of 1,727 candidates had undergone assessment for the Worker'sPAS with 1,509 Worker'sPAS certificates already issued.

Table 4: Statistics of Assessment of Worker'sPAS, Jan-Dec. 2012

No	Occupation	Number of Awardees
1	Hair Dressers	590
2	Tailors	411
3	Motorcycle Mechanics	270
4.	Welders	238
	Total	1,509

Source: Directorate of Industrial Training

The Uganda Small Scale Industry Association (USSIA) reported that the Worker'sPAS had increased the chances of its members winning tenders where formal certificates were a bidding requirement. USSIA also reported that the Worker'sPAS was increasingly being accepted as an objective assessment criterion by credit providers especially Microfinance Institutions (MFIs) and commercial banks to determine the technical ability of USSIA Worker'sPAS holders to fulfill their contractual obligations to the latter's clients. The Worker'sPAS was proving to be a cost effective recruitment tool to a large number of USSIA's members who are small and micro owner managed enterprises. The certificate had made it easier and less costly to hire and deploy technical (vocational) staff by hair salons, dress makers, motor cycle garages, welding & carpentry workshops and small building firms. These micro-owner managed enterprises typically face a comparatively higher cost to recruit, skill, deploy and retain such staff where the technical abilities of the candidates can't be independently verified prior to hiring owing to the lack of HR competences in-house. Outsourcing the hiring function is normally beyond the abilities of these firms.

Beyond, its principal partners the Worker'sPAS has reached out directly to employers to develop tailor made enterprise based training programs to address enterprise identified skill gaps. The Motorcycle Mechanics program is one such successful initiative between the Worker'sPAS and YAMAHA Motors. This approach may provide part of the solution to the shortage of certified welders to service the EAC and Uganda's infant oil and gas industry.

The biggest challenge faced by the Worker'sPAS program is the shortage of assessors with the requisite practical and pedagogical skills to use and apply the training and assessment tools approved by the DIT. Preliminary results show, that the candidates were proving more technically adept at their trades than the pedagogically superior assessors. A TOT approach, to provide peer assessors among the trades' people may make the program sustainable and accessible to its target of 2.5 million beneficiaries.

Secondly, although the long-term regional objective of the Worker'sPAS is the regional expansion of the accreditation system to the East African Community, the CMP in its current form limits its scope to professional and academic qualifications which technically excludes the Worker'sPAS and other Non-College Acquired Competences and Skills.

In conclusion, the Worker'sPAS represents an experience of successful certification of *non-college acquired competences and skills* which could be replicated across the EAC. It has enabled people previously excluded from the formal qualification system and the formal labour market to re-enter them and helped expand the pool of employable workers within the EAC. If replicated across the EAC and mainstreamed into the CMP qualifications framework, the Worker'sPAS can both act as a tool to enhance employability of workers as well as an instrument of labor mobility across the EAC.

5.8 Survey of Employers

A mini- survey of employers was carried out in all the EAC Partner States to capture their views and experiences with regard to cross-border movement of workers in the EAC and determine the ease of hiring workers from across the East African Community and recommend solutions to address the challenges impeding labour mobility in the EAC. Specifically, the survey was meant to (i) Examine the extent to which the EAC Common Market Protocol facilitates the mobility of workers among the EAC countries; (ii) Ascertain whether the implementation processes by the by the Partner States are in compliance with the CMP provisions and (iii) Identify the challenges faced by both workers and employers in attempting to take advantage of the protocol provisions on workers, highlighting the causes of these challenges.

EAE0's focal points were tasked to identify a minimum of five employers known to have workers from other EAC Partner States among their staff as respondents. The mini - survey involved the use of a short questionnaire administered by the EAE0 focal points in each of the Partner States. A copy of the survey instrument is included in this report as Annex 1.

5.8.1 Findings from the Mini-Survey

The mini-survey findings are presented in Tables: 5 - 10 below. The information in Tables: 7 - 10 is presented exactly as submitted by the respondents without being edited;

Table 5: Description of Respondents

Country	Burundi	Kenya	Uganda	Rwanda	URT
Respondent Companies	3	-	6	-	4
Companies aware of the CMP and its workers' Provisions	2	-	5	-	3

Table 6: Assessment of Workers' Deployment by EAC Employers

BURUNDI			UGANDA			URT		
	%	C-origin		%	C-origin		%	C-origin
Co1	13.00	Kenya	Co1	11.10	Kenya	Co1	1.00	Kenya
Co1	4.30	Rwanda	Co2	0.33	Kenya	Co1	87.50	Rwanda
Co2	19.60	URT	Co3	1.90	Kenya	Co1	0.25	Uganda
Co3	12.50	Kenya	Co4	2.05	Kenya	Co2	0.89	Kenya
Co3	1.80	Uganda	Co5	-		Co3	2.60	Kenya
			Co6	100.00	Uganda	Co3	0.28	Uganda
			Co7	0.61	Kenya	Co4	100.00	URT

*C-origin & Co – Country of Origin

Table 6: Advantages derived from employing Workers from other EAC countries

BURUNDI	UGANDA	URT
Exchange of experience (learning from each other.	Expertise	Regional outlook currently enjoyed.
feeling of belonging to the same community	New skills and knowledge	Take advantage of available expertise in the region
Expertise	Best Practices particularly from Kenyan managers	Passing expertise to local workers.
Experience	Sharing expertise of more experienced colleagues	Eases inter-unit transfers of workers in the region thus exposing locals to experiences in the region.
Exposure	Cross cultural diversity of experiences among workers from different countries	Transfer of skills and knowledge
Multicultural service delivery	Career growth opportunities across borders for workers.	Encouraging empowering local capacities
Skilled staff from EAC countries	Technical skills	Enhances chances of acquiring right personnel with best talents
Multilingual staff able to serve diverse customers in the EAC	Work ethics	Provide improved and excellent integrated service quality system
Leverage on competitive advantage among other EAC countries.	Exchanging experiences	Transfer of knowledge
Higher productivity due to better service provision.	–	Exchange of culture
Exposure	–	Well skilled candidates are at their abundance.

Table 7: Challenges in hiring Workers from other EAC Countries

BURUNDI	UGANDA	URT
Language barriers (2)	Systems at immigration is very laborious and takes long to issue permits	Never hired workers from other EAC countries.
Cultural differences	It is Costly in terms of fees	Have to secure work permits for them
High labor costs	Documentation needs to be redesigned to eliminate unnecessary questions.	Have to give them expatriate employment packages and not URT packages.
Conflicting social security laws and non-transferability of contributions	Resistance from local staff	Tanzanian employees see no reason why their EAC colleagues should be treated as expatriates
Work permit – securing free flow of labour within EAC countries	No challenges apart from work permits	Limitation at free movement of labor
Skilled staff for technical skills	No major challenges faced save for challenges relating to securing work permits.	Work permits availability and obstacles
Social-cultural barriers e.g language	Immigration	Inferiority vs superiority among workers in the region.
–	Hire salaries for technical staff	Pay and administration policies (negotiation for economic viability)
–	Costs in transport and family.	Discriminatory behavior in employees across the region.
–	Education adjustments	Restrictions on mid-level professional/management levels
–	Not applicable	Can only hire for high level professional/senior management positions.
–	–	Sourcing for trained hotel professionals from one country has made it very expensive.
–	–	Too many impromptu and random spot checks from immigration officials demanding for proof and copies of documents.

Table 8: Specific challenges related to securing work permits

BURUNDI	UGANDA	URT
Costs – it's too expensive to secure documentation for staff from outside Burundi	Requirements for justification	The restriction of hiring only senior level professionals has resulted in the denial of work permits for specialized areas such as the kitchen, hospitality trainers, food & beverages control
Bureaucratic --- takes too long to get authorization for work documentation.	Renewal process is costly	The cost of work permits is too high hence medium-size hotels can't afford the benefits of regional expertise which is impacting their level of service provision.
–	Delays in processing and acquiring work permits due to administrative red tape.	Time taken in processing permits after the application till approval and actual issuance of the permit is too long. This costs the hotels too much in terms of waiting time and service delivery.
–	System at immigration is too laborious and takes long to issue the permits	We have no experience related with securing permits for staff
–	It's costly in terms of fees.	Takes as long to secure work permits for EAC workers as it does for other foreign expatriates.
–	Unnecessary questions in permit documentation	You have to pay US\$ 2,050 being work permit fees like any other foreigners.
–	Showing proof of failure to employ Ugandans.	Long queuing due to huge volumes at immigration.
–	Questions like whether there are no Ugandans who can do the job.	Centralized immigration system
–	Delays and differences in the issuing of work permits at the borders.	Customer care and services is unsatisfactory
–	–	Waiting administration (Time spent on getting permits is too long).
–	–	Manual documentation results into ineffectiveness

Table 9: Interventions that would ease challenges related to securing work permits

BURUNDI	UGANDA	URT
Harmonisation of EAC social security laws	Have a free movement of labor	Should remove/reduce the restrictions on the level of personnel permitted for higher.
Harmonisation of EAC training systems (curriculum)	Apply when one is still in their country of origin	Should reduce/scrap the cost of the permit to have the benefit of regional movement trickle down to middle hotels.
Full implementation of the EAC Common Market Protocol	Cut on the bureaucracy involved in the process	Devise a system to fast track the permit application from the time of presentation to issuance of a permit
Easing free movement of labor by all EAC countries	All the 5 countries should have a common passport	Where the cost of a permit cannot be reduced the cost of subsequent renewals should be significantly reduced.
	Similar recruitment procedures should be adopted.	Having a tracking system within the immigration websites once an application has been lodged to the department
	Permits should not be asked from members of the EAC	Would be great if application and lodging of papers could be done online to reduce on the congestion experienced in immigration offices (permits section)
	Encourage training across the EAC to create a buffer stock of skilled manpower.	Strong decentralization to reduce the queuing
	Encourage industrial training across the EAC.	Clear procedures, information and communications.
	Encourage exchange programs across the EAC	Computerised technology can displace some manual works on the ground.
	Harmonise salaries, wages and benefits	Responsible human resources and ready to support.
		Strong minded, right attitudes and trained front office officers.
		Allow free movement of people and labour as entailed in the EAC Common Market Protocol.
		Should remove/reduce the restrictions on the level of personnel permitted for higher.

5.8.2 Observations and Emerging Issues

- Over 75% of the employers surveyed reported awareness of the CMP and its provisions on workers suggesting that there is a high level of awareness of CMP Provisions on workers among employers in the EAC.
- The biggest source of workers in all the EAC countries is Kenya. However, the ratio of East African workers in the majority of employers surveyed is below 3% while a few particularly in Burundi have a ratio of between 10 and 20%. Burundi is where the highest average ratios of East African workers exist among employers.
- Employers in the EAC have demonstrated clarity on their need to employ East African workers to supplement those from countries where they are operating and the motivation primarily centres around tapping the expertise and experience of other East African workers as well as the need to improve service delivery in a multi cultural regional market environment.
- Work permit challenges together with Language and other social cultural barriers feature prominently as the main barriers although there are some differences between member countries. In the URT work permits feature prominently while in Uganda traces of resistance to East African workers have been sighted.
- High cost, bureaucratic red tape and unharmonised procedures, lack of automation, and the absence of preferential treatment for East Africans appear to be the main challenges related to the work permit regimes in the region.
- Interventions that would reduce work permit challenges for East African employers include preferential treatment for East African workers in terms of cost for new applicants and renewals, automation to allow for online application and tracking, simplification and harmonization of procedures as well as reduction in the restrictions on mid-level skilled workers.

6.0 EMERGING ISSUES AND RECOMMENDATIONS

6.1 Emerging Issues

A number of issues emerge from the above findings in Sections 4 and 5. These issues relate to the extent to which the CMP provisions on workers facilitates the free movement of workers as well as the field findings regarding the extent of implementation of CMP provisions on workers by the Partner States of the EAC.

The review of the CMP provisions relating to workers reveals that;

- The CMP empowers the Council of Ministers to issue directives to ensure the implementation of Article, 12 on harmonisation and progressive implementation of the CMP. Many directives have been issued by the COM but there is no enforcement mechanism for these Directives and Decisions;
- The CMP guarantees the free movement of workers who are citizens of the Partner States. However, Annex II of the Protocol permits the free movement of highly qualified and skilled workers but seems to exclude the semi-skilled;
- The schedules in Annex II seem to be inconsistent with the spirit of Articles 76 and 104 of the EAC Treaty that guarantee the free movement of workers without any exception;
- Regional Manpower Surveys- Implementation of this provision relies on Council Directives and the goodwill of Partner States which have proved ineffective;
- Definitions of Worker, Professional and the Self employed, the CMP does not define the term and coverage of a 'Professional' yet it makes extensive use of the term. For example in Burundi's Schedule, the term "related professionals" is extensively used leaving the scope of the levels covered by the term vague;
- Competent authorities seem to be lacking for most of the lower level of professional practices in most of the EAC Partner States;
- In the classical sense, the right of establishment assumes the self employed to be investors and therefore requiring to *establish*. However in the EAC the self employed are not necessarily investors, majority are traders and *jua kalis* who require to move freely around the region and require special provisions which the CMP Establishment provisions do not spell out;
- Labour Market Information Systems. This is emerging as one of the most glaring non-implementation issues in the CMP.
- *The EAC labor market exhibits low labor force participation rates and hence high dependence rates characterized by relatively high rates of labor force inactivity.*

The high rates of labor force inactivity present the policy challenge of how to use effective coordination of employment services, matching of skills, addressing the youth bulge and youth unemployment to reduce the inactivity rates and its negative effects.

- Annex II of the Protocol seems to be strongly biased in favor of the highly qualified and skilled and tends to disadvantage the semi-skilled.

- The CMP entrenches the work permit regime but the work permit regime does not allow preferential treatment to EAC nationals.
- The CMP links the Mode 4 market access issues for trade in services in Annex V with the liberalisation commitments in the Schedule on free movement of workers in Annex II by the expression "*in accordance with the Schedule on the free movement of Workers*" limits further progression in each of the two. The CMP needs to be reviewed with a view to delink the two in the Schedule on Trade in services.

From the above, it can be said that the CMP currently does not seem to provide clear mechanisms for quick enforcement of Council directives in general, and in particular those related to movement of workers. The CMP still needs to cater for all worker categories in definition and scope, particularly the semi-skilled and the 'East African Self employed'. Finally, implementation monitoring of the various provisions on workers is being hampered by lack of access to relevant information, which is still largely considered classified.

Regarding the extent of implementation of CMP provisions on workers by the Partner States of the EAC, a number of issues seem to emerge. These include:

- **Work Permits:** Instead of becoming cheaper and easier to get as essential tools of facilitating the mobility of workers, the Cost of work permits is high and increasing and the duration of approval varies among partner states and largely remains unpredictable. There is scanty information on the average duration owing to the absence of standard work-permit procedures.
- **Machine Readable National IDs (MRNIs):** Only two Partner States were found to have MRNIs which limits the scope for their use as effective alternative travel documents. Wide usage of MRNIs would broaden the scope of labor mobility and open the space to more categories of workers without easy access to passports.
- **Implementation provisions with clear mandates for MDAs within partner states not clear**
- **Harmonisation of laws and policies on portability of social security and other workers' benefits is crucial to the movement by workers already in service.**
- **Language challenges in some Partner States:** These challenges still remain with workers and employers from French speaking Partner States unable to communicate effectively with English speaking partners and also workers from some English speaking Partner states encountering communication difficulties in French and Kiswahili.
- **Opening up new occupational categories:** The lack of a built-in agenda for future negotiations to improve the scope of Annex II and realign it to the needs of the employers with their direct participation.
- **Rejection rates for work permit applications in Kenya:** The high rejection rate is eroding the value of free work permits. To facilitate the movement of workers, It's more important for workers to get their work permits issued at a cost than have them gratis but never have them issued.
- **Right to information:** Obtaining information relating to key implementation measures remains problematic in all EAC Partner States which continues to hamper implementation monitoring by various stakeholders including employers. Most of the relevant information is still largely considered classified.

- **Certification of Non-College Competences and Skills is emerging as a necessity to allow EAC workers without formal training but have skills and competencies to perform different jobs.**
- **Manpower Surveys - Except for Rwanda and Kenya:** EAC Partner States have not completed these Surveys. Uganda has not done the pilot phase of the Manpower surveys. These are substantially behind schedule.
- **Labour Market Information Services (LMIS):** The lack of awareness about the CMP, its provisions on free movement of Workers and the measures which Partner States have done to implement the CMP Workers' Provisions is overwhelming. All the Trade Unions covered this study by this study demanded for deliberate efforts to increase awareness to enable workers know about the CMP and its opportunities. None of the PS except for Rwanda has deliberate LMIS efforts.

6.2 Recommendations

Work Permits: In principle, the Work Permit should be recast as a tool that facilitates orderly movement of workers and not an immigration control tool:

- Cost** - the movement of workers was meant to be free. The cost of work permits for East Africans should be reduced over an agreed time frame.
- Standardisation of Work Permit Procedures including cost, format,**
- Decentralisation** – Issuance of work permits is currently centralized in the capitals but should be decentralized and fees charged in local currencies.

Machine Readable National IDs (MRNIs): Partner states that do not have MRNIs need to adopt them urgently in order to allow their use as alternative travel documents within the EAC.

Certification of Non-College Competences and skills: Non-College acquired competences and skills should be recognized and certified to broaden the scope of the CMP to embrace the excluded majority semi-skilled workers. The Workers'PAS and other similar juakali, kazi nguvu initiatives should be adopted and included in a broader harmonisation of certificates framework extending beyond academic and professional qualifications for all Partner States.

Delinking of Annex II and V: EABC and EAO's should pronounce themselves strongly on the Delinking of Annex 1 and V.

Opening up new Occupational Categories: The lack of a built-in agenda for future negotiations to improve the scope of Annex II is a serious shortcoming that needs to be addressed to realign the annex to the needs of the employers with their direct participation.

Harmonisation of labour policies, laws and programs: As a priority, harmonisation of labour policies, laws and programs should be undertaken not merely for Social Security but other benefits well and should be prioritised.

Clarification of mandates of MDAs with regard to implementation of various CMP Provisions: MDAs within Partner States require further clarification of mandates with regard to implementation of various CMP Provisions particularly those relating to free movement of Workers.

Definition of Public Information: Partner States need to clearly define what is public information and its scope. Information relating to progress in the implementation of various CMP provisions currently appears classified and needs to be declassified and made freely available to the public so that different stakeholders including employers can monitor implementation progress of the CMP.

CEPGL and participation in different regional economic arrangements: Rwanda and Burundi should ensure that the treatment currently extended to Congolese under the CEPGL is also accorded to EAC nationals.

In addition, based on the CEPGL experience, all EAC Partner states should ensure that their participation in different regional economic arrangements should not disadvantage East Africans and contravene the MFN principle given that the EAC is at a higher level of integration.

Manpower Surveys: These are substantially behind schedule. While costly to implement, they need to be undertaken every five years. In order to mitigate the cost of the manpower surveys, there is need for substantial integration of the manpower survey instruments into the national census exercises for each of the partner states.

Labour Market Information Systems (LMIS): Deliberate efforts to increase awareness to enable workers know about the CMP and its opportunities are urgently required. None of the PS except for Rwanda has deliberate LMIS efforts.

Addressing Labor Inactivity & Youth Unemployment: The EABC and the EAEO should take the lead in advocating the implementation of the provisions of the CMP on exchange of young workers amongst Partner States".

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See also <http://www.eac.int>

See also <<http://www.imis.gov.rw>>

See also Articles 12 (2) of the Common Market Protocol.

See also <http://www.issa.int/pdf/kuwait04/2cruz.pdf>

See also <http://www.eac.int>

ANNEX 1: EMPLOYERS' MINI-SURVEY INSTRUMENT



QUESTIONNAIRE

The East African Employers Organisation together with the East African Business Council are conducting a survey on the ease of hiring workers in the East African Community. As an employer, this survey seeks to capture your views and experiences regarding cross-border movement of workers in the EAC.

A. Basic Company Data

1. Company Name:
2. Year of Establishment:.....
3. Countries in which the Company is presently active (Tick as appropriate)

Burundi	
Kenya	
Rwanda	
Tanzania	
Uganda	
Others (Please Specify)	

B. Assessment of Staff Deployment in the EAC by Employers.

1. How many people does your company currently employ?
.....
2. Please indicate in the table below how many of your staff are from each of the EAC Countries as indicated

Country	Staff Numbers
Burundi	
Kenya	
Rwanda	
Tanzania	
Uganda	

3. What advantages does your company enjoy from being able to employ staff from other EAC countries Give at least three (3)
.....
.....
.....
4. (a) What challenges does your company face in hiring staff from other EAC countries? List three (3) of the most important.
.....
.....
.....
.....
- (b) Are there any specific challenges related securing work permits for your staff from other EAC countries? If yes, please highlight some of them below.
.....
.....
.....
5. In your view, what interventions would ease the challenges you have listed above?
.....
.....
.....
6. Are you aware of the EAC Common Market Protocol and its Provisions on the free movement of Workers?
Yes (b) No

