

FRIEDRICH EBERT STIFTUNG

**The East African Common Market Protocol and Free Movement of
Labour: Achievements and Challenges of Implementation in Uganda**

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Abbreviations

CMIP	Common Market implementation Plan
ESO	External Security Organisation
FUE	Federation of Uganda Employers
ILO	International Labour organisation
ISO	Internal Security Organisation
MDAs	Ministries, Departments and Agencies
MGLSD	Ministry of Gender Labour and Social Development
MICT	Ministry of Information and Communication Technology
MOFA	Ministry of Foreign Affairs
MOJCA	Ministry of Justice and Constitutional Affairs
MTIC	Ministry of Trade Industry and Cooperatives
NOTU	National Organisation of Trade Unions
PSFU	Private Sector Foundation Uganda
UMA	Uganda Manufacturers' Association
UNCCI	Uganda National Chamber of Commerce and Industry

1.0 Introduction

The history of migration across nations is as old as the history of mankind. Migration has always occurred due to various pull and push factors which have been both voluntary and involuntary. The motivations for migration whether voluntary or involuntary have also varied in time and space. However, regardless of the cause, the history of migration has always been one, of the people's natural struggle to survive and prosper.

Although the history of migration is long, migration in search for better jobs, wages and related socio-economic opportunities emerges in East Africa only after the introduction of the money economy during the colonial era in the early twentieth century. Initial recorded movements of

labour in East Africa were associated with work on plantations and mines. During the colonial era, labour migration in Uganda originated mainly from Rwanda, Burundi and Zaire. Later after independence especially under the aegis of the defunct East African Community, Uganda became both a source and destination of labour migrants in East Africa. However the political turmoil that Uganda witnessed had by the end of the 1970s turned her into more of a source than a destination of labour migrants in the region.

It is believed that apart from enhancing household incomes, labour migration in a regional economic block like the East African Community (EAC), ensures that the regional pool of labour is fully exploited and can move quickly to areas where it is needed. It is furthermore held that labour mobility ensures that the economic bloc is free from bias as a result of very high or very low priced labour.

Despite the recognised potential contribution of labour mobility to economic development and the long historical and cultural ties of the peoples of East Africa, labour migration has always witnessed varied restrictions and prohibitions in all the East African Community States.¹ However, the Partner States have shown a shift towards a relaxation of restrictions on labour mobility as part of the efforts aimed at widening and deepening political, social and economic cooperation in East Africa. In Article 104(2) of the Treaty for the Establishment of the East African Community (hereafter referred to as the Treaty), the Partner States agreed to adopt measures towards achieving the free movement of persons and labour as well as guaranteeing the right of establishment and residence of citizens within the Community.

To this end, the EAC Partner States entered into a Common Market Protocol (hereafter referred to as the Protocol) in November 2009, which subsequently came into force in July 2010.

The overall objective of the Common Market is to widen and deepen cooperation among the partner states in the economic and social fields through removal of restrictions on the movement of goods, persons, labour, services and capital and the rights of establishment and residence.

1.1 Objectives of the Paper

Like any regional endeavour, the implementation of the Protocol will be faced with a number of challenges which should be progressively identified and appropriately addressed in each Partner State. Accordingly, the Friedrich-Ebert-Stiftung (FES) intends to organise a Sub-Regional Workshop of policy makers and labour market stakeholders to debate the problems and prospects of implementing the provisions of the Protocol relating to the mobility of labour. For the sake of preparing the agenda and ensuring a well informed discussion of the relevant issues, FES commissioned country papers; this being the Uganda one.

¹ These restrictions were heightened especially after the collapse of the first East African Community in 1977

The overall objective of this paper is therefore to:

1. Explain the content of the Protocol with regard to labour mobility
2. Establish the extent to which Uganda has domesticated the provisions of Protocol relating to free movement of persons & workers as well as the right of establishment and residence
3. Highlight the potential advantages and disadvantages that may accrue to Uganda as a result of implementing labour mobility under the Protocol.
4. Identify the main technical and policy challenges of implementation of the Protocol with regard to labour mobility.
5. To propose actions for the effective implementation of the Protocol.

The paper finds that only the highly skilled professionals are entitled to move to other Partner States for employment purposes under the Protocol. This is not different from the situation that obtained prior to coming into force of the Protocol. Several restrictions on labour mobility like the work permit regime are also maintained by the Protocol. To this extent therefore, the provisions of the Protocol do not constitute a major departure from the laws, regulations and administrative practices that governed labour mobility in Uganda prior to 1st July 2010. Accordingly the Protocol falls short of its stated objective of creating a common market for labour in East Africa.

The paper is arranged in eight sections. Section two provides a background to the Common Market Protocol. The Analysis of the Protocol Provisions relating to labour mobility and the extent of their domestication is done in section three. While section four highlights the potential benefits of labour mobility, section five presents Uganda's strategy for implementing the Protocol. The status and challenges of implementation of the protocol are discussed in sections six and seven respectively. The concluding observations are made in section eight.

2.0 Background to the East African Common Market Protocol

The East African Community (EAC) is the regional intergovernmental organization of the Republics of Kenya, Rwanda, Burundi, Uganda and the United Republic of Tanzania with its headquarters in Arusha, Tanzania. The Treaty for Establishment of the East African Community was signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the original three Partner States – Kenya, Uganda and Tanzania. The Republic of Rwanda and the Republic of Burundi acceded to the Treaty on 18th June 2007 and became full Members of the Community with effect from 1st July 2007.

The EAC aims at widening and deepening co-operation among the Partner States in, among others, political, economic and social fields for their mutual benefit. The EAC integration is a four

stage model; Customs Union, Common Market, Monetary union and Political Federation. The Customs Union was established in 2005 and the Common Market Protocol (Protocol) that came into force on the 1st July 2010 lays down the framework through which the Common Market will be progressively attained.

2.1 Objectives of the Common Market Protocol

The specific objectives of the Protocol are:

- Acceleration of economic growth and development of the Partner States through the attainment of free movement of goods, persons and labour, the rights of establishment and residence and the free movement of services and capital.
- Strengthening coordination and regulation of economic and trade relations among partner states in order to promote accelerated, harmonious and balanced development in the EAC.
- Sustaining the expansion and integration of economic activities within the EAC.
- Promoting common understanding within the nationals of the Partner States.
- Enhancing research and technological advancement to accelerate economic and social development.

2.2 Guiding Principles of the Protocol

The Protocol is guided by the fundamental principles of non-discrimination of nationals of Partner States on grounds of nationality; equal treatment to nationals of other Partner States (and in any case not less favourable than the treatment accorded to third parties); transparency and open sharing of information on the implementation of the Protocol).

3.0 Examination of the Freedoms on Labour Mobility and Extent of Domestication in Uganda

Consistent with the provisions Articles 76² and 104³ of the Treaty, the Protocol in Article 2 (4) provides for the following freedoms and rights: free movement of goods; free movement of persons; free movement of workers; the right of establishment; the right of residence; free movement of services and free movement of capital. However, this paper is mainly concerned with four of them that impact directly on labour mobility of citizens of EAC Partner States. These are: the free movement of persons, free movement of workers, right of establishment and right of residence. In this section, the paper particularly examines the nature and extent of labour

² Articles 76 of the Treaty provides for establishment of the East African Community Treaty provides establishment of a Common Market within which there shall be free movement of labour, goods, services, capital and the right of establishment.

³ Partner States agreed to adopt measures to achieve the free movement of persons, labour, services and to ensure the enjoyment of the right of establishment and residence of their citizens.

mobility provided for by the Protocol. The question of whether Uganda's legal and administrative regime contradicts or facilitates the mobility of labour and related rights envisaged under the Protocol is also considered.

3.1 *Free Movement of Persons*

The free movement of persons is a fundamental right guaranteed under Article 7 of the Protocol. To this end, Partner States are required to enable without any discrimination citizens of other partner States entry without a visa; free movement within the territory; freedom to stay within and exit the territory without any restrictions and the right to full protection in accordance with the laws of the Partner State. The right of free movement of persons applies to citizens of a Partner State who move to stay in and exit another Partner State for purposes of a visit, medical treatment, transit, education and training or any other lawful purpose other than as a worker or as a self employed person (Reg. 4 Annex I).⁴

3.1.1 Entry, Stay and Exist

Contrary to common public opinion the free movement of persons under the Protocol, does not eliminate immigration border controls and accordingly any citizen⁵ who seeks to enter or exit the territory of another Partner State has to do so at the entry or exit points designated in accordance with the national laws of the partner State and has to comply with established immigration procedures.

The procedures for entry and exit of a Partner State that are provided for in the Protocol maintain the old order in as far as they require a citizen of another Partner State to present to the immigration officer a valid common standard document and declare all information required for entry and exit. The new matter in this respect is that a citizen may instead of a passport or common travel document present a national identity card where the Partner State has agreed to the use of a machine readable electronic identity card as a travel document (Reg. 5 Annex I of Protocol). It should also be clearly understood that the acceptance of a machine readable identity card as a travel document is an advantage that only citizens of East Africa may enjoy. However, Uganda is yet to conclude formalities with any Partner State for the use of a national Identity card as a travel document.

The Protocol further provides that upon presenting a travel document and answering all relevant questions, a citizen shall be issued with a *pass* free of charge which shall entitle the citizen to enter into the territory of the host Partner State and stay for a period of six months (Regulation

⁴ For purposes of clarity, the free movement of persons and free movement of workers are distinct rights under the Protocol. The latter is dealt with in Article 10 of the Protocol.

⁵ According to Article of the Common Market Protocol, "a citizen" means a citizen of Burundi, Kenya, Rwanda, Tanzania and Uganda.

5(3)). This is also not a new matter as Uganda's laws provided for issuance of the equivalent pass to citizens of East Africa free of charge even prior to the coming into force of the Protocol. However, the variance is that, the entry pass under Uganda's laws entitles a citizen of another country to enter and stay for an initial period not exceeding two months and not the six months provided for in the Protocol. The period of initial stay may only be extended up to six months at the direction and discretion of the Director of Immigration.

The Minister of Internal Affairs should therefore cause the amendment of Regulation 6(2) of Uganda Citizenship and Immigration Control Regulations, 2004 so as to increase the initial period of stay under a visitors pass to six months for citizens of East Africa and in so doing bring the domestic law in Uganda in tandem with the regulations of the Protocol.

3.1.2 Border Management

To facilitate the free movement of persons, the Partner States undertook to effect reciprocal opening of border posts and keep the posts opened and manned for twenty four hours (Art.7(7)). In addition, Partner States agreed to establish a common standard system for issuing national identification documents to their nationals which shall be the basis for identifying the citizens of the partner states within the community. Partner States which have agreed to use machine readable identity cards may also do so. However, Uganda has not yet taken any legal measures to facilitate the use of machine readable identity cards as a travel document.

3.1.3 Student or "Learning Mobility"

Traveling to another country to study or "learning mobility" is one of the fundamental ways in which young people can boost their personal development as well as their future job opportunities (EC 2010). Learning mobility is also potentially beneficial to goals of the EAC given that it fosters a sense of East African identity; helps knowledge circulate more freely; and enhances EAC internal labour market mobility since East Africans who are mobile as young learners are more likely to be mobile as workers later in life.

The drafters of the Protocol did recognize the important role student or learning mobility can play in widening and deepening EAC integration. The freedom of persons seen above accrues to students as well. However the Protocol further provides that a citizen who is admitted as a student in an approved training establishment of another Partner State shall within 15 days of entry apply for a student's pass (Regulation 6(1) of Annex I Protocol).⁶

The Protocol Provides that the student pass should be issued free of charge for a period not exceeding one year upon furnishing the competent authority with a valid common travel

⁶ However, Regulation 6(5) of Annex I exempt a citizen entering another Partner State to undergo training for a period of less than two months from applying for a work permit.

document or identity card, confirmation of admission in an approved training establishment in the host Partner State; confirmation of sponsorship for the course to be pursued and in the case of a child the identification of the guardian to be responsible for the child while the child is in the host Partner State. For purposes of enforcing compliance with this provision, the Protocol requires all persons in charge of a training institution to ensure that all students from other Partner States apply for a student pass.

In Uganda, the law does not clearly pronounce itself on the period within which a student should apply for a pass, nor the duration of a pupil pass.⁷ However, Uganda's law like the Protocol provides for issuances of pupil passes free of charge to students from EAC. Students from third countries pay One Hundred United States dollars for a pupil pass. Although citizens of EAC obtain the pupil pass free of charge, the laws and regulations of Uganda do not require education institutions to accord citizens of the other Partner States the same treatment accorded to citizens of Uganda in respect of the costs of education. As a result, the citizens of the other Partner States are often charged more tuition or fees than Ugandan students. For example Makerere University Graduate applications for 2012/13 provided for an application fee of UGX 50,000 and UGX 151,000 for Ugandans and non-Ugandans respectively. Drawing from a decision of the European Court of Justice, non-discrimination which is one of the guiding principles of the Protocol would in this case imply equal access to education and by extension the right to pay the same fees (*Sylvie Lair Versus University of Hannover*).

The Protocol further provides that the Immigration office may cancel a student's pass where the citizen to whom the pass was issued fails to enter and undergo training in the establishment for which the pass was issued or ceases to be a student in the establishment in issue. These grounds are similar to the grounds for cancellation of a student pass under Uganda's law (Regulation 5(3) of UCIC of 2004).

3.1.4 Registration of citizens of Partner States

The protocol permits a host partner state to register citizens of other partner states in accordance with its national laws. Uganda's legal regime already provides for the registration of persons who are non-Ugandans.⁸ Section 68(1) of the Uganda Citizenship and Immigration control Act requires every person who is not a citizen of Uganda to register with an immigration officer. Furthermore Section 69 of the UCICA requires all Aliens to hold at all times an aliens identity card issued by the immigration Board. In addition, the law requires a person who is not a citizen of Uganda to produce proof of their identification number and entry permit within seven days for inspection whenever asked to do so by an immigration officer.

⁷ Statutory Instrument No. 16

⁸ The term actually used in the Act is Alien.

The registration of non-Ugandans is supposed to facilitate tracking immigration flow and generating data that is necessary for analyzing the nature and magnitude of immigration.⁹ However tracking the evolution of migration is made difficult by the long stretches of Uganda's porous borders. Secondly the absence of a citizenship registration and identification system makes it difficult to distinguish a Ugandan from a non-Uganda. Efforts to implement a national citizenship identification system have been faced with a number of procurement challenges. Consequent of which, only 406 out of 33 million Ugandans had received National Identity cards by June 2012 despite the millions of dollars that have been allocated for this purpose by the Government of Uganda over the last five years. It is therefore very difficult to distinguish a Ugandan from a non-Ugandan, which defeats the whole purpose of non-Ugandans holding aliens identity cards.

3.1.5 Limitations to Free Movement of Persons

Important to note also is that the free movement of persons under the Protocol is not absolute as it is subjected to limitations imposed by the host Partner States on grounds of public, health and security policy. This implies that privileges and opportunities derived from this freedom may vary with changes in public, health and security policies in the different Partner States.

Accordingly in Uganda, citizenship of any of the Partner States does not guarantee one entry into Uganda. Section 52 of the Uganda Citizenship and Immigration Control Act-1999, declares certain categories of persons prohibited immigrants and their entry into Uganda unlawful. These include: a destitute; any person against whom an order for deportation subsists or who refuses to submit to medical examination upon the request of an immigration officer; a person not in possession of a valid passport issued by a recognised authority; a drug trafficker or a person who prior to entering Uganda was living on earnings of drug trafficking; a person who is a citizen of a country at war with Uganda; a person declared by the Director of Immigration or Minister to an undesirable immigrant and a person convicted of an offence under the said Act.¹⁰

In addition, the Protocol like Uganda's laws prohibits holders of a student pass from taking up employment in the host country except where the holder of a student pass is on industrial training or internship (Reg. 7). Many students around the world are known to partially finance their education with employment income. The Protocol in my opinion therefore denies students studying in another territory the opportunity to finance their education with employment income. The only option available for a student to work under the protocol is to change their status to employees. This means that a student would have to abandon school in order to work

⁹ However the requirement to hold an alien's identity and identification number under Ugandan law does not apply to holders of an in-transit pass, visitors or special pass of not more than ninety days, a refugee (S.71 UCICA 1999).

¹⁰ Furthermore, freedom movement of persons under the Protocol does not exempt a person who commits an offence in another Partner State from prosecution

as there is no opportunity for dual status- as a student and a worker. I find it rather discriminatory to prohibit students from other Partner States from working while permitting those in the host territory to work as they study.

3.2 *Free Movement of Workers*

As indicated earlier, the Protocol guarantees the free movement of workers who are citizens of the Partner States. It further provides for non discrimination of workers of other Partner States based on their nationalities in relation to access to employment, remuneration and other terms and conditions of work. In other words a worker is free to apply and accept offers of employment made in accordance with the national laws; to move freely and stay within the territory of another partner State for purposes of employment; to freedom of association and collective bargaining for better working conditions; to enjoy the rights and benefits of social security accorded to the workers of the host Partner State.

3.2.1 Free Movement for the Highly Skilled Professionals

Although Article 10 (1) of the Protocol provides that *“the Partner States hereby guarantee the freedom of workers who are citizens of other partner States within their territories”*, the schedule for the free movement of workers under Annex II of the Protocol only permits the free movement of highly skilled workers. These include: corporate managers; physical, mathematical and engineering science professionals; teaching professionals, lawyers and metal and related trades workers.

The free movement of workers in the Protocol is therefore a privilege of only the highly skilled and professional workers yet the majority of workers in East Africa are semi or unskilled. This in my opinion does not reflect the spirit of Articles 76 and 104 of the treaty that guarantee the free movement of workers without any exception.

However the decision by the Partner States to adopt a selective freedom of movement of workers might have been prompted by a number of factors. First, the Treaty provides that the attainment of a common market shall be progressive hence the restricted category of workers allowed to move may just be the beginning. Secondly, there might have been fear of the “fear of the unknown” and hence the “strategic choice” to begin with “a smaller and more manageable” category of workers so as to learn lessons and subsequently expand the category of workers that can move based on this experience. Thirdly, the employment of migrants is a very hot political issue in all the East African Countries. This reality perhaps also explains why the Partner States chose to liberalize the movement of highly skilled workers which is politically less sensitive than semi-skilled and unskilled.

However, I hasten to add that continuing to work in Uganda even for categories of professionals that are permitted to move under the Protocol is not wholly guaranteed in Uganda. Under the law, a non-citizen of Uganda can only work in Uganda for more than one year upon fulfilling two conditions to the Uganda Citizenship and Immigration Board. Firstly, that his or her continued employment, benefits Uganda. Secondly that the post the non-citizen is holding or intends to hold cannot be filled by a Ugandan.¹¹ I find this provision discriminatory and for that matter contrary to the provisions of the Protocol. Indeed if the law were to be strictly adhered to very few citizens of the other Partner States would meet the requirements to work in Uganda.¹²

3.2.2 Retention of the Work Permit Regime¹³

Furthermore, the Protocol maintains the requirement for a work permit even for the limited scope of workers that is permitted to move.¹⁴ The Protocol provides that any worker with an employment contract for a period exceeding ninety days in the territory of another Partner State has to apply to a competent authority for a work permit within fifteen working days from the date of entry into or securing an employment contract within the territory of the host Partner State. The Protocol further provides that where a worker secures employment for a period of not more than ninety days, the worker shall apply for, and be issued with a special pass.

Although under the Protocol, a worker with an employment contract is supposed to apply for a work permit within 15 days of entry into or securing work within the territory of another partner State, Section 53(5) of the Uganda Citizenship and Immigration Control Act prohibits the entry of a person intending to take up employment in Uganda until such a person has been granted a work permit. The import of this provision is that the application for a work permit is submitted by the prospective employer, while the prospective worker remains outside Uganda. This contradicts the spirit of the protocol but also treats prospective workers like potentially dangerous immigrants.

3.2.3 Procedures for acquiring a work permit

The Protocol provides that application for a work permit should be supported by a valid common standard travel document (or a national identity card, where that Partner State has agreed to use the national identity card as a travel document), a contract of employment and any other document the competent authority may require¹⁵. The competent authority is required within thirty days of application to issue a work permit for an initial period of up to two years and

¹¹ Regulation 23 UCICR 2004

¹² Where required, professionals have to register with the relevant professionals bodies

¹³ A work permit is referred to as an "Entry Permit" in the Uganda Citizenship and Immigration Control Act, 1999.

¹⁴ Section 59 of the Uganda Citizenship and Immigration Control Act provides that a person who is not a citizen of Uganda shall only work if that person is in possession of a work permit.

¹⁵ These requirements are similar to the work permit application requirements under Uganda's laws.

subsequently for a period not exceeding the duration of the employment contract or travel document (Regulation 6(7) and 6(8)).

However, in Uganda the law provides for issuance of a work permit for a period not exceeding one year (Regulation 14 of UCICR, 2004). This means that under the law workers from Partner States have to renew their work permits annually. This is not only inconveniencing but also a constraint to free movement of labour given that work permits are issued at a cost.

The Council of Ministers has not yet harmonized the classification of work permits, procedures and fees as required under the Protocol. As a result, East African citizens like citizens of third countries who intend to work in Uganda pay United States dollars 600 and 700 for employees and professionals respectively.

3.2.4 Denial of a Work Permit

The Protocol grants a competent authority power to reject an application for a work permit, but also grants the applicant the right to be notified in writing about the reasons for the rejection. In addition, the Protocol grants an applicant whose application has been rejected the right of appeal against the decision of the competent authority in accordance with the national laws of the host Partner State. Besides the Protocol provides that where the competent authority rejects an application for a work permit or where an appeal is rejected, the competent authority shall give the applicant and his or her spouse, child or dependant, reasonable time to leave the territory of the host Partner State or regularize their stay.

The grounds for rejection of an application for a work permit are matter left for national legislation under the Protocol. The grounds for rejecting an application for a work permit in Uganda include:

- the applicant being a prohibited applicant (S. 54(2) of UCICA, 1999);
- failure to provide a valid travel document (S.52 (a));
- failure by the applicant to provide proof of employment (Form 1A Regulation 14 of UCICA, 2004) and
- failure to execute an immigration bond in circumstances where it is requested by the Immigration authorities in Uganda (Regulation 15 of UCICA, 2004).¹⁶

3.2.5 Cancellation of a Work Permit

The Protocol grants immigration authorities power to cancel a work permit where a worker:

¹⁶ This is a requirement for financial security where an applicant may be asked to deposit with the Immigration authorities a certain sum of money. Such deposit may, if necessary be used for the purpose of defraying any expenses incurred by the government in the maintenance or repatriation of the person in respect of whom the deposit was made

- Is expelled or deported from the territory of the host Partner State.
- Ceases to engage in or fails to take up the employment for which the work permit was issued or
- Obtained the work permit fraudulently.

Besides the above grounds, a work permit under Uganda's laws may also be cancelled on the following grounds:

- Violation of any terms of stay in Uganda or any provisions of the UCICA, 1999 or any regulations made under it by the holder of a work permit
- If the holder of a work permit becomes a prohibited immigrant
- Where after the expiration of one year the Immigration Board is not satisfied that continued employment by a non-Ugandan will continue to be of benefit to Uganda or the position held by a non-Ugandan cannot be filled by a Ugandan (Regulation 22 (1) (d) of UCICR, 2004).

All the grounds for cancellation of a work permit under the laws of Uganda are in conformity with the Provisions of the Protocol except two. The cancellation of a work permit on account that the continued employment of a non-Uganda is no longer beneficial to Uganda or the position held by a non-Ugandan can be filled by a Uganda, clearly contradicts the principles of non-discrimination enshrined in the Protocol. Furthermore, it is my opinion that the principal objective of these grounds is to deny citizens of other Partner States employment in Uganda which is prohibited under Article 10 (9) of the Protocol.

In addition, the Protocol provides that a worker whose work permit has been cancelled may within thirty days of the cancellation regularize his or her status or leave the territory of the host Partner State. On the contrary, the laws of Uganda declare a person whose work permit has been cancelled an illegal immigrant and therefore deny such person the opportunity to regularize his or her stay in Uganda.

3.2.6 Workers' Rights

For many, migrating for work may be a rewarding and positive experience, but for an unacceptably large proportion of migrants, working conditions can be abusive and exploitative. Often the working conditions for migrants are characterized by forced labour, low wages, poor working environment, a virtual absence of social protection, the denial of freedom of association and union rights, discrimination and xenophobia, as well as social exclusion. All these rob workers of the potential benefits of working in another country. Therefore ensuring decent

working conditions for migrant workers is a major precondition for harnessing the potential benefits of labour migration.¹⁷

It is therefore noteworthy that the Protocol guarantees the rights of migrant workers to freedom of association, collective bargaining for better working conditions and social security similar to those accorded to the workers of the host Partner State. Another positive is that Uganda's labour law regime is very progressive and to every extent conforms to the spirit of the protocol with regard to workers' rights. The constitution of the Republic of Uganda and other statutes guarantee an array of workers rights which include freedom of association, collective bargaining, right to an employment contract, social security, and maternity protection among others.¹⁸ However as will be seen later, working conditions in Uganda are predominantly poor despite good laws.

Freedom of Association and Collective Bargaining

Although the general state of working conditions and labour rights is challenging for all workers in Uganda, some legislative reforms will be required to protect and promote the rights of workers from other Partner States. For example, whereas the Labour Unions Act guarantees the rights to form join and participate in the leadership of a union, Section 76 of the Uganda Citizenship and Immigration Control Act prohibits non-Ugandans from membership of an executive committee of a trade union.

Migrant workers often have unique problems and should therefore not be denied the chance to voice their concerns in the decision making organs of the unions. In addition, leadership of a union is absolutely within the domain of its membership and the right of workers to elect their representatives in full freedom should be exercised in accordance with the union constitutions. If it is the choice of the members of a union to elect a non-Uganda working in Uganda as their leader so be it!

Accordingly, national legislation should not as is the case in Uganda interfere with the freedom of workers to elect their leaders and the right of foreign workers to access trade union posts.¹⁹ In the circumstances one wonders whether the idea of an East African Political Federation merits any discussion if Ugandan law prohibits a citizen of Burundi, Kenya, Rwanda or Tanzania from being a mere member of an executive committee of a union! Therefore section 76 (1) of the Uganda Citizenship and Immigration Control Act should be amended to bring it in conformity

¹⁷ ILO: *Summary of conclusions*, Report of the Regional Tripartite Meeting on Challenges to Labour Migration Policy and Management in Asia, 30 June-2 July 2003, Bangkok; ILO: *Summary report and conclusions*, Tripartite Forum on Labour Migration in Southern Africa, Pretoria, South Africa, 26-29 November 2002.

¹⁸ See article 29 91) (e) of the Constitution of the Republic of Uganda, Labour Unions Act, Employment Act, National Social Security Act.

¹⁹ (See the 1996 *Digest*, para. 382)

with internationally accepted democratic principles, but also as a demonstration of Uganda's commitment to deeper and wider integration.

Social Security

Under the Protocol, free movement of workers entitles workers to the benefits of social security as accorded to the workers of the host country. However, the EAC Council of Ministers has not yet issued guidelines to facilitate harmonized implementation of Protocol provisions on social security which today are largely governed by national legislation.

In Uganda, social security in the non-government sector is governed by the National Social Security (NSSF) Act, 1985. Under the NSSF Act an employee's monthly savings include the equivalent of 5 percent deducted from his or her monthly salary and the equivalent of 10 percent of the employees monthly salary contributed by the employer. The benefits provided include: Age, Invalidity, Survivors, Withdrawal and Emigration Grant.²⁰ The monthly contribution by an employee and benefits available are the same for both citizens and non-citizens of Uganda. Therefore, to this extent, the NSSF Act conforms to the principle of equal treatment which is enshrined in the Protocol. However it should be noted that the law in its current form does not facilitate portability of social security as envisaged under the Protocol.

Labour Dispute Settlement

Another matter of concern relates to S.78 of the Uganda Citizenship and Immigration Control Act which provides that *"where any complaint is lodged with the immigration office concerning the conduct of an alien in the course of his or her employment, the Director of Immigration may forward the complaint to the Industrial Court which shall submit its findings to the to him or her, and the Director may then take necessary action considered relevant in the circumstances."* This creates a special and biased labour dispute resolution mechanism for non-Ugandans working in Uganda, contrary to the spirit of the Protocol that workers from other Partner States should be accorded equal treatment with nationals of the host country. Furthermore, the opportunity accorded to the employer to report the conduct of employee to an immigration officer is not available to an employee.

Besides, labour dispute matters are not the core mandate of the Immigration Directorate nor do Immigration officers have the requisite expertise in handling labour dispute matters. Labour dispute resolution issues should be left to labour officers who are not only experts in this field, but also have labour dispute resolution as their core mandate under the law.²¹ Therefore any

²⁰ Emigration grant is for non-citizens leaving Uganda

²¹ See S.3-S.6 of the Labour Disputes (Arbitration and Settlement) Act, 2006

aspect of S.78 of the immigration law that creates a special dispute resolution mechanism for non-Ugandans should be repealed.

3.2.7 Duties of Employers in Monitoring the Free Movement of Workers

Like the Laws of Uganda, the Protocol requires every employer to provide to the competent authority returns of the workers from another Partner State in his or her establishment. The only difference is that the Laws of Uganda provide for a bi-annual return instead of an annual return that is provided for in the Protocol.

The Protocol further provides that where the holder of a work permit ceases to engage in the employment in respect of which the work permit was issued, the employer specified in the work permit should within fifteen days of the cessation of the employment in writing, inform the competent authority. However Uganda's law is not entirely in harmony as it provides for 7 days within which such report should be made.²²

The government of Uganda should bring the regulations in respect of the duties of an employer in consonance with the Protocol. Firstly, by increasing the period within which an employer should report the cessation of employment by a holder of a work permit from 7 days to 15 days. Secondly, by reducing the returns employers make to the competent authority about workers from other Partner States from bi-annually to annually.

3.2.8 Duty of an Employee to Report Change of Employment

The Protocol also requires a worker who changes or ceases to engage in employment, in respect of which a work permit was issued, to report such change of employment or cessation in writing to the competent authority within 15 days. Although the law in Uganda is silent on this matter, the established administrative practice is that a worker who changes employment is supposed to notify the Immigration Department of such change immediately and accordingly apply for a new work permit.

3.2.9 Dependants

The Protocol grants a worker the right to be accompanied by a child and spouse. This right is already recognized under the laws of Uganda in respect of holders of a valid work permit. However, a holder of a valid work permit under Ugandan law who wishes to be accompanied by his or her dependants is required to apply to the Director of Immigrations for a dependant's pass in respect of any of his or her dependants (Regulation 4(2)(a)) of UCICR, 2004). The Director of Immigrations may only issue a dependant's pass at a fee upon satisfaction that the person is a dependant of the applicant and the applicant is able to provide adequate accommodation for the

²² This reporting is important for purposes of tracking the evolution of labour migration

dependant and has sufficient income to maintain the dependant (Regulation 4(2)(b) of UCICR, 2004)²³.

In addition, the Protocol grants a child and spouse accompanying a worker the right to be employed as a worker or to engage in self employment. However, the right to work is subject to such procedures and regulations of the Protocol and national legislation that are considered above.

3.3 *Right of Establishment*

The Protocol guarantees a national of one Partner State the right to establish him or herself in another Partner State. The right of establishment entitles a national of a Partner State to:

- take up and pursue economic activities as a self employed person;
- set up and manage economic undertakings in the territory of another Partner State;
- join a social security scheme of that Partner State as a self employed person in accordance with the national laws of that Partner State.

Furthermore a self employed person also has a right to be accompanied by his or spouse, child and dependant.

3.3.1 Duties of Partner States in Promoting the Right of Establishment

The Protocol requires Partner States to ensure non-discrimination of the nationals of other Partner States. This includes ensuring that a firm is not discriminated against because it is registered in and undertakes most of its economic activities in another Partner State²⁴. To this end, Partner States are further required by the Protocol to remove all restrictions on the right of establishment based on the nationality of companies, firms and self employed persons.

However, a review of the Laws of Uganda points out a number of discriminatory and restrictive provisions in respect of the right of establishment. These include:

Employment Bond

Section 41(8) of the Employment Act provides that any employer who is not incorporated in Uganda shall be required by a labour officer to pay a bond assessed at the equivalent of one month's wages for each person employed or to be employed by that employer. This provision is not only discriminatory but also a prohibitive cost towards establishment in Uganda especially for small and medium size enterprises.

²³ A dependants pass shall be issued at a fee of USD 250 and in respect of a spouse and child and USD 400 in respect of a dependant other than a child or spouse

²⁴ For example, the government of Uganda should accord to firms from the other Partner States all the benefits accorded to Ugandan firms.

Regulation of Foreign Investment

The Investment Code 1991 defines a foreign investor as a person who is not a citizen of Uganda; a company in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda or a partnership in which the majority of partners are not citizens of Uganda (S. 9(1)). This implies that firms from the other Partner States are considered foreign within the terms of the Laws of Uganda.

Therefore according to the Investment Code, firms from the other Partner States cannot operate in Uganda without obtaining an investment licence. In addition, a citizen of another EAC Partner State cannot engage in the business of crop and animal production except where a minister has by Statutory Instrument permitted a foreign firm to engage in restricted businesses (S.10 (4)).

It follows therefore that citizens of other Partner States can only engage in Industry and Trade. Moreover, the standards set under the law for obtaining an investment licence may not be very easy to fulfill by Small and Medium Size firms from the other Partner States. For example, the issuance of an investment licence is dependent on the capacity of a foreign firm to demonstrate that it will contribute to: the generation of new earnings or savings of foreign exchange through exports, resource-based import substitution or service activities; the utilisation of local materials, supplies and services; the creation of employment opportunities in Uganda; the introduction of advanced technology or upgrading of indigenous technology and the contribution to locally or regionally balanced socioeconomic development.

In essence the above eligibility criteria for an investment licence calls for accompanying the application for an investment licence with a well detailed business plan; complete with projected cash flows, employment effect and economic impact assessment of the proposed business project. This will be a big challenge for many SMEs whose owners are often semi-illiterate and or with no capacity to hire experts to prepare business proposals for them. The restrictive provisions to economic engagement of foreign firms in Uganda were meant to protect local firms and help promote the indigenous economy. However with the coming into force of the Protocol, firms from the other Partner States became "local firms". The investment Code should therefore be amended to accommodate this new reality.

On the other hand, the Investment Code exempts foreign investors intending to engage in trade from obtaining an investment licence. However such investors intending to engage in trade are required to deposit a sum of one hundred thousand United States dollars or its equivalent in Uganda shillings at the Bank of Uganda, which is supposed to be specifically used for importation or direct purchase of goods for the business (S.10 (4) of the Investment Code). Upon making the said deposit, the Bank of Uganda is required to issue a Certificate of Remittance to the foreign

investor (Investment Code 10 (5))²⁵. It is important to note that a foreign investor intending to engage in trade cannot apply for a work permit without obtaining a Certificate of Remittance issued by the Bank of Uganda. Furthermore without a work permit a foreign investor cannot obtain a trading licence.

I find the requirement to deposit one hundred United States dollars and the highly technical nature of the application for an investment licence very prohibitive for the establishment of Small and Medium Enterprises (SMEs) from other Partner States in Uganda, yet they constitute the largest portion of business concerns in the region. If this provision is not amended to recognize Uganda's commitments under the Protocol, the right of establishment in Uganda will be a right for only big firms.

3.3.2 Entry, Stay and Exit

The Protocol provides that a persons seeking to enter another Partner State as self employed persons shall do so at designated points and upon presenting a valid common standard document or national identity card and any other required information. Upon fulfillment of requirements, a self employed person shall be issued with a pass which will entitle him or her to enter the host country for a period of up to six months in order to complete formalities for establishment²⁶. A self-employed person shall also have the right to be accompanied by his or spouse and child. The provisions of the Protocol in this respect are not any different from the requirements for entry under Uganda's laws.

3.3.4 Procedure for acquiring a work permit-Self Employed

The Protocol stipulates that self employed person who intends under the Protocol to set up and manage economic undertakings in the territory of another Partner State shall, apply to a competent authority for a work permit within thirty working days from the date of entry into the territory of the host Partner State.

It further provides that the application for a work permit shall be supported by a valid common standard travel document (or a national identity card where a Partner State has agreed to use the national identity card as a travel document); proof that the self employed person obtained a license, registration or any other authority or permission that may be necessary for the purpose of establishment; proof that the self employed person has sufficient capital and other resources for the purpose of establishment; proof that the self employed person is engaged in an activity for which he or she was licensed or given authority for by the competent authority of the host Partner State; and any other document the competent authority may require. Besides, the

²⁵ The certificate of Remittance is one of the requirements for obtaining work permit for persons seeking to engage in trade

²⁶ The Laws of Uganda allow an initial period of only two months.

Protocol requires that a work permit be issued to the self employed person for an initial period of up to two years within thirty days of successful application for a work permit²⁷. In addition, a self employed person may at least thirty days before the expiry of the work permit apply to the competent authority of the host Partner State for renewal and the authority should renew the work permit where the applicant provides justification for a longer period of stay.²⁸

Section 54 of the UCICA, 1999 creates eight classes of work permits four of which are applicable to the right of establishment articulated in the Protocol. These are: Class B (Agriculturalists), Class C (Miners), Class D (Business and Trade), and Class E (Manufacturers). All the terms set out above for acquisition of a work permit under the Protocol are already applicable under the Laws of Uganda, except that Uganda's law requires an applicant for Class B (Agriculturalist) work permit to show proof of authorised interest in land. In addition, UCICR, 2004 stipulates application fees for all applicants of these work permits as follows:

- Class B (Agriculturalists) -----USD 500
- Class C (Miners) -----USD 500
- Class D (Business and Trade)-----USD 1500
- Class E (Manufacturers) -----USD 500

3.3.4 Registration and Licensing

The protocol provides that a national of a Partner State who wishes to engage in an economic activity in another Partner State shall register or be licensed in accordance with the national laws. It further provides that such national shall in the process of registration make disclosure of the shareholders, partners, directors and financial statements during the process of establishment and operations of the economic activity. These Protocol provisions are very similar to the requirements for establishment under Uganda's Companies Act.²⁹

3.4 *Right of Residence*

The Protocol grants holders of work permits and their families the right to reside in the Partner State where they are employed or established (Article 14(1) of the Protocol). To this end, the Partner States are required to issue residence permits to holders of work permits and their families (Article 14(3) of the Protocol). However, the Protocol subjects the right of residence to limitations imposed by the host Partner State on grounds of public policy, public security

²⁷ A self employed person under the protocol may apply for a special pass before formalities of establishment are completed. Such special pass entitles the self employed person the right to engage in an economic activity.

²⁸ Work permit may be cancelled where a self-employed person does not engage in the economic activity in respect of which the work permit was issued

²⁹ See Sections 370-378 of the Companies Act

or public health. The Partner States further agreed that matters relating to permanent residence shall be governed by the national policies and law of the Partner States.

Uganda's law already guarantees the right of residence for work permit holders and their dependants. Since a work permit automatically grants the holder and his or dependants the right to reside in Uganda, there is no requirement under Ugandan law for work permit holders to apply for a residence permit. However, I hasten to add that the right of residence granted to work permit holders is not permanent and is limited to the duration of the work permit³⁰.

Citizens of other Partner States who wish to reside in Uganda on a permanent basis are required to apply to the Immigration Board to that effect (S.53 UCICA, 1999). A certificate of permanent residence under Uganda's law may be issued to a person upon proof that the applicant:

- Has contributed to the socioeconomic or intellectual development of Uganda;
- Has continuously lived in Uganda for the last ten years;
- Is of good character and proven integrity;
- Has not defaulted on any taxes;
- Is not bankrupt or destitute
- Is legally married to a Ugandan and there is a subsisting marriage for at least three years

The Act does not define the maximum period of stay that may be granted under the certificate of residence nor the benefits that come with it. I also find that the eligibility criteria make permanent residence quite difficult to achieve. Yet certainty about residence is very crucial for long-term business establishment.

This section has comprehensively analysed the provisions of the Protocol and the extent of their domestication in Uganda. In conclusion it can be observed that the provisions of the Protocol do not constitute a major departure from the laws, regulations and administrative practices that currently govern labour mobility in Uganda. For example the Protocol provides only for mobility of highly skilled professionals, who already moved in the region even prior to 1st July 2010. It is also apparent that the attainment of the limited standard of labour mobility that is envisaged in the Protocol will require legislative reforms in Uganda and enhancing of the financial and human resource capacities of the national institutions necessary for implementation of the Protocol. The next section summarizes the potential benefits of labour mobility to Uganda both as a destination and source country.

³⁰ The maximum length of a work permit currently is one year under the law in Uganda.

4.0 Potential Benefits and Costs of the Free Movement of Persons and Labour

The potential benefits and costs of the labour migration to both the source and destination country are summarized below:

Table 1: Potential Costs and Benefits of Labour Migration

SOURCE COUNTRY		DESTINATION COUNTRY	
Potential Benefits	Potential Costs	Potential Benefits	Potential Costs
Reduces Population Pressures	Brain Drain	Population Rejuvenation	Social friction between immigrants and nationals
Lowers unemployment Pressures	Coping with Returnees	Bridges skills and labour shortages	Costs of integration programmes
Increases Foreign Remittances	Loss of potential output	More foreign investment by immigrants	Increase in costs of social services
Skills Transfer by Returnees (Brain Gain)	Loss of potential tax revenue	More diverse and energetic population	Potential crime
Builds Transnational Communities		More tax income	

5.0 Strategy for Implementation of the Common Market Protocol in Uganda

Upon the launch the Protocol, the Ministry of East African Community Affairs developed a Common Market Implementation Plan (CMIP) in consultation with other Ministries, Departments and Agencies (MDAs) as well as private sector and civil society.

5.1 Main Purpose of the Common Market Implementation Plan (CMIP)

The CMIP will serve as a medium for achieving the following goals:

- effective and efficient co-ordination of the implementation of the Common Market Protocol in Uganda;
- providing benchmarks for monitoring and evaluating the implementation of the Protocol in Uganda;

- defining and supporting measures needed to jumpstart the participation of Ugandans in the Protocol; and
- ensuring that Protocol implementation is fully integrated into the work plans of MDAs.

5.2 Common Market Implementation Work Plan

The plan provides matrices for implementation of the Protocol. The matrices identify Uganda's different commitments under the Protocol and their respective time lines. Furthermore, it identifies the actions required to fulfill the commitments as well as the necessary resources. The matrices provide a framework for identifying and monitoring obligations of the protocol as well as any complimentary policies that will support its implementation. The Ministries, Departments and Agencies responsible for implementing the different actions are also spelt out.

For example the Ministry of Gender, Labour and Social Development is responsible for implementing provisions relevant to movement of labour including conducting regular labour inspections to ensure that EAC nationals are given equal treatment and harmonizing social benefits across. On the other hand the Ministry of Internal Affairs is responsible for implementing provisions related to the movement of persons into and outside Uganda; including removal of visa requirements for EAC citizens who are workers or self employed persons. Health is responsible for identifying limitations that should be imposed on free movement of persons or right of residence on the basis of public health.

5.3 Institutional Structure

The CMIP defines an institutional framework for realizing full implementation of the Common Market. It vests powers to implement various requirements under the Protocol with MDAs. However for purposes of coordinating, monitoring and evaluating implementation of the Protocol by the MDAs, the CMIP creates a multilevel coordination structure.

5.3.1 The National Coordination Committee for the Implementation of the Common Market Protocol

Its mandate is to provide overall technical guidance to the implementation process. It may create sub-committees and delegate part of its mandate to such sub-committees. It is composed of: Ministry of Justice and Constitutional Affairs; Ministry of Finance Planning and Economic Development; Ministry of Foreign Affairs; Ministry of Health; Ministry of Trade, Industry and Cooperatives; Ministry of Gender, Labour and Social Development; Ministry of Internal Affairs; Ministry of Education and Sports; Ministry of Works and Transport; Ministry of Lands, Housing and Urban Development; Ministry of Agriculture, Animal Industry and Fisheries; Ministry of Internal Security; Ministry of Public Service and Office of the President.

5.3.2 Technical Committee on Common Market Implementation Committee

It is responsible for technical coordination and monitoring of the implementation of the Protocol and is supposed to meet at least once quarterly. The membership of the committee includes: Directors of various government departments, Private Sector and Civil Society.

5.3.3 Expert Sub-Committees

Several expert sub-committees have also been established to deal with certain specific details of the implementation of the Protocol. One such sub-committee is the one on *Free Movement of Persons, Workers, the Right of Residence and Right of Establishment*. It is chaired by the Ministry of Internal Affairs. Other members of the sub-committee are from the Uganda registration URSB, MEACA, Office of the President, ISO/ESO, MGLSD, Civil Society, FUE, NOTU, MLHUD, MTIC, PSFU, UNCCI, UMA, MOJCA, MOFA, MoH, MICT.

From the above it is clear that the Common Market implementation Plan provides a sound institutional framework for attainment of the goals of the Protocol in Uganda. Let us hope that the government will find the necessary resources for its actualization. The next section highlights actions that have been taken by some MDAs towards the enhancing of labour mobility in Uganda.

6.0 Status of Implementation of the Common Market Protocol

In line with CMIP, several MDAs have undertaken different actions aimed at actualizing the Common Market Protocol. In this section of the paper I highlight some the actions that have been undertaken by three government agencies that are very crucial for the implementation of the free movement of persons and labour as well as the right of establishment and residence. That is; Ministry of East African Community Affairs, Directorate of Citizenship and Immigration Control and Ministry of Gender, Labour and Social Development.

6.1 Ministry of East African Community Affairs

In executing its mandate of steering Uganda's regional integration agenda in accordance with the objectives of the Treaty, the Ministry of East African Community Affairs has undertaken a number of measures towards the implementation of the Protocol. These include:

- Developing the Common Market Implementation Plan which is well articulated above;
- Commissioning an economic impact assessment of the Protocol. The study conducted in Busia Uganda attempted to analyze the relationship between labour mobility, human development and livelihood on the one hand and the barriers to labour mobility in the Ugandan context.³¹ While not exhaustive, its major findings raise important issues. It shows that the primary pull factor for working in Kenya is the prospect of higher wages.

³¹ Busia is a town in Eastern Uganda on the Uganda-Kenya Border

Further that the income earned from employment in Kenya contributes considerably to house hold income, paying of school fees and access to healthcare.

- Conducting a legislative impact assessment of the protocol. The major outcome of this process is a list of laws relevant to implementing the freedoms guaranteed under the protocol. Furthermore, an attempt has been made to identify and list provisions of Uganda's laws that are inconsistent with the Protocol. The Ministry of East African Community Affairs is accordingly coordinating an effort by various MDAs to review the relevant laws in accordance with the Protocol.
- Coordinating efforts to develop a National Policy for EAC integration.
- Developing a Communication Strategy to guide the sensitization of the public on issues of EAC integration. Awareness campaigns have been held at some regional towns and selected schools.

6.2 Directorate of Citizenship and Immigration Control

The Directorate of Citizenship and Immigration Control is the Uganda Government agency that is responsible for aspects of the protocol related to entry, stay, and exit of East African citizens. In line with this mandate, it has undertaken some measures towards the implementation of Uganda's commitments under the Protocol. Some of them are considered here below:

6.2.1 Entry, Stay, and Exit

Although under the laws of Uganda a visitors' pass entitles a person coming into Uganda to an initial period of stay of up to two months with the possibility of extending it to six months, the Immigration Board has through administrative action and in accordance with the Protocol increased this period from two to six months. Extensions beyond six months may be obtained upon justification. Visitors' passes and students' passes are also issued free of charge.

6.2.2 Easing Cross Border Movement of Persons

Uganda's government committed itself to ease border crossing for citizens of East Africa. Some of the measures that have been taken to this effect include:

- Reducing timeframes for obtaining national travel documents as a means of enabling Ugandans to move in the region more easily. The official turn around period for issuance of a Ugandan passport has been reduced from several weeks to 10 days. The temporary pass is also issued at a reasonable cost of five thousand Uganda shillings which makes it affordable for nearly everyone interested in traveling out of Uganda.
- Provision has been made for separate immigration counters at Entebbe International Airport to ease border crossing of EAC nationals. In addition, the border posts at Entebbe International Airport, Malaba, Katuna and Busia are kept open and manned for twenty four hours.

- Initiatives to put in place a One Stop Border Post (OSBP) and Integrated Border Management System (IBMS) are in their final stages at Mirama Hills, Malaba, Busia, and Katuna.
- Gazetting and operationalization of corresponding border posts is crucial for the free movement of persons and the Government of Uganda has taken a number of actions to this effect. Border posts at Amudat on Uganda-Kenya border, Kizinga-Rwempasha on Uganda-Rwanda border, Omuruhumba Uganda-Rwanda border have been gazetted. In addition, Bugango on Uganda-Tanzania border is already manned and earmarked for gazetting next financial year-2013/14. Assessments at other places like Lokiriam Uganda-Kenya Border for possible border station status are also ongoing.

6.2.3 Work Permits and Student passes

Obtaining a work permit is a fundamental precondition for employment under the protocol and the laws of Uganda. The Government of Uganda has accordingly adopted some measures to facilitate the employment of citizens of other Partner States in Uganda. The measures include:

- Issuance of work permits within ten working days which is far less than the thirty days provided for in the Protocol
- Issuance of work permits up to a period of three years which is more than the one year and two years provided for in the laws of Uganda and the Protocol respectively.³²

EAC nationals studying in Uganda are issued with pupil passes free of charge in accordance with the Protocol.

6.2.4 National Identification Programme

Although only 406 National Identity cards have been issued, Immigration officials said that process of constructing the data personalization center in preparation for issuance of national Identity Cards is ongoing. Apparently the Immigration Department intends to use citizenship data from the Electoral Commission as the initial base for citizenship registration. To date data of five million nationals has been migrated from the Electoral Commission to the Immigration Department.

6.2.5 Policy and Legal Reforms

Establishing comprehensive labour migration policies, legislation and structures at the national and regional levels can result in significant benefits for States of origin and destination. To this end, the Government of Uganda has undertaken a number of measures to consolidate the policy and legislative framework. These include:

³² The three years is an administrative action which is not yet encoded in the law.

- Implementing a process for development of National Migration Policy which reflects the Common Market dispensation. The process is in the final stages.
- Reviewing the Uganda Citizenship and Immigration Control Act with the aim of harmonizing it with the Protocol
- The Directorate of Citizenship and Immigration Control is actively participating in an ongoing regional process for harmonization of immigration laws.

6.3 *Gender Labour and Social Development*

The Ministry of Gender Labour and Social Development is responsible for implementing provisions relevant to the movement of persons including conducting regular inspections to ensure that EAC nationals are given equal treatment and harmonizing of labour policies.

6.3.1 Externalization of Labour Programme

In a bid to manage the unemployment and underemployment pressure and maximize the gains of labour migration, the Government of Uganda initiated the externalisation of labour programme.

The overall objective of the programme is to reduce unemployment and underemployment in Uganda by facilitating access to decent employment opportunities abroad; which substantially contributes to poverty eradication. The specific objectives of the externalisation of labour programme are:

- to promote full employment and equality of employment opportunities for all and to uphold the dignity and rights of Ugandan migrant workers;
- to allow deployment of Ugandans to countries which have existing labour and social laws or are signatories to international agreements protecting the rights of migrants;
- to protect every Ugandan desiring to work abroad by securing the best possible terms and conditions of employment;
- to provide a mechanism for issuing licenses to recruitment agencies

The External Employment Unit, in the Ministry of Gender, Labour and Social Development is responsible for the date-to-date running of the programme. The functions of the External Employment Unit are:

- licensing private companies;
- Promote linkage of locally available skills to employers abroad;
- Promote better working conditions for Ugandans abroad;
- Strengthen cultural and national identity amongst Ugandans in the diaspora;
- Ensure that Ugandans abroad value, maintain and strengthen linkages with the mother country;

- Promote quick and cheap transfer of funds and property;

However the External Employment Unit has largely been involved with emigration of Ugandan Workers to Non-EAC Partner States like the United Arab Emirates and Iraq. Due to human resource and fiscal constraints, the Unit has not been able to establish mechanisms for promoting the working conditions of Ugandans engaged abroad under the Externalisation of Labour Programme. As a result many returning Ugandan migrant workers have reported cases of severe rights violations in their former host countries. The next section deals with the challenges of implementing the Protocol in Uganda.

7.0 Observations and Challenges

The coming into force of the East African Common Market Protocol on 1st July 2010 heralded a new epoch in regional cooperation in East Africa particularly by legally creating a common market. The creation of a single market requires among others the enabling of labour mobility. Such an endeavour has far reaching consequences and challenges. The successful attainment of a single market therefore will depend on how effectively the Partner States identify and address the potential challenges to the implementation of the Protocol.

As we address ourselves to the potential challenges of implementing the Protocol, it is important to remind ourselves that this is not the first attempt by the East African countries to create a common market; the previous attempt lasted for only ten years (1967-1977). In addition, aware that it is not uncommon for man to repeat history, it is important that we particularly remind ourselves of the challenges that brought down the previous Community as we try to examine the likely challenges of implementing the current Common Market Protocol.

Briefly, the East African Cooperation (1967-1977) collapsed due some six major issues:

- Lack of political will
- Failure of the citizenry to appreciate the long-term benefits of the Community due to insufficient awareness creation by the Partner States
- Perceived or real inequitable fiscal redistribution of gains from the Community
- Inter-territorial imbalances in trade
- Currency system disharmony
- Lack of homogeneity in constitutional and political architecture of the Partner States

With above in mind I have reviewed the current challenges to the implementation of the Protocol in Uganda here below:

7.1 *Weak Political Will*

Three years after the signing of the Common Market Protocol, the Government of Uganda is still without a National Policy on EAC integration. Without such a policy it will be very difficult to define Uganda's vision on EAC integration and also mainstream regional integration into national planning and priority setting. As a result it will be hard to establish whether Uganda is optimizing the benefits of regional integration and how such benefits, if any, are contributing to the country's development goals.³³ As stated earlier, although the Government of Uganda has not yet formulated a national policy on EAC, it has put in place a Common Market Implementation. Regrettably, Government of Uganda has not accompanied its strong political voice for EAC integration with the provision of required resources to the ministries, departments and agencies that play various roles in the implementation of the Protocol.

For example the Common Market Implementation Plan prepared by the Ministry of East African Community Affairs (MEACA) remains an unfunded priority as no single shilling of the 599 million shillings that MEACA had requested for in the financial year 2012/13 was allocated by the Ministry of Finance. The Ministry of East African Community Affairs' Communication Strategy that guides the ministry's efforts to sensitize the public about EAC integration is also an under funded priority as only 500 million Uganda shillings of the required 1 billion was allocated by the Ministry of Finance in financial year 2012/13. Similarly the communication budget of the Directorate of Citizenship and Immigration Control required to sensitize the public on the integration process was also reduced this financial year. Without sufficient funds it will be very difficult to implement protocol Provisions.

It is often said in public policy that the priorities of governments may be identified by the nature and magnitude of its sector budget allocations. The poor funding of integration activities may therefore seriously cast doubts on Uganda's political commitment to EAC integration.

7.2 *Limited awareness of the provisions of the Protocol*

Knowledge of the provisions of the Protocol by members of the public and government officers is very crucial for the implementation and sustainability of the Protocol. However, limited knowledge of Protocol Provisions by Ugandans including migration managers was cited by a number of stakeholders interviewed as a major challenge for labour mobility in the region. For example the view largely held by the public is that any citizen of the Partner States can cross borders in search for work yet regulations under the Protocol permit only a specified category of professionals to move across borders.

³³ Rwanda's National Policy and Strategy was adopted by her Cabinet in February 2012.

As a result of limited awareness of Protocol provisions by technocrats, political enthusiasm for regional integration at least in words is well ahead of that of the technocrats. It was also reported that limited awareness of Protocol provisions undermines coordination between and amongst institutions that are responsible for the actualization Protocol provisions relating to labour mobility like Ministry of Internal Affairs, Ministry of Gender Labour and Social Development, Ministry of Education, Uganda Investment Authority and Uganda Registration Services Bureau. Poor inter-agency cooperation and coordination will impact negatively on the implementation of the Protocol given its multi-sectoral nature.

7.3 Poor Attitude to Labour Mobility

Significant sections of the public and civil service in all the Partner States continue to see immigration as a problem to be dealt with and not an opportunity to be seized. Consequently, despite long and enduring historical as well as cultural links of the people of East Africa, there is quite a subtle but potentially explosive xenophobia about labour movement in all EAC countries.

Many local citizens regard migrant workers as unwanted competitors in the labour market. This negative attitude towards immigrants has the potential of generating violent tensions and therefore constitutes one of the biggest threats to labour mobility in East Africa. Matters have not been helped by the fact that quite often than not, politicians harbour the same line of thinking thus the continued implementation of policies and laws that restrict labour mobility in East Africa.

The concerns about xenophobia should be taken seriously as they are not without any historical basis. Courtesy of Xenophobia each of the Partner States has in the past forcefully removed migrant labour from other EAC countries for scanty excuses and in many cases they were accused of escalating criminalities. The most pronounced case in Uganda was in 1969 when President Obote expelled over 30,000 Kenyan workers from Uganda. The reason for the expulsion was that there were more financial remittances going to Kenya from the earnings of unskilled Kenyans working in Uganda than from a similar category of Ugandans in Kenya (Mazurui Ali 1979)

7.4 Ability to Optimally Exploit Potential Benefits

The real or perceived inability of Ugandans to fully exploit the job opportunities in the other Partner States will also be a big challenge to the creation of a single market. It is a strong view within the public and civil service spheres that Uganda is more of a destination than source country of labour mobility in the EAC region. One example commonly given is the high incidence of Kenyans in the management of hotels in Uganda with no similar evidence of Ugandans in the Kenyan hotel industry. It is also widely believed that instead Ugandans appear to use Kenya and Tanzania more as transit routes to other destinations especially Middle East and South Africa.

Some of the factors cited for the inability of Ugandans to move to the other EAC countries for work include: limited knowledge of Swahili which is a major lingua franca in the other Partner States and limited skills in some fields due to poor training.

7.5 Attitude towards Gains and Losses

For the creation of the single market to succeed, there must be mutual understanding about real or perceived gains and losses of labour mobility among the Partner States and their citizens. This appears not to be the case in Uganda and other Partner States. For example, the elimination of work permit fees would obviously be a strong measure towards facilitating employment of citizens of other Partner States in East Africa. However, to date the Government of Uganda appears not to have found a net benefit in the elimination of work permit fees in respect of citizens of the other Partner States. Un-disaggregated data shows that the Government of Uganda collected about twenty four billion Uganda shillings from work permit fees alone. Until it is very clear to the government about how Non-Tax Revenue (NTR) that will be lost by the elimination of work permit fees will be compensated, the existing work permit regime may continue in Uganda. This will of course be at the expense of enhanced labour mobility.

Furthermore, commitment to the Protocol is bound to decline the moment any Partner State forms the opinion that rather than mitigate the problems of unemployment, the mobility of labour actually exacerbates it. In absence of reliable migration data people resort to speculations and stereotypes about gains and losses of EAC integration. Indeed although no comprehensive survey has been carried out on the net employment effect of the Protocol in Uganda, there is a strong feeling by Ugandans that their country is not benefiting a lot from job opportunities in the other Partner States save for Rwanda.

The relatively high participation of Ugandans in Rwandan labour market is associated to a number of factors which include: the unique cultural and historical ties that exist between the peoples of Uganda and Rwanda; elimination of work permit fees for Ugandan professionals; transitioning by Rwanda from Francophone to Anglophone, which has enhanced demand for teachers of English; relatively better pay especially for teachers and medical personnel in Rwanda;³⁴ and a favourable environment for establishment especially for individuals with vocational skills.

7.6 Brain Drain

Employment opportunities for Ugandans in Rwanda have meant better incomes for the households involved and more remittances for Uganda's economy. However, this has come at a

³⁴ In Uganda, a doctor starting out earns about sh700, 000 after taxes. A consultant surgeon in Rwanda is paid between sh5m and sh9m while in Uganda such a consultant is paid is sh1.5m

very high cost to Uganda's health sector that is struggling to meet the needs of her citizens due to a shortage of healthcare professionals among other factors. In 2010, the health minister revealed that 13 senior surgeons left Uganda for Rwanda due to poor pay.³⁵ As long as pull factors continue to exist in the other Partner States Uganda's health sector will continue to struggle to the detriment of the welfare of her citizens.

7.7 National and Regional Migration Data Management

The lack of systematic and comprehensive migration data gathering, analysis and exchange on all aspects of migration in the region is one of the principal obstacles to effective migration management, policy and cooperation. This is because as noted earlier, reliable and comprehensive migration data is very crucial in establishing the gains and losses of labour mobility in any Partner State. It also helps in monitoring the patterns of migration, its reasons, development impact as well as the formulation of migration policy.

Unfortunately, the infrastructure for capturing migration data at border stations and its analysis is very weak in Uganda as in other Partner States. For example migration data available in Uganda's Statistical Abstract is disaggregated only according to international arrivals and departures; resident and non-resident arrivals; tourist arrivals by purpose and non-resident arrivals by mode of transport. It is difficult therefore to know how many citizens of the other Partner States enter, stay and exit Uganda in a particular year and for what purpose. Neither is it possible to know the sectors with the highest activity of labour mobility in the region nor the push and pull factors.

7.8 Weak Mechanisms for Protection of the Rights of Migrant Workers

Although on paper Uganda has a labour law regime that promotes and protects the rights of workers, the labour laws do not specifically address the working conditions of migrant workers. Further implementation of labour laws in Uganda is generally weak and as a result, working conditions for workers in Uganda even for the nationals remain poor. For example about only forty out of the one hundred and twelve districts have a district labour officer, yet effective labour administration is a basic condition for the promotion of the rights of both local and migrant workers.³⁶ In addition, the Industrial Court which is responsible for labour dispute resolution has not operated for over ten years and as a result disharmony between employees and employers obtains at a number of work places. Matters will not be helped by the fact that there is no regional mechanism for expeditious labour dispute resolution. Furthermore, the government has also not established labour advisory services or posted labour attaches at its missions in any of the Partner States as a measure of protecting the rights of emigrant Ugandan Workers.

³⁵ See New Vision News Paper 23rd July 2012

³⁶ ILO 2006a

7.9 Cost of Establishment

The cost of establishment for citizens of the other Partner States legally remains high. As noted earlier eligibility criteria for an investment licence calls for accompanying the application for an investment licence with a well detailed project proposal; complete with projected cash flows, employment effect and economic impact assessment of the proposed project. In addition, the law requires a foreign firm to deposit one hundred United States dollars as a precondition for formalizing establishment. The requirements for a deposit one hundred United States dollars and a technically elaborate application procedure for obtaining an investment licence will be a major obstacle for establishment in Uganda.

7.10 Absence of a National Identification System

The absence of a citizenship registration and identification system makes it difficult for Uganda and other Partner States to establish who is or isn't a Ugandan. In the circumstances, managing illegal migration will be a major challenge not only for Uganda but the other Partner States as well. The absence of a national identification system will undermine opportunities for Ugandans in the labour markets of the other Partner States. Indeed some of the Partner States have given the absence of a national identification system as the reason for their reluctance to open up more space in their labour markets for Ugandans.

7.11 Harmonisation of Policies and Laws

The choice to create a common market while remaining a community of sovereign states will be one of the biggest challenges of actualizing and implementing Protocol commitments. Although the Protocol anticipates harmonized outcomes of its provisions on labour mobility throughout the EAC territory, the same Protocol rests its implementation in national laws of the Partner States. The challenge here is that some of these laws as we have seen above in the case of Uganda are not consistent with the Protocol and were largely drafted to control immigration and protect the domestic labour market.

However the harmonization of labour laws and policies will remain difficult to unless the Council of Ministers of the East African Community formulates as required by the Protocol regional guidelines on labour laws and policies. Such guidelines would then serve as a reference point for harmonization of labour laws and policies in the Partner States. Nonetheless, I hasten to add that the formulation of regional guidelines of labour policies and laws might just solve part of the challenge. This is because the same Protocol that calls for harmonization also provides that free movement of workers shall be subject to limitations imposed by the host Partner State on grounds of public policy, public security or public health. The concerns of public policy, health or security may vary from time to time in any Partner State which potentially may undermine the efforts for harmonization. Furthermore the efforts of harmonization of laws is likely to be

delayed because the process of law reform in Uganda and the other Partner States is often a slow and politically engaging process.

It can safely be said at this point that the implementation of the Protocol in Uganda will be no easy task given the multiple challenges considered above. Not to be ignored also is that the challenges that were responsible for the collapse of the “Old East African Community” continue to rear their ugly heads. Urgent action is therefore required to avoid history repeating itself. The next section will wrap up the discussions of the paper and also make some recommendations on what can be done to effectively implement the Protocol and also optimize the benefits of labour mobility for Uganda and East Africa as a whole.

8.0 Conclusion

The provisions of the Protocol relating to the mobility of labour and the extent of their domestication and implementation in Uganda have been comprehensively analysed. It was found that contrary to public opinion, the Protocol provides only for mobility of highly skilled professionals, who already moved in the region even prior to 1st July 2010. Even for the limited spectrum of labour mobility that is permitted, the Protocol guarantees the right of mobility of labour with one hand and takes it away with another by providing that mobility of labour will be subject to limitations imposed by Partner States on grounds of public, health and security policy. Guaranteeing labour mobility and simultaneously allowing for its limitation by national laws and policies will make harmonization of laws and polices relating to labour mobility in the EAC problematic.

It is evident therefore, that the provisions of the Protocol do not constitute a major departure from the laws, regulations and administrative practices that currently govern labour mobility in Uganda. To this extent, the Protocol falls short of its stated objective of creating a common market for labour in East Africa.

In addition, attainment of the limited spectrum of labour mobility that is provided for in the Protocol will require legislative reforms in Uganda and enhancing of the financial and human resource capacities of the national institutions necessary for implementation of the Protocol. Law reform is crucial because Uganda’s immigration law was enacted to control entry of foreigners and protect the domestic labour and is therefore inconsistent with Protocol provisions in several respects. It is important to note here that efforts to enhance labour mobility through administrative measures (as has been done by the Citizenship and Immigration Control Board) that are not backed by legislation are not sustainable.

However we must quickly remember that laws are made by people’s elected representatives and therefore legal reforms that facilitate labour mobility in tandem with the Protocol will be difficult

to achieve without public support. Unfortunately, although labour mobility is a manifestation of the peoples Endeavour to survive and prosper, many people in Uganda still see migrants whether from the Partner States or third countries are seen as a problem to be dealt with and not an opportunity to be seized. Therefore achieving a common labour market will be hard without winning the hearts and minds of the citizens. The government should accordingly increase funding for the Ministry East African Community Affairs Communication Strategy on the Protocol.

An analysis of Uganda's net benefits arising out of labour mobility under the Protocol was not carried out. This is because such an analysis requires rich migration data, which as noted earlier are not available in Uganda and the region. The Partner States should therefore take prompt steps to establish a sound migration statistics infrastructure. Without sound migration data analysis it will be difficult to establish the winners and losers and measures that can be taken to mutually optimize benefits for all Partners in regard to labour mobility. This point cannot be overlooked because perceptions about unfairness in the distributions of benefits were one of the factors responsible for the collapse of the "Old EAC" in 1977.

In addition a clear policy framework will be crucial for Uganda to effectively monitor and evaluate the implementation and outcomes of the Protocol provisions relating to labour mobility. The Government of Uganda should therefore expedite the formulation of her National Policy on East African Community integration. Finally, the challenges that caused the collapse of the "Old East African Community" continue to rear their ugly head in varied ways. It should therefore be the responsibility of all the Partner States to ensure that all challenges are addressed mutually and promptly.

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