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Competitiveness of the Labor Market in East African Community

Thesis submitted in partial fulfillment of the requirements for the award of
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By MUSONI Charles

Supervisor

Prof. Dr. NGAGI M. Alphonse

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DECLARATION

I, Charles MUSONI, hereby declare that the thesis entitled “*Competitiveness of the labor market in East African Community*” is my original work. To the best of my knowledge, it was not submitted for any degree or examination in any other university for any award. I acknowledge that works or individuals sources used, references are provided.

Charles MUSONI

June, 2014

DEDICATION

I dedicate first of all, to Almighty God in Jesus Name

I, secondly dedicate to my wife UWERA Anita, and

To my children:

Cyusa MUSONI Arsène

Agasaro Musoni Alaine

Ikirezi MUSONI Kevine

Iradukunda MUSONI Caleb

Ishimwe Musoni Moise

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My gratitude goes to God for providing finance and courage having permitted timely, effective, efficient and successful participation to all course requirements: Bless the LORD, O my soul, and forget not all his benefits. Psalm 103:2.

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ACRONYMS AND ABBREVIATIONS

ART	: Article
CLADHO	: Collectif des ligues et Association de defense des droits de l'home au Rwanda
CM	: Common Market
CMP	: Common Market Protocol
COMESA	: Common Market for Eastern and Southern Africa
EAC	: East African Community
EACSOFF	: East African Civil Society organization Federation
EAMU	: East African Monetary Union
Etc.	: Et Cetera
EU	: European Union
Id	: Idem
ID	: Identity Card
ILO	: International Labor Organization
ISCO	: International Standard Classification Occupation
LMIS	: Labor Market Information System
LMP	: Labor market policies
LO/FTF	: Danish Trade Union council for International
MEACA	: Uganda Ministry of East African Community Affairs
MFN	: The Most Favored Nation Principle
MIFOTRA	: Ministère de la Fonction Publique et du Travail
MINEAC	: Ministry of East African Community Integration
NEPSA	: National Employment Promotion Services
NHIF	: National Hospital Insurance Fund
NLC	: National Labor Council
NSSF	: National Social Security Fund
NT	: National Treatment Principle
OG	: Official Gazette
OL	: Organic Law

Para : Paragraph
P : Page
SADC : Southern Africa Development
SME`s : Small and Medium Enterprises
TF : Task force
TMEA : Trade Mark East Africa
TNS- RMS : A full service research agency
UK : United Kingdom
USD : United States Dollars

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GENERAL INTRODUCTION

1. Presentation of the topic

Countries put their efforts together, in order to achieve or to reach an economic level that could not have been achieved by a single state. It is in this regard, neighbor countries, with a favorable background of economic and political neighborhood, form communities through which, big issues regarding their respective countries or in a broad view, the community, are settled. Most of the time the project is initiated by few countries and create a community among themselves, but continue to receive other members that apply for joining the multilateral entity, and this contributes to the growth of the community and it impacts on the economic lifestyle of citizens of the concerned community.

It is in this frame that the European Union was born in 1957¹, and the treaty was signed only between six European countries, such as: Belgium, The former Federal Republic of Germany, French Republic, Italian Republic, Luxembourg and Netherlands. By now, EU counts 28 member countries, and has a total population of just over 500 million citizens.²

Our research was conducted on another multilateral community, the East African Community (EAC), a community made of 5 countries: Kenya, Uganda, Tanzania, Rwanda and Burundi. The EAC was born firstly by the treaty of establishment signed between Kenya, Uganda and Tanzania in 1967 and collapsed in 1977 due to its lack of steering functions, the unequal distribution of benefits and the differences of opinion between leading players.³ Its renaissance took effect in 2000, and two other members, Rwanda and Burundi joined in 2007. East African Community covers the surface area of 1.82 million sq. km, and the population of 141.1 million.⁴

The community, through a number of conventions and regulations, has several objectives to be achieved to become economically closer, for the welfare of their citizens. Given that, different states and people are involved, skills and domain of activities are also diversified. Therefore, the

¹The Treaty of Rome, 25th March 1957.

² See "EU country list" on www.countrylist.com, consulted on 17th July 2013.

³ S. Reith&M.Boltz, "The East African Community: Regional integration between aspiration and reality", available on www.kas.de consulted on 17th July 2013

⁴ See on www.eac.int consulted on 17th July 2013.

element of competition can't be put aside. That is why the competition must be regulated and put aligned into different areas.

Amongst other sectors of activities in the community, our research was focused only on the labor market and on how this labor market is competitive within the community. It is in this frame that the research is called: “*The Competitiveness of the Labor Market in the East African Community.*”

2. Background of the study

Having its roots from a long history, as it is briefly explained here above, East African Community (EAC) is currently known as a regional intergovernmental organization of the Republics of Kenya, Uganda, the United Republic of Tanzania, the Republic of Rwanda and the Republic of Burundi 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 adhered to the EAC Treaty on 18th June 2007 and became full Members of the Community with effect from 1st July 2007⁵.

The community's main objective is to strengthen political, economic and social co-operation among the partner States for their mutual benefits.⁶

Among other specific objectives that the community has, it aims the economy growth and development through attainment of free movement of labor and capital, in order for the beneficiaries, to have lower transaction cost for business, larger market size, the improvement of the competitiveness on the market,⁷ etc.

It is in that perspectives that the community established a common market in 2010 through the protocol signed on 20th Nov.2009⁸, and the article 10 of the protocol emphasizes on the free

⁵ MINEAC, “East African Community”, <http://www.mineac.gov.rw/index.php?id=27> , consulted on 17th July 2013.

⁶ *Ibid.*

⁷ EAC, “Objectives of the EAC Common Market” on www.eac.int/commonmarket/objectives.html consulted on 17th July 2013

⁸ EAC, “Common Market overview”, on www.eac.int/commonmarket/cm-background.html consulted on 17th July 2013

movement of workers in the partner states of the community, and offers equal opportunities towards other citizens in terms of employment.⁹ Strategies were put into place to enforce the recommendations in this specific domain, as well as for other areas the common market is established for.

The common market protocol is not a hazard, but it is recommended by the Treaty for establishment of the East African Community *amended on 14th December, 2006 and 20th august, 2007*¹⁰.

The study shall focus on different recommendations preceding the execution provisions, and will compare those recommendations to the provisions, to see if the entire legal required tool have been put into place, how much they are enforceable, and what is the impact in this journey.

3. Statement of the problem

All legal provisions are well elaborated, in favor of a good competitiveness, but the implementation by the Partner States in terms of the harmonization of the national Laws with the community regulations still being an obstacle to the integration in the market.

Who is responsible? Anybody, because integration is a process. Nations fear to lose their sovereignty to the supranational, but integration can't succeed without concessions. Regulations for competitiveness in labor market, even in other areas, are not a challenge as such.

The EAC Executive secretary talked about challenges in deepening regional integration and said that: "lessons learnt and forwarded looking strategies is therefore an opportunity to celebrate the breakthroughs that the EAC has made, but also to look squarely at the significant challenges we face in the period ahead..."¹¹ He continued showing that EAC's organizational reforms is necessary to fit into the context of moving on the higher stages of integration. These reforms which can be realized through administrative actions or relevant amendment of the treaty are the

⁹EAC, "Protocol on the establishment of the East African Community Common Market", www.eac.int/commonmarket consulted on 17th July 2013

¹⁰EAC, "Treaty of Establishment" <http://www.mineac.gov.rw/index.php?id=27>, art 76, consulted on 17th July 2013.

¹¹ EAST AFRICA Hand Book 2011, *INFRASTRUCTURE Key Economic Integration*, p.4.

key to unlocking the full potential of a more effective EAC. So it is a work of sectoral council on Legal and Judicial affairs which is already seized of a number of areas of the treaty that need to be adapted to fit the current situation in the integration process.”¹²

As far as amendment of the treaty is concerned, we do not take the same position with the EAC Secretary General, because the treaty is clear about the general principles of the integration, the problem is how Partner States apply, or implement Laws and regulations in place. So, instead of amending, efforts should be made in enforcing what already is provided delegata.¹³

This involves measures that should be taken against the non compliant. If resolutions get such enforcement, then it is up to workers to offer their skills, willingness and ability to the labor market, knowing that their rights are protected.

The main question is to match the law in theory with the law in practice. How are the integration of domestic laws and their compliance to the treaty and conventions of the community made, to allow citizens to benefit fully from the common market?

At which extent are policies set up by the community, to facilitate the application of laws to the realities in the society of the EAC?

The process of integration in the common market is also distorted by different conditions. How can we imagine a market competition where the competitors are coming from different educational, political and social background, and they are required to meet the same standards? This is why barriers to the process of integration are obvious.

There is also a problem concerning taxation. The question to be answered here is to know if the legal arsenal of the community is sufficient enough to protect competitors against double taxation. What says the laws and what is done practically?

If there are provisions for establishing and regulating the common market within the EAC, are all the recommendations stated in the treaty of establishment implemented? If so, is the competitiveness being profitable by the beneficiaries? Which we doubt on, and if not, what

¹² Idem P.6

¹³ C. Musoni, The Competitiveness of the Labor Market in East African Community, Paper presented in class, NUR, 2012, p. 15.

should be done in order to facilitate the quick integration of the common market according to the spirit of the treaty of establishment.

We realized also that, the free movement of people and workers and the cross- border facilitations, aiming the ease accessibility to the labor market within the EAC, is not respected to the same level by the member states. Some of them respond positively, therefore they receive competitors from other members states, while others exercise a kind of protectionism so as their citizens do not lose the employment on the benefit of the foreign competitors. This lack of uniformity has caused the unbalanced treatment on the market. This issue should be analyzed seriously in order to find solutions against possible infringement to non discrimination principle.¹⁴

The security issue within the community is becoming a big challenge to the free competition in the wide labor market.

These are the questions that the research addresses in order to find accurate solutions and recommendations. Thus, issues may be summarized or highlighted as follow:

- The competition on the labor market is tackled by the will of concerned governments, to promptly implement the resolutions of the council. So what should be done to enforce EAC council resolutions?
- Harmonization process, a *sine qua non* condition for a better labor competition is slowing down because of the lack of compliance with the community regulations and the international labor standards. Which methodology should be adopted to make legal harmonization efficient and effective?

4. Aims and objectives of the study

This research concentrated on legal framework analysis in terms of labor market and other related fields, to contribute to the awareness of all the actors in the EAC integration process. The study applied legal provisions to the reality on the ground, and it found out gaps to be filled on either side, in order to make the integration more effective, given that integration in all areas, is a

¹⁴ Art. 10.2 of the common market protocol.

process which needs day to day, step by step, new updates and contributions of different actors, from the EAC treaty of establishment up to the achievement of States Federation objective. Our objective was to find out the obstacles to the implementation of good policies based on noble provisions, and solutions to overcome those obstacles, in order to attain the real integration in terms of labor competitiveness.

The study put a clear emphasis on the feasibility of a fair competition according to the legislation at the regional level and domestic laws as well. This research is a contribution to enhancing and improving legal frameworks that must be put into place to activate the various declarations on free movements, under the customs union and common market operations.

5. Methodology

In our research, the methodology that was used is the qualitative methodology. The documentary technique conducted us in the literature review and the use of internet.

This helped us to analyze the theoretical and legal background of the competitiveness of the labor in the common market of the East African Community.

This technique was supplemented by the analysis of East African Community conventions, domestic laws and case laws, in order to have a fair sense of legal provisions to apply to the practices.

We also used interviews for getting the views from different stakeholders in the area that forms the subject of our research.

The comparative method was an input for a clear understanding of the EAC, given that other similar communities like the European Union, have born before the EAC, and still operating in the same conditions. By this method we compare the EAC Treaty of establishment to the Treaty of Rome of 1957, establishing the EEC, and the similarities we found helped us to analyze the subject matter of the research. We also used this method to confront different provisions from the legal arsenal of each EAC partner state, as well as other international standards and best practices. The finding were treated on the basis of legal objectivity.

Given that EAC partner states come from a different historical, cultural, political and social background to make a harmonized community, it is obvious that their respective legal systems be influenced accordingly. It is why we used the exegetical method to interpret legal texts, basing on the context and the mindset of the legislator, as well as the historical and/or motivation background in order to look for adequate solutions remedying to those differences.

In order to establish the relationship between the data or different ideas related to our research and the legal problem to be solved, the analytical method was helpful.

During the literature review, apart from the legal texts, different legal authors argue on the subject in different ways. To analyze and exploit those ideas, and have a legal critique, we used the synthetic method.

6. Scope of the study

This study is conducted in the field of “Competition Law and consumer protection”¹⁵, and it analyzes the issues of “the competitiveness of the labor market in the EAC”. It focuses mainly on the community but also reaches the domestic law in terms of integration and harmonization, and deals with the process of implementation of related legal provision and the impact to the competitors on the market. Emphasis was put on how the competition on the EAC labor market is regulated, and at which level the competitor`s rights are observed and protected.

7. Outline of the chapters

Our research begins with an introduction, and the first chapter deals with the place of the labor market within the EAC, because the labor market is a part of the entire common market. Through this chapter, we analyzed the reasons and the importance of the labor market towards other components of the entire market. The second chapter concerns the assessment of competitiveness of the labor market in EAC, how it is regulated and implemented. Gaps found all along the study

¹⁵A. Ngagi, *competition law and consumer protection*, course material, NUR, LLM Business Law, 2012, unpublished.

and analyzed within the two chapters, have been stressed on, in the conclusion where recommendations are provided.

CHAPTER I: PLACE OF THE LABOR MARKET WITHIN THE EAC

The EAC revised Treaty of establishment predicted the steps to be followed, in order to achieve the ultimate goal of the community, a political federation. This is stipulated in the article 5.2 of the treaty for establishment of the East African Community.¹⁶

Each of these initiatives is independently regulated and for the purpose of fixing the limits of our research we have been conducted to focus on the Common Market, which has also different areas of expansion that are regulated accordingly. Amongst those areas, we have the labor market which, of course, benefits from an appropriate regulations and international standards, different from goods and services market, or capital market.

Through this chapter, we were called to describe the place of the labor market within the whole EAC, and for this purpose, we had to know the key areas of the EAC, which shall allow us to well analyzing the specific sphere, reserved to the labor market, towards other horizons of the community.

I.1. General Overview on EAC

The East African Community is a regional community which is guided by international best practices and standards, for the economic growth of its members, the life improvement of the citizens and the equal sharing of the benefits coming from the co-operation relations between Member States.

This objective is achieved through a number of legal instruments, and the main instrument is the EAC treaty of establishment, which provides for the enactment of other laws, and put in place

¹⁶Art 5.2 of the Treaty for Establishment of the East African Community, amended on 14th December, 2006 and 20th August, 2007):“[...] *the partner states undertake to establish among themselves and in accordance with the provisions of this treaty, a customs union, a common market, subsequently a monetary union and ultimately a political federation, in order to strengthen and regulate the industrial, commercial, infrastructural, cultural social, political and other relations of the partner states [...]*”

necessary institutions for the implementation of its provisions.¹⁷ This research is a legal research, it is why the legal analysis of the legal instruments of the community, was the focal guide of our research.

I.1.1. Brief presentation of the EAC

In addition to the presentation of the EAC that we made through the general introduction, EAC has set up objectives to be achieved, and the four stapes cited in the article 5.2 of the treaty cited here above, are the guidance tools, for the analysis of how the community is moving towards its mission to achieve its goals. They are the pillars of the sustainability of the community.

For the first phase, the community has put efforts to the two first features, the customs union and the common market, because they are the core foundation of the achievement of the ultimate goal, the political federation, which, of course implies the monetary union.

The Customs Union establishment is particularly provided by the art 75 of the EAC treaty of establishment as it has been amended. The paragraph 2 of this article recommends that *“the establishment of the Customs Union shall be progressive in the course of a transitional period as shall be determined by the Council.”*¹⁸

Its objectives are summarized into four main points¹⁹:

- To further liberalize intra regional trade in goods,
- Promote efficiency in production within the community,
- Enhance domestic, cross border and foreign investment in the community,
- Promote economic development and industrial diversification in the community.

So far, as provided by the EAC treaty of establishment, the protocol on the Customs Union has been ratified on the 2nd of March 2004, and other support regulatory tools, in order to set a strong

¹⁷ Art. 151 of Treaty for Establishment of the East African Community.

¹⁸ Art 75, para. 2, of the same treaty.

¹⁹ Art. 3 of the protocol on the establishment of the EAC Customs Union.

customs union, are now in place. We may cite, inter alia, the East African Community Customs Union Management Act, 2004; the disputes settlement regulation; anti- dumping regulation²⁰; etc

In the theory of economic integration, a Customs Union is supposed to be the third stage of integration, after a preferential Trade Area.

However, the Treaty for the Establishment of the East African Community provides that a Customs Union shall be the first stage in the process of economic integration. Therefore, real economic integration in the region is subjected to the coming into being of customs union. The Treaty provides that the Customs Union shall be followed by a Common Market, then a Monetary Union and subsequently a Political Federation.²¹

The 15th ordinary summit of the EAC heads of state, held in KAMPALA Uganda on 30th of November 2013, approved and signed the protocol on the establishment of the EAC Monetary union, and directed that all partner states should conclude the ratification process of the East African Monetary Union (EAMU) protocol by July, 2014.²² The protocol recommends the creation of other support administrative institutions as well.

This is to show, the implementation trend of the EAC integration process through the four integration stages.

In this section we talked about Customs Union and Monetary Union, a bit little more about the political federation process, in order to describe the picture of the East Africa Community and its integration process, and we have put aside the East African Common Market, to be talked about in further developments, because the object of our study, and especially this chapter, whereby we tried to define the place of the Labor Market in the EAC, takes its main source from the EAC Common Market.

²⁰ See "Customs Union Management Act, 2004", www.customs.eac.int, on 17th July 2013.

²¹ Art 2 of the EAC Treaty of establishment.

²² See "the communiqué of the 15th ordinary summit", on www.eac.int/news, on 17th July 2013.

I.1.2 Labor market and the treaty for establishment of the East African Community

The place of the labor market in the EAC is defined by laws and regulations governing the community, from the Treaty of Establishment of EAC, up to different directives within the community.

In its article 76, the treaty provides for the creation of the common market, and the most important thing is that, the provision is clear about the content of the common market, whereby, it emphasizes on the labor market. The treaty went further in the same article saying that the regulations for implementation must be put in place.²³

The paragraph 4 of this article provides for the conclusion of a specific protocol by member states, for the creation of a common market. This means that the treaty of establishment of EAC, doesn't talk a lot of things about the common market, but it opens a large door for details through a protocol. The intent of all the provisions is the integration and harmonization of laws to the model of the common market of the EAC, but for the purpose of this research, we move forward targeting the only labor market.

The article 104²⁴ of the same treaty goes in deep regulating the free movement of persons, labor, services, right of establishment, and residence. It provides that, the Partner States shall agree to adopt measures to achieve the free movement of persons, labor and services and to ensure the enjoyment of rights of establishment and residence of their citizens within the community. The article continues saying that, the Partner States undertake to co-operate in the enhancement of the social partnership between the government's employers and employees so as to increase the productivity of labor through efficient production.

²³ Art 76 of the Treaty: "There shall be established a common market among the Partner States. Within the Common Market, [...] there shall be the free movement of labor, good and services [...] and the right of establishment regulations..."

²⁴EAC, "The Treaty of establishment of EAC" art.104, on <http://www.eac.int/>, , on 17th July 2013.

The paragraph 2 of this article, as it is stated in the paragraph 4 of the article 76, emphasizes on the purpose of the article, to concluding a protocol between member states on the free movement of persons, labor and services, etc. whereby, details shall be included through the consent of Member State`s council.

The Paragraph 3 of the article 104 of the treaty of establishment sets up the guidance to further labor legislations, whereby, it enumerates what should be agreed on, by Partner states` council.²⁵

All the recommendations of the treaty must be observed in order to achieve the objectives and we have analyzed how much the recommendations of the treaty of establishment of EAC have been honored all along the integration process in the field of labor market, through protocols and regulations.

²⁵The Partner States shall, as may be determined by the council:

- a. *Ease border crossing by citizens of the Partner States,*
- b. *Maintain common standard travel documents for their citizens,*
- c. *Effect reciprocal opening of border posts and keep the posts opened and manned for twenty four hours,*
- d. *Maintain common employment policies,*
- e. *Harmonize their labor policies, programs and legislations, including those on occupational health and safety,*
- f. *Establish a regional center of productivity and employment promotion and exchange of information on the availability of employment.*
- g. *Make their training facilities available to persons of other Partner States, and*
- h. *Enhance the activities of employer`s and worker`s organizations with a view to strengthen them.*

(EAC, The East African Community treaty of establishment, August 2007, Art. 104, Par.3)

I.1.3 Labor Market and the EAC Common Market Protocol

Article 76 of the Treaty of establishment of EAC, in its paragraph 4, provides for the conclusion of a protocol on the EAC Common Market. It is in this frame that the common market Protocol has been adopted on the 20th November 2009 and entered into force on 1st July 2010.²⁶

The business dictionary defines a common market as “*a group formed by countries within a geographical area to promote duty free trade and free movement of labor and capital, among its members*”.²⁷

This definition makes us comfortable, because it stress on the object of our research, which is the labor market, seen not as an isolated market, but as part of the entire wide region market.

In East African Community, the Common Market represents the second stage of the regional integration process (as defined by the Treaty for the Establishment of the East African Community), following the Customs Union, which became fully-fledged in January 2010. The establishment of the East African Community Common Market is in line with the provisions of the EAC Treaty. It provides for “Four Freedoms”, namely *the free movement of goods; labor; services; and capital*, which will significantly boost trade and investments and make the region more productive and prosperous.²⁸

Although we are saying that the EAC common market is a wide market in which the labor market is inserted, we note clearly that every corner of this market refers to the labor, which means that the entire common market is made by labor, provided either by an employed person or a self-employed person. This shall be proved by the existence annexes to the EAC Common

²⁶The Protocol on the Establishment of the East African Community (EAC) Common Market entered into force on 1 July 2010, following ratification by all the five Partner States: Burundi, Kenya, Rwanda, Tanzania and Uganda, available on <http://www.commonmarket.eac.int> on 17th July 2013.

²⁷Business dictionary, “Common Market definition”, on <http://www.businessdictionary.com/definition/common-market.html>, Visited on 2nd Nov. 2013.

²⁸ EAC Treaty, art 76, “Definition of the Common Market by the treaty”, on <http://www.commonmarket.eac.int/cm-background.html>, Visited on 2nd Nov. 2013.

Market Protocol: The free movement of persons; the free movement of Workers; the right of establishment; the right of residence; the schedule of commitments on the progressive liberalization of services; the schedule on the removal of restrictions on the free movement of capital.

All this legal supports have a direct relationship with labor. So, labor market in the EAC shall be defined as substantial and integrated part of the Common market, and all provisions related to the common market, directly have an impact on the labor market. If we talk about competition in the whole common market, it is the labor that is concerned because, the market is made of goods and services, produced through the labor efforts.

The only difference is that labor is not in trade, but the production of the labor, can be in trade. So we may say that the common market is created to harmonize and promote economic activities, for the benefit of the citizens of the EAC partner states. For the community to achieve this main objective, the competition must be regulated, and consumers of goods and services be protected.

In the light of the EAC common market protocol, especially in the regulation on the free movement of workers²⁹, the labor market is specified. It includes also self- employed people. The EAC Common Market Protocol defines a self-employed person as a person engaged in an economic activity, not under any contract of employment or supervision, and who earns a living through that activity. A Worker is defined as a person who performs services for and under the direction of another person in return for remuneration.³⁰

We may confirm that this protocol, apart from trade regulation, the big part of its provisions, concern labor. Even though, the content of the Common Market Protocol provides a lot about rights of persons, services and labor, which implies labor market in all areas of the Common Market, it provides also for other areas of co-operation, such as trade, protection of cross border investments, Economic and financial sector policy coordination, competition and consumer welfare, Commercial policy, Transport, Environmental management, research and technological

²⁹ Annex II of the CMP.

³⁰ Art 1 of the CMP.

development, intellectual property rights, industrial development, Agriculture and food security³¹, and each of these areas, can't operate without labor. But for the purpose of delimitation of the research, we will be conducted to have the basis of the regulations on workers, which include workers and self-employed persons.

I.1.3.1. Free movement of workers

In compliance with the art 104 of the EAC Treaty of establishment, the Common Market Protocol guarantees the free movement of workers who are citizens of the other Partner States and explains that the partner states shall ensure the non discrimination of workers of the other Partner States, based on their nationality, in relation to employment, remuneration and other conditions of work and employment.³²

The non discrimination of workers gives them entitlement accompanying the free movement. They are entitled with the application and acceptance of the employment, moving freely within the territory of the Partner State in the purpose of employment, contract conclusion in accordance with national laws, freedom of association, social security,... according to national laws in relations with employment.³³

We realize that, this provision gives to the workers all the rights entitled to the citizens of the hosting Partner State, only in a specific field of employment, which means that, there are preliminary documents that the moving worker should have, to attest really that he is seeking a specific job, which has been advertized.

This constitutes a big limitation to the principle of a free movement of workers, because they should be allowed to move for looking for an employment even though there is no any actual employment. This freedom is also limited by national regulations and procedures of the host Partner State in terms of public security, Public policy and health as well as immigration

³¹MINEAC, *East African Community Common Market*, Training Module, Feb.2011, p.23.

³²EAC, The protocol of establishment of the EAC Common Market, 2009, Art.10 Para.2.

³³Art.10 Para.3 of the same protocol.

administrative procedures³⁴; because these areas are sensitive and it is difficult to know clearly when one may infringe public security and immigration procedures.

Another important thing is that the moving worker may be accompanied by spouse, children and dependants and all have the same rights in the area of employment. They may operate as workers or self-employed persons.³⁵

The office responsible for employment in a Partner State shall facilitate the citizen of another Partner State who seeks employment in the territory of that Partner State to receive the same assistance as would be accorded to a citizen of that Partner State, who seeks employment.³⁶

This reflects an exaggeration, or an objective to achieve in a long run, because, even though such good regional plans may be projected, they are tackled by the high national unemployment rate, that can push some countries to protect their citizens from foreign workers invasion, and ignore the above mentioned right. But it is better to include such provision, because it may also be used to train inexperienced local workers, and raise the development up to the regional standard.

To facilitate the free movement of workers, and the awareness of job vacancies, the EAC Protocol on the establishment of the East African Common Market determined for each Partner State, for a specified period, a schedule of different field of employment it offers, so as people from respective countries compete for job acquisition.³⁷

It seems that the article 10 of the EAC Common Market Protocol is the only article that regulates the labor market, but as it has been explained, every part of this protocol provides for the labor.

³⁴ Art.10 Para.11 of the same protocol.

³⁵ Art.10 Para.5,6 of the same protocol.

³⁶ Art.10 Para.7 of the same protocol.

³⁷ Annex II on free movement of workers, Schedule for the free movement of workers.

I.1.3.2 Integration of workers and harmonization process

Given that the regional labor market is subjected to the national laws, of the host Partner State, according to different political and social backgrounds of the Partner States, national laws are differently elaborated, and to working together, those laws should be harmonized.

It is in that perspective that, Partner States shall undertake to harmonize their labor policies, national laws and programs, the national social security policies, laws and systems.³⁸

A labor market offering equal opportunities to job seekers requires competitors having benefited equal opportunities in professional capacity building to acquire needed skills to the market. This requirement to be successful, curricula, examinations, standards, certifications and accreditations of educational and training institutions, must be harmonized.³⁹ The mutual recognition of academic and professional qualifications depends on how much harmonization of educational and training institutions is successful.

This is crucial, especially for the competition purpose, because the competitors should have asame education background for a fair competition.

I.1.3.3 Right of establishment and residence

The protocol for establishment of the East African Community Common market guarantees the right of establishment for nationals of EAC Partner State. The beneficiaries of this right of establishment are self employed persons (natural persons), and firms and companies (legal persons).⁴⁰

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. A self employed person shall join social security scheme in accordance with the national laws of the host Partner State. In all circumstances, he shall be accompanied by

³⁸ EAC, The protocol of establishment of the EAC Common Market, 2009, Art.12 Para.1;2.

³⁹ Art.11 Para.1 (b) of the same protocol.

⁴⁰ Art.13 of the protocol of establishment of the EAC Common Market.

a spouse, children and dependants. The limitations to this right are similar to other rights limited by the Host Partner State`s public policy, public security or public health.

The right of residence shall be granted to a worker, a self-employed person and a spouse, child and dependants of a worker or self employed person. The basis of the residence is the work permit and other relevant documents according the host Partner State national laws.⁴¹

I.2. Relationship and impact of different players

Job seekers, party on the labor market, in other words, the competitors, are made by citizens from other Partner States and existing workers, and this has an impact on the wages determination according to the exported skills toward the skills of existing workers, and the level of the economy of the hosting country. It is crucial to weigh and analyze the relationship and the impact of players from different background, having to respond to the same standards and be equally regulated. This impact refers probably to the wages and employment, the two main variables which are the indicators of the level of the competition on the labor market.

I.2.1. Competitors or labor providers

As said above in the introductory note, this category is made by citizens from other Member States on one hand, and the existing workers of the hosting country on the other hand. Even though the harmonization efforts in different areas of co-operation in the community, are being implemented, they are not yet achieving a satisfactory trend, and this is the reason why, obviously the gathering of people from different realities on the same market, in an integration and harmonization context, must bring a new concept of the market within the economy of the hosting country.

By a comparative approach, we analyzed the impacts of immigration in the hosting country economy, as far as wages and employment are concerned in the East African Community labor market.

⁴¹Art. 14 of the same protocol.

According to Dr. Martin Ruhs⁴² *The impacts of immigration on the labor market critically depend on the skills of migrants, the skills of existing workers, and the characteristics of the host economy....If the skills of migrants and existing workers are substitutes, immigration can be expected to increase competition in the labor market and drive down wages in the short run. The closer the substitute, the greater the adverse wage effects will be. Whether and to what extent declining wages increase unemployment or inactivity among existing workers depends on their willingness to accept the new lower wages. If, on the other hand, the skills of migrants are complementary to those of existing workers, all workers experience increased productivity which can be expected to lead to a rise in the wages of existing workers.*

Even though wages and employment are not the only variables that respond to immigration impacts, because other parameters like the increase of investment and the change of the technology used in the production, and the mix of goods and services, we limited our research on wages and employment for the purpose of a competitive labor market. To better analyzing the effects of immigration, we found crucial to know who is defined as a migrant.

Migrants or immigrants are commonly people that are subjected to the immigration control, but, given that some countries are governed by bilateral or multilateral conventions that provides for some waivers in immigration matters, up to the range the immigration control is almost cancelled, there is no a precise definition of migrant.

In UK for example, there is no consensus on a single definition of a migrant. Migrants might be defined by foreign birth, by foreign citizenship, or by their movement into a new country to stay temporarily (sometimes for as little as a year) or to settle for the long-term. Some analyses of the impact of migration even include children who are UK-born or UK nationals, but whose parents are foreign-born or foreign-nationals, in the migrant population. In addition to those categories, there is another one made by the commonwealth members. The impossibility of setting a clear

⁴²M.Ruhs, The labor market effects of immigration, University of Oxford, 2014, p. 2, <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/brifing> visited on 07/04/2014.

definition of migrant in UK obliges researchers, to weigh any category to find out the effect of immigration to the labor market.⁴³

In EAC, migrant is defined as a citizen of one Member State, moving to another Member State, the hosting country. Here the definition seem to be simple, because categories of citizens in EU, where nationality may be acquired by the time spent to the territory, or by the fact of being born there, do not exist in East African Community members states except in KENYA where laws confer the citizenship to a migrant staying in Kenya from the 12th December 1963.⁴⁴

This issue is regarded not only though the formal angle, but also we know that, beside the movement of labor, categories set up by Member States, basing on the International Standards Classification of Occupation (ISCO), there is also an informal labor market which may have an impact on the employment and wages. The informal market is mainly maid by low level jobs like in garages, where citizens from UGANDA for instance, are better than domestic competitors, and sometimes those Ugandans perform the service by experience only while others are holding theories and certificates, while the market needs the well performed service. In addition, given that there is not yet a single currency in the community, and the cost of life being different within the Member States, immigrant with a low cost, will obviously cause the shooting dawn of wages. This applies to both formal and informal market.

According to Mrs MUGWANEZA Pacifique⁴⁵, this has a negative and positive impact. Negative because it eliminates the existing workers and creates unemployment, which is against the will of the governments, in setting up the categories of workers that have to move, have based the choice on the areas where each country has a lack of skills, to avoid the creation of unemployment? But on the other hand, it has a positive impact because; the domestic competitors take a time to learn from the experiences of those immigrants.

⁴³Briefing on "who counts as a migrant in UK, see on www.migrationobservatory.ox.ac.uk. visited on 07/04/2014.

⁴⁴The Kenya citizenship and immigration Act, 2014, art 16, available on www.kenyalaw.org visited on 07/04/2014.

⁴⁵Interview with MUGWANEZA Pacifique, in charge of the Regional Economic Integration and External Sector, in the MINECOFIN. Interviewed on 12th April 2014

We can say that we share the respondent`s opinion, because, especially in Rwanda, either on the formal or informal market, Rwandans are entering a new system with a different education background, while, others are familiar with it for a long time ago, and the country want to reach the standards of the community, so those services permitting to raise a country to the required standards must be welcomed, and it is an opportunity for the nationals to learn and to plan the taking over the responsibilities. The main responsibility of the Rwandan government being to regulate and monitor carefully this sector.

I.2.2. Consumers or employers

This category is made by the beneficiaries of the outcomes of the services or labor availed by competitors. They have the rights to choose the suitable services matching with their needs, because they pay their money. The question here is to know, if those consumers have enough knowledge or the awareness of the functionalities of the market. This is why they have to benefit from a certain protection against possible abuse of the market. This protection is a legal matter which has been further analyzed. This ignorance is likely to exercise also a great impact on the employment and wages.

The survey on awareness and perceptions amongst Rwandans about Regional integration⁴⁶ was made on different categories of stakeholders of East African Community initiatives, sampling from the General public, SME`s, Civil society organizations, private sector organizations, Corporate, and Government ministries. The findings showed that, for the level of awareness by individuals and institutions, as far as the East African Common Market is concerned, there is not a clear difference between the common market and the customs union. There is a lack of differentiation between the two initiatives. They are taken to mean one and the same thing. So there is a need to educate people in order to have a clear understanding of each initiative, to permit them to enjoy the benefits attached to each initiative. It has been noticed that people show a high level of general understanding, but a poor understanding about the specific EAC

⁴⁶ TMEA & TNS RMS, Regional Integration: A Survey on awareness and perception amongst Rwandans, March 2012, p. 15

integration process initiatives, which includes also the benefits of the labor market misunderstood by the general public and institutions. This applies to the consumers of different services provided from initiatives of the community, and the lack of awareness brings a lack of interest in all the benefits, because they are unknown. It is necessary that different players put their emphasis beyond the simple awareness to reach the level of being engaged participants.⁴⁷

⁴⁷*Id.* P. 16.

CHAPTER II ASSESSMENT OF COMPETITIVENESS OF LABOR MARKET IN EAC

We have, through the first chapter, demonstrated the place occupied by the labor market, as far as regulatory framework is concerned, but we focused on one aspect of how the legislator have provided for its existence within the whole common market of the EAC. At this level, we talked about how border barriers had to be moved, and countries sovereignty violated on the benefit of the citizens from Partner States, to facilitate them to seeking employment.

This chapter doesn't go far away from this aspect; it is its continuation showing the circumstances and the way forward to access to employment through competition. What do provide laws and international standards, what are the applicable laws, and how mach this market is competitive?

Before going into deep analysis, let us provide some definitions of the key terms which are the base of our current analysis.

According to the business dictionary,⁴⁸ *labor market is a nominal market in which Workers findpaying Work, employers find willing Workers, and wage rates are determined. It may be local or national(even international)...They depend on exchange of information between employers and jobs seekers about wage rates, conditions of employment, level of competition and job location*⁴⁸.

According to the same source, competitiveness means:⁴⁹*The ability of a firm or a nation to offer products and services that meet the quality standards of local and world markets at prices that are competitive and provide adequate returns on the resources employed or consumed in producing them*⁴⁹.

The first definition puts emphasis to the relationship between the workers and employers. There must be the availability of the employer willingness to offer job, and of the job seekers. The two

⁴⁸Business dictionary, <http://www.businessdictionary.com/enableimages.php> ,visited on May 1, 2012.

⁴⁹ Ibid.

elements are linked by the information provided by the employer to the job seeker, about rates, and level of competition.

At the other hand of the definition relating to the competitiveness, the author talks about the ability, to provide what is needed on the market and that must meet the quality standards of the market, for a fair cost.

In one sentence, to be competitive on a labor market, the available jobs acquire the skills responding to the need of the market, fulfilling the required standards, and the job seeker, who is considered as a competitor having his skills and experience as a product to the market, must fulfill all qualities, required by an available job on the market, and the lack of a single ability of required qualities and standards makes him a weak competitor.

The definition is delicate in the way one may be in confusion of knowing, between the employer who offers a job, and the employee who executes the job, who is the competitor, and who is the consumer. It is clear that a market can't exist without product made available by producers in order to raise their income in the specific area of productivity, and they avail the products that respond to the need of the consumers. So we realize that the theory, even though, it doesn't adequately reflect the relationship between an employer and an employee, because labor can't be in trade, while other products conceived in the commercial spirit are in trade, it is applicable by analogy.

By this definition have been driven to conclude that the labor market in East African Community is composed by the availability of jobs, as provisioned in the annex of the schedule of free movement of workers, attached to the EAC Common Market (free movement of workers) regulations.⁵⁰ This is the core component of the market, because the later can't exist without labor. In the context of the theory of the demand and supply, on the market there is a category of people or firms in need of a service and they have to buy the service from its provider upon payment of a certain amount of money. Those are the consumers of the service which is considered here as a product, and the producer, considered as a competitor on this market, a supplier of a needed service on the market, brings his experience and skills, to compete with

⁵⁰EAC, common market (free movement of workers) regulations, <http://www.mineac.gov.rw>, on 1 May 2012.

other`s products according to the regulatory requirements in this specific market. So, competitors are providers of services, consumers are beneficiaries of those services and pay for them, and the services expressed through knowledge, skills, experience and the compliance to the required standards are here taken as products. All those actors are linked by a regulatory framework to permit a fair competition and equal treatment among all competitors and for the protection of consumers.

We have analyzed the competitiveness of the EAC labor market in both ways: The labor providers on one hand, and the beneficiaries of labor on the other hand, to see if, each side has the required ability to satisfy the counter party.

II.1 Status of regulatory framework in EAC

At the beginning of this research, we talked about the implementation of norms through their hierarchy, where the Treaty of establishment was implemented through the protocols, but the protocols have regulations annexed to them for their implementation. We analyzed different regulations in accordance with labor market in the EAC. The source of the regulatory framework is the Treaty of establishment of the East African community.

II.1.1. Place of the Treaty of establishment

The EAC Treaty of establishment provides for the regulation of the labor market, and the rationale is quite particular in comparison with the competition for other economic activities. The labor market is here considered as a support of the general competition and at the same time, its life depends on how much efficient is the trade competition. The treaty talks about what must be done to regulate the labor market on its art 104⁵¹. This provision enhances the establishment of common policies in relation with labor and employment, in order to facilitate the penetration and integration of the labor market. Once this is implemented, there should be equilibrium between

⁵¹ See article 104 of the EAC Treaty, available at www.eac.int visited on 02/03/2014.

the labor supply and the demand, and we think this is the competition regulation in this specific area, which shall, of course impact on other aspects of competition in other sectors, because the level of fairness as far as firms' competition is concerned, impacts on the level of employment.

This is confirmed by the International Labor Organization (ILO), commenting on Labor Market Policies and Institutions.⁵²This new clarification, excludes the first concept of taking the labor market competitiveness in the same way as other area of economic competition. This is why, even the EAC Competition act, 2006 doesn't mention in any provision, the regulation of the labor market, because the international practices provide otherwise.

We may conclude saying that the EAC Competition Act, 2006, doesn't regulate the whole common market, because the labor market, the main component of the EAC Common market, doesn't find its place in this field, instead, the mirror to harmonizing domestic laws to the regional standards regarding the labor market, is the EAC Common market Protocol, especially in its article 10. The EAC Common market protocol having its roots in the EAC treaty of establishment as it is stipulated in its article 104 and of course the international labor standards as set up by the International Labor Organization. The real competitiveness of the labor market resides in the compliance and harmonization of Partner States laws with the spirits of the treaty through the EAC Common Market Protocol.

II.1.2. EAC Common Market Protocol and the free movement of workers

The Common Market Protocol guarantees the free movement of workers, because it is considered that labor is one of key factors of production which characterizes the common market. The free movement of workers allows citizens of EAC partner States, to seek, within the

⁵²For, ILO, "An important part of today's labour economics has been increasingly concerned with the issue of labour market institutions/regulations, their interactions and their impact on different economic and labour market outcomes. Labour market regulations actually include labour market institutions as well as part of labour market policies: they cover wage setting institutions, mandatory social benefits, the unemployment insurance system, as well as different aspects of labour legislation (law on minimum wage, employment protection legislation, and the enforcement of the legislation). Labour market policies (LMP), on the other hand, comprise all kinds of regulative policies that influence the interaction between labour supply and demand. They consist of polices that provide income replacement (usually called passive labour market policies) as well as labour market integration measures available to unemployed or those threatened by unemployment". Available at <http://ilo.org/empelm/areas/labour-market-policies-and-institutions/> visited on 02/03/2014.

community, better living and working conditions and shall give them the opportunity to enhance their professional experience.⁵³

The free movement of persons from partner States as it is provided by the Article 9 of the Common Market protocol, is different from the free movement of workers, provided by the article 10, in the way that the free movement of persons, concerns any person who travels for any reason in the partner State while, the free movement of Workers concerns people who are seeking an employment, or establishing themselves as self-employed. This freedom is of course subjected to the domestic regulations, which are conceived in harmonization with the community regulations.

II.1.2.1. Who is a worker?

The definition of a worker as it is above given, excludes however the self-employed person. The business dictionary defines a self-employed person as “A Sole-proprietor, or partner in a partnership to whom the legal requirements under the contract of employment do not apply. He or she, however, may employ others under such contract. Self-employed individuals obtain their own work or sales and pay their own expenses.”⁵⁴

Prof. Dr. Manfred Weiss⁵⁵, defines the self employed as “he who essentially is free in organizing his work and in determining his working time. The personal freedom is the main characteristic of being self employed.”

Lined up with those considerations, we can combine the two kinds of worker into one, which may be defined as any person who performs services, either, for and under the direction of another person, in return for remuneration, or a self-employed operating as a sole-proprietor or a partner in a partnership to whom the legal requirements under the contract of employment do not apply. The concerned workers in this work, are workers who are citizens of Partner States.

⁵³ MINEAC, East African Community Common Market. Training Module, Feb.2011, *Op.cit.* p. 10.

⁵⁴The definition of Self-employed, <http://www.businessdictionary.com>, Visited on 12th Dec. 2013

⁵⁵ M. Weiss, Labor law and industrial relations in German, J.W Goeth University, Frankfurt, 1997, p. 41

II.1.2.2. Annex II of the common market protocol

The regulation 2 of the EAC Common Market (free movement of workers) Regulations⁵⁶, explains the purpose of these regulations saying that “*the purpose of these Regulations is to implement the provisions of Article 10 of the Protocol and to ensure that there is uniformity among the Partner States in the implementation of the Article and that to the extent possible, the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol*”.⁵⁷

The target of these regulations is the implementation of the only article 10 of the protocol that has been explained here above. Taking its roots from the article 104 of the treaty of establishment, the art 10 of the protocol provides for the fundamental rights of the worker who move to seek employment in the territory of a Partner State.

A citizen of a Partner State, who seeks to enter the territory of another Partner State, must present the contract of employment to obtain a pass for six months, in order to seek a work permit state.⁵⁸

We think this is a limitation to the freedom of workers within the community, because we don't see any regulation providing for a laps of time for seeking a contract, and if, for a same job, some candidates are limited in terms of time for contract negotiation, while others are connected at a full time, the situation shall harm citizens from other Partner States on the benefit of the citizens of the host Partner State.

The Regulations subject the worker to the national laws, policies and immigration administrative procedures of the host partner. If there is no uniformity of administrative procedures, people are not subjected to same conditions.

⁵⁶ EAC, regulation 2 of annex II of the EAC Common Market (free movement of workers) regulations, available on www.eac.int, consulted on 12th Dec. 2013.

⁵⁷ EAC, the East African Community Common Market (free movement of workers) Regulation, Annex II of the EAC Common Market Protocol, Regulation 2.

⁵⁸ Regulation 5 of the same annex.

A worker, who has a contract of employment of more than ninety days in the territory of another Partner State, has the right and obligation to apply for a work permit within fifteen working days from the date of entry into the territory of the host Partner State. However, if the conclusion of the contract is made while the worker stays within the territory of the host Partner state, fifteen days to apply for a work permit are counted from the date of the conclusion of the contract.

The Regulations provides also for the situation of a worker with a contract of employment of not more than ninety days, where the competent authority issues a special pass.

In all circumstances affecting the documents issued for the execution of the employment, such as the end of the contract, when a worker ceases to engage in the employment, or if there is any change affecting the contract, the competent authority, who has issued the work permit or a special pass should be informed within a period specified in the regulations.

For the reasons stated in the regulations, the competent authority may deny to a worker, a work permit (Regulation 7), cancel the work permit already issued (Regulation 8), expel (Regulation 10) or deport (Regulation 11) the worker⁵⁹.

The regulations provided for an information framework to permit to people to access to the information on job vacancies, and the information is published by the secretariat of the community through the ministries in charge of EAC affairs in Partner States.⁶⁰

Once the job vacancy is published, relevant candidates from Partner States are to fill a job application, to submit it, and the selection is made according to the criteria already specified in the job advertisement and administrative procedures of the host State.

Protocols and regulations provide equal treatment during the application period and even during the execution of the employment contract.

This is how the EAC organized its common labor market for the benefits of each Partner State, and they have to compete, bringing to the market varieties of services to sell to EAC citizens for the growth of economic and social lives.

⁵⁹ Regulations 7,8,10,11 of the annex II of the EAC Common Market Protocol.

⁶⁰ Regulation 12 of the annex II of the EAC Common Market Protocol.

II.1.2.3. Who is allowed to move?

Not all categories of workers will be allowed to move, because each Partner State has identified categories of workers and determined the implementation date for each category.⁶¹

For a harmonization purposes, in order to comply with the international standards and best practices, to determine jobs available within each partner states, the International Standard Classification of Occupation (ISCO)⁶² has been used.

The free movement of Workers regulations, provide for a schedule of categories of workers that are needed in each Partner State. The analysis of the schedule conducted us to the following remarks:

- According to the economic development level of each Partner state, fields vary quantitatively and qualitatively.
- EAC Competition act of 2006⁶³ defines competition as a *process whereby two or more persons supply or attempt to supply the same or substitutable goods or services to persons in the relevant market, or acquire or attempt to acquire the same or substitutable goods or services from persons in the relevant market.*

By this definition there is a key element which characterizes a competition and that is supply of the same and substitutable products and services. If we adapt the theory to the case, the competitor has to present the same abilities before the same job they are competing for. If East African Partner States don't have the same standards in different fields of social development, it will be difficult to produce real competitors on the common labor market.

⁶¹MINEAC, "Training module", February, 2011, p.11.

⁶²ILO, *the International Standard Classification of Occupations (ISCO) is an International Labour Organization (ILO) classification structure for organizing information on labour and jobs*, on <http://en.wikipedia.org>, visited on 14th Feb. 2014.

⁶³A.Ngagi, *Competition Law and Consumer Protection*, NUR, LLM Business Law, course material, 2012, p. 35, unpublished.

In the schedule of free movement of workers⁶⁴, some Partner States present offers that are not available for others and it correspond to the education and economic level of the Partner States where competitors come from. It creates therefore a dominant position in the market, because any offer reflects the capacity of human resources within a given country. By that fact, where a country has a monopoly in one employment offer, we can't say that it is a competition. Competition will have its meaning for the similar offers and similar abilities.

Using International Labor Organization classification, Partner States have committed to open up for the following categories of workers:

- By 1st July 2010, the Republic of BURUNDI availed a category of Professionals.
- By 1st July 2010 The Republic of KENYA availed the categories of Managers, Professionals, Technicians and Associate Professionals, Craft and related workers.
- By 1st July 2010 The Republic of RWANDA availed Professionals, Technicians and Associate Professionals.
- By 1st July 2010 to 2015, The Republic of TANZANIA, availed Professionals, Technicians and Associate Professionals.
- By 1st July 2010, the republic of UGANDA availed Managers, Professionals, Craft and related Trades workers.⁶⁵The regulations give also explanatory note⁶⁶.

⁶⁴EAC, Common Market (free movement of workers) regulations, schedule for the free movement of workers, <http://www.commonmarket.eac.int/>, Visited on 04/03/2014.

⁶⁵ EAC, *Annex on the free movement of labor/worker*, available on <http://www.commonmarket.eac.int/>, Visited on 04/03/2014

⁶⁶EAC, *The free movement of workers regulations* available on <http://www.eac.int/>, visited on 5th May 2012:

- 1.** *Administrator and Managers: Directors and Chief executives, Specialized departmental and Managers.*
- 2.** *Professionals: Physical science professionals, Mathematicians, Statisticians and Computing Professionals, Engineering Science Professionals, Health and Life Science Professionals, Teaching Professionals, Legal Professionals, Social Science and Related Professionals, Business Professionals.*
- 3.** *Technicians and associate professionals: Engineering Technicians, Medical and Health Science associated professionals, Physical and Life Science Professionals, Ship and Aircraft, Other Business Social Services, Athletics, Sports and Related Workers Controllers, Business and Social Services Associate Professionals, Primary and Pre-Primary Education and other Teachers.*

According to this classification, all the workers are not allowed to move, only those who are seeking an employment related to what is available within each partner state, are regarded by the provisions on labor and workers in EAC.

We note that there is a reservation by some Partner States, for some kinds of categories of jobs; this reservation is due either to the absence of the need related to the category of the job, or to an unfair competition practice, or to any other reason.

Partner States committed only to four categories of job out of ten that are put to the labor market and this situation limits all those who do not qualify for the available jobs. Neither the community, nor Partner States give any explanation of that choice. Why the remaining categories weren't considered? Are they reserved for the nationals in a kind of protectionism? Are they not competitive to the extent that it is not necessary to advertize them? Or there are not candidates fulfilling the requirements to acquire such jobs. Those categories are⁶⁷:

1. Clerical Support Workers: General and keyboard clerks, Customer services clerks, Numerical and material recording clerks, other clerical support workers.
2. Service and Sales Workers: Personal service workers, Sales workers, Personal care workers, Protective services workers.
3. Skilled Agricultural, Forestry and Fishery Workers: Market-oriented skilled agricultural workers, Market-oriented skilled forestry, fishery and hunting workers, Subsistence farmers, fishers, hunters and gatherers.
4. Plant and Machine Operators and Assemblers: Stationary plant and machine operators, Assemblers, Drivers and mobile plant operators.
5. Elementary Occupations: Cleaners and helpers, agricultural, forestry and fishery laborers, Laborers in mining, construction, manufacturing and transport, [[Food preparation]] assistants, Street and related sales and service workers, Refuse workers and other elementary workers.

-
4. *Craft and related trades workers:Extraction and Building Trades Workers, Metal, Machinery And Related Trades Workers, Air Traffic and Ship Controllers and Technicians*

⁶⁷ILO ,“International Standards of Occupations”, <http://en.wikipedia.org>, visited on 06/04/2014.

6. Armed Forces Occupations: Commissioned armed forces officers, Non-commissioned armed forces officers, Armed forces occupations, other ranks.

7.

As far as right of establishment and residence is concerned, EAC Common Market Protocol ensures the rights of establishment for legal and natural persons of a partner state, who want to establish an economic activity in another Partner State.⁶⁸

We are not interested in all the regulations; we shall be limited to those that talks about self-employed workers, because we have shown that they differ from worker by definition, where a worker is a person who performs services for and under the direction of another person in return for remuneration, while a self-employed person is person who pursue an economic activity, without being under the direction of any other person.

We note also that workers who are citizens of a Partner State, employed in the territory of another Partner State, are allowed to remain in that territory for the purpose of taking up economic activities as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that Partner State at the time when they intended to take up such economic activities.⁶⁹ So we can't be limited by the definition where an employed person is subject to the direction of another person because we are convinced that labor goes beyond that mentality whereby it is considered as an aggregate of all human physical and mental effort used in creation of goods and services.⁷⁰

To acquire the documents permitting the natural person to enjoy the rights of establishment into the territory of another Partner State, the person has to comply with the procedures as it is the case for workers seeking an employment, the only difference being the presentation of key documents, where a worker is required to present a contract of employment, but for the self-employed person, is required to present the license and the certificate of registration, in order to be given a work permit.⁷¹

⁶⁸ Art 13 of the EAC Common Market Protocol.

⁶⁹ MINEAC, "East African Community Common Market", training Module, Feb.2011, Op.cit.p. 15.

⁷⁰ The Business Dictionary, <http://www.businessdictionary.com/definition/labor.html>, visited on 02/03/2014

⁷¹ MINEAC, *Training module*, Op. Cit. p.13.

All of course are subjected to the limitations imposed by the host Partner State on grounds of public policy, public security, or public Health.

A residence permit shall be granted to workers, self-employed person, their spouses and children of the other Partner States who have been admitted in their territories in accordance with the article 10 and 13 of the protocol.⁷²

The basis for residence is the work permit and the residence permit which is obtained upon presentation of a valid common standard travel documents or a national identity card, a copy of the work permit, and any other document that might be required.

All these rights are made available to the citizens of the Partner State, in order to guarantee their freedom, to overcome or legally violate the sovereignty of a country for allowing people to move toward at a range wider than that of its single country, and seek where he can live better.

This is the place of the labor market within the East African Community, and once established it must be well regulated to being competitive and achieving its objectives of providing better lives to the beneficiaries.

We realize that regulatory framework in the area of labor market within the EAC, has been sufficiently elaborated, if we consider what is written in laws. The following chapter added an element of the competition analysis, then, weighs the theory to the trial of the real practice.

II.1.3 EAC Competition Act, 2006

By lack of any consistent law governing the specific labor market, we have been obliged to consider the case by analogy in order to put it on an understandable level of competition, according to the standards available on the East African Common market. This is why; we have shaped the EAC labor market as one of the components of the entire EAC Common Market,

⁷² Art 14 of the EAC Common Market Protocol.

hence, governed by the same laws as far as competition and consumer protection is concerned. So, within this labor market, as it is for goods, capital and services market, we talk about competitors, products, consumers, producers, buyers, providers, etc. and each term shall be used according to the case subjected to analysis. But for the specific case of labor market, the competition seem to be quite different because, as we saw here above, labor is not in trade, therefore, its competition framework can't be measured to any other market in trade. We analyzed instead, the labor market regulation and its interdependence with the competition in the economic sphere. In addition to that, there are limitations to this approach regarding laws in place to regulate the competition in the EAC Common Market of whom the labor market is part.

The EAC Competition act, 2006 applies to all activities and sectors having cross border effect. But that Act must comply with international practices in regulating competition and consumer protection and internal laws of Partner State must be harmonized with the Act.⁷³

We noted however that, the EAC Competition act, 2006 is not explicit on its relationship with the labor market, which is a component of the whole EAC Common Market it is supposed to regulate, especially where it says that, it applies to all activities and sectors having cross-border effect.⁷⁴ According to this article the labor market is not excluded from the field of application of the Act.

The solution is found in the principle of double compliance, where the Act complies with the international standards, although it is not here enough clear, and the compliance of national laws with the Act. The Rwandan Competition and Consumer Protection law⁷⁵ is specific enough on the regulation of the labor market, and its art 4 says that the law shall not apply in all matters regarding employees and employers. Even though this law must comply with the Act, we realized that it is not, because the provision cited above is in contradiction with the Act, but complies with international practices. We propose the inclusion of this aspect in the Act.

⁷³A.Ngagi, *Op.Cit.*p. 34.

⁷⁴ See EAC Competition Act, 2006, Art 4 (1) "This Act shall apply to all economic activities and sectors having cross-border effect." Available at www.eac.int visited on 20/04/2014.

⁷⁵ See, Law n°36/2012 of 21/09/2012 relating to Competition and Consumer Protection, (Art 4) Official Gazette n° 46 of 12/11/2012.

The harmonization of the domestic laws with the EAC competition act, 2006 is respected in member States, except in Uganda, where the competition regime is, till now, on a low step compared to other member States. In UGANDA, apart from some competition policies, the draft competition bill, 2004 is not yet adopted.

In Kenya, Competition is regulated through the Competition Act n°12 of 2010, revised in 2012⁷⁶. Art. 5 (1) provides that *the Act shall apply to all persons including the government, state corporations and local authorities, in so far as they engage in trade.*

It is clear that labor is not concerned because it is not in trade. The Art 5 (5)(b), says that there are activities that are not engaged in trade such as the grant or revocation of licenses permits and authorities, collection of fees for licenses, permits and authorities. This confirms the exclusion of the labor market from the field of this act, because the work permit, one of the main requirements to operate on the labor market, is ignored by the Act. So, although the EAC Competition act, 2006 is not specific on the labor market, the domestic competition laws, which are supposed to harmonize with it, avoid regulating the labor market through their general competition Acts.

This has put us on the path of looking for the labor market regulatory framework elsewhere. While the EAC put in place legal tools, to facilitate regional integration through different initiatives, like the EAC Competition Act, 2006 for the Common Market and the EAC Customs Management Act, 2012⁷⁷, the issue here is that Partner States are required to harmonize and approximate or domesticate regulations in labor matters, but any benchmark similar to other cited initiatives has been initiated. The only available reference being the EAC Treaty of establishment and the EAC Common Market Protocol and it is in this frame that we analyzed the regulatory framework in EAC Partner States, as far as competitiveness of the labor market is concerned.

⁷⁶ See Kenya Competition Act n°12 of 2010, available on <http://kenyalaw.org> visited on 20/04/2014.

⁷⁷ See EAC Customs Management Act, 2012, available on <http://www.rra.gov.rw>, visited on 20/04/2014.

II.2. Impact of the domestic laws

By lack of integrated model laws regulating EAC labor market, and while harmonization and approximation of domestic laws is on its implementation process which may take time, domestic laws play a determinant role in labor market competition regulation. That is why even the Common Market Protocol refers to domestic laws because it acknowledges its insufficiency.

The free movement of workers shall entitle a worker to.../... conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions without any discrimination,⁷⁸ stay in the territory of a partner state for the purpose of employment in accordance with the national laws and administrative procedures governing the employment of workers of the Partner State,⁷⁹ enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host Partner State.⁸⁰

The Partner State shall facilitate the admission of a dependant of a worker in accordance with the national laws of the Partner State.⁸¹ The CMP provides also that the free movement of worker regulation doesn't apply to employment in the public service unless the national laws and regulations of the host partner state so permit,⁸² and it shall be subject to limitations imposed by the host partner state on grounds of public policy, public security or public health.⁸³

All these provisions shows us how much the CMP as a regional instrument gives powers to national laws, as if they are being applied on its behalf. For us, this is dangerous and it may undermine the competition on the labor market since, national laws are not yet harmonized or approximated to the spirit of the region market.

As we have seen above, harmonization of domestic laws within EAC partner states is not yet effectively implemented, and it is why for example some countries impose high charges to issue

⁷⁸ Art 10.3(c) of the EAC Common Market Protocol.

⁷⁹ Art 10.3(d) of the same protocol.

⁸⁰ Art 10.3(e) of the EAC Common Market Protocol.

⁸¹ Art. 10.6 of the same protocol.

⁸² Art 10. 10 of the same protocol.

⁸³ Art 10.11 of the same protocol.

work/residence permit, and others issue them free of charge. This is the case of Rwanda and Kenya where work permit is issued free of charge, while other partner states still charging them. This shows how much the discrimination principle for a fair competition is undermined, because all EAC citizens are not benefiting the same treatment for the same offer although the CMP urges all EAC partner state to remove any provision that infringes the free movement of workers regulation.

The Common Market Protocol provides that a worker who has a contract of employment of a period of more than ninety days in the territory of the another partner state, shall apply to the competent authority for a work permit within fifteen working days from the date of entry into the territory of the host partner state.⁸⁴

The competent authority shall, within thirty days of application of a work permit, issue a work permit for an initial period of up to two years which may be renewed upon application.⁸⁵

The work permit or a special pass, shall be issued in accordance with the harmonized classification of work permit and forms, fees and procedures as may be approved by the council.⁸⁶

The protocol provides for the non discrimination principle⁸⁷ and entitles the EAC citizens the entry without visa, free movement within territory of the partner states and exit without restrictions. Annex I for application of this provision⁸⁸ provides for a visitor`s pass to entitle the holder to enter and stay in the territory of partner states up to 6 months. In regard with this regulation, the Kenya Citizenship and Immigration Act, n° 12/2011 provides for ninety (90) days extendable to an aggregate of six (06) months. In Tanzania, the maximum period for the visitor`s

⁸⁴ Regulation 6.1 of the annex II of the EAC Common Market Protocol.

⁸⁵ Regulation 6.7 of the annex II of the EAC Common Market Protocol.

⁸⁶ Regulation 6.9 of the same annex.

⁸⁷ Art 7 of the Common Market Protocol.

⁸⁸ Regulation 5(3), of the annex I of the Common Market Protocol.

pass is ninety days,⁸⁹ while in Rwanda visitor`s pass is issued for a period of up to six (06) months to the citizens of EAC.⁹⁰Uganda doesn`t exceed two (02) months.⁹¹

This is an example of divergences of domestic laws of one specific area, which might cause a great harm to the fair competition on the labor market ground. So harmonization is critical to tackle the negative impact of national laws to whom the protocol gave power of reference regardless their lack of uniformity.

Another testimony of a negative impact of the domestic laws is the divergences on the non discrimination issue within different partner states: The protocol provides for non discrimination on grounds of nationality in matters relating to employment,⁹²and prohibits the rejection of work permit on grounds of nationality. In Kenya nationality is ground for rejection of work permit,⁹³but in Tanzania, S of NEPSA provides that foreigners should not be employed in certain occupations reserved for nationals.⁹⁴This is the particularity of Tanzania; all other partner states respect the non discrimination principle in their legislations.

II.3 Indicators of efficient and effective integration in EAC labor market

As said, all Member States harmonizes their laws according to the provisions of the CM Protocol, as benchmark. This protocol was predicted by the EAC Treaty of establishment.⁹⁵It has been conceived for multiple purposes, but we have been limited to the object of this research, the labor regulation that we find on the art 104 of the treaty, which means that all the provisions contained into this article must be taken into consideration by the protocol.

⁸⁹ Regulation 13(1) of the Immigration regulations of 1997

⁹⁰ Art 8 (3) of the ministerial order n° 02/01 of 31/05/2011 establishing regulations and procedures implementing immigration and emigration law.

⁹¹ Regulation 6(2) of SI 16/2004.

⁹² Art 10 (2), of the Common Market Protocol.

⁹³ Kenya Citizenship and Immigration Act, n° 12/2011, S 40 on issuance of work permit.

⁹⁴ CLADHO, *op. cit.* p. 66

⁹⁵ See the EAC Treaty of establishment Art 76(4), available on <http://www.mineac.gov.rw> , visited on 21/04/2014.

The competitiveness of the labor market is based on how much the internal laws are harmonized, but also, that harmonization might respect international practices as a general benchmark to the extent that everywhere an EAC citizen move to seek job, may find the same standards as it is in the country of origin. The International Labor Organization (ILO), provides some of the pillars of the labor competition, that should be available to any market. Those pillars are mainly, the regulation of the labor relations, Labor institutions and Labor policies. All the provisions of the EAC Revised Treaty of Establishment, and the CMP are sourcing from these pillars, and once available and harmonized on the labor market, skills brought to the market are competitive. This is applicable to any market even national. But if it is a supranational market, there is another element that might be respected. This is the fair border posts management and the ease border crossing by the citizens of the Partner states.

II.3.1 Ease border crossing by citizens of the Partner States

This is recommended by the treaty, and the CM Protocol emphasizes it: “...*ease cross-border movement of persons and eventually adopt an integrated border management system.*”⁹⁶ This is the beginning of the free movement of labor, because the market is accessed by border crossing. Partner States, though they have inheriting challenges, implement the provision and the process is quickened according to the will of each country.

The importance of harmonization and integrated border posts management systems is that some of state agencies normally based at the border posts, including immigration, revenue authorities, police and standards agencies, among others, apparently operate independently, thereby, causing delays at the borders. With the integrated systems, these agencies should not be working independently, they need to collaborate on planning and monitoring, and organization and other related activities to ease the movement of people.

⁹⁶ See the EAC Common Market Protocol, art 5.2 (b), available on <http://www.mineac.gov.rw>, visited on 21/04/2014.

In UGANDA, they tried to ease border movement as it is stated by the report of the EAC conference held at Nairobi KENYA in 2012.⁹⁷

The same report talks about efforts made by KENYA, showing the number of EAC nationals who crossed border to enter into KENYA, and the number of borders opened to easing cross-border.⁹⁸

For Rwanda, three major border posts namely Kigali International Airport, Gatuna and Rusumo operate 24 hours. Akanyaru and la Corniche operate up to 10 pm.⁹⁹

In Tanzania, due to their specific matters listed as union matters, even though matters of employment and labor relations, are not union matters, they are regulated by two distinct set of laws enacted by two independent legislatures and administered by two different ministries in the United Republic of Tanzania. This is why TANZANIA has committed herself to implement the protocol fully by 2015. This is a great challenge because the spirit of the treaty was that all Member States complies at the same level. It is in contradiction with the art 8.1 (c) of the treaty.¹⁰⁰

BURUNDI does not have a border post that operates 24 hours apart from Bujumbura Airport. Work is in progress to render operational the Gisenyi and Kobero borders. BURUNDI does not have a single border post with the necessary infrastructure and electronically interconnected or integrated border management systems between BURUNDI and bordering EAC Partner

⁹⁷The East African Community Common Market Protocol for movement of labor, conference held on 1st-2nd November 2012, at Nairobi KENYA: In UGANDA the turn- round period for passport processing in 10days. There are separate counters for EAC nationals at the Entebbe International Airport and 24 hour service at Malaba, Katuna, Busia and Entebbe International Airport. Efforts on One Stop Border Post and Integrated Border Management System are ongoing at Malaba, Busia, Katuna and Mirama hills. Border posts have been gazette at Amudat (Uganda-Kenya), KizingaRwempasha (Uganda-Rwanda),andOmuruhumba (Uganda Rwanda). Bugango which is at the border of Uganda and Tanzania is opening and is to be gazette in 2014. Available on <http://www.fes-kenya.org> Visited on 21/04/2014.

⁹⁸The country has also opened seven border posts which are operational on 24 hour basis. These are Jomo Kenyatta Airport (JKIA), Mombasa International Airport (MIA), Namanga, LungaLunga, Taveta, Malaba andBusia. All these borders together with Kisumu International Airport are electronically nterconnected and have integrated border management systems.

⁹⁹ The Regulation 8 (d) of the Annex I to the CM Protocol on the free movement of persons, recommends that Partner States shall assure the manning of border posts for 24 hours. See on www.mineac.gov.rw. Visited on 21/04/2014.

¹⁰⁰Member States shall abstain from any measures likely to jeopardize the achievement of those objectives or the implementation of the provisions of this treaty.

States.¹⁰¹ This is also a challenge for EAC citizens to the free movement in order to seek jobs to the labor market, and it creates unbalances, since some Member States make efforts to meet the standards and the requirements, while for others, those progresses still being very low.

The Treaty talks about the maintenance of common standard travel documents Art 104.3(b). This initiative is repeated by the EAC Common Market Protocol: Art 8 and art 9¹⁰² but the most helpful facility is provided by art 9.1 and 9.2 where a machine- readable and electronic identity card may serve as a travel document. The only challenge is that, according the provisions the operation still optional and may be guided by the agreements and modalities set up by Partner States wishing to use the facility for their citizens.

This is a weak side of the provision, because the fair competition on the wide labor market might be lead by the uniformity and approximation of all the players, in order to treat “competitors” in the equal conditions. The facility is only being implemented in Rwanda, Uganda and Kenya.

This is a key requirement for a better implementation of different EAC initiative, especially to maintain a fair competition on the labor market.

While unemployment remains a major challenge in EAC, enabling workers to move freely and work anywhere within the region is critical first step in addressing unemployment problem in the region. It is also beneficial to the extent that skilled labor – a rare factor of production in EAC – can move freely and Partner States can obtain skills that are locally scarce from other Partner States.¹⁰³

It shall be indeed a solution, if the domestication of the EAC Common Market Protocol by Partner State becomes effective. For example prior the CMP, Kenya had laws that inhibited free movement of other nationalities in the country.¹⁰⁴ These laws have since been repealed and

¹⁰¹The East African Community Common Market Protocol for movement of labor, conference held on 1st-2nd November 2012, at Nairobi Kenya, on www.eac.int, visited on 21/04/2014.

¹⁰³ V. Ogalo, “Achievements and challenges of implementation of the EAC Common Market Protocol in Kenya”, research paper July-October 2012, P.5, available on www.fes-kenya.org Visited on 21/04/2014.

¹⁰⁴V. Ogalo *Op. Cit* p. 6: This includes the Kenya citizenship Act (Cap 170), Immigration Act (Cap 172), Alien restriction Act (Cap 173), and visa regulations.

replaced in compliance with the CMP.¹⁰⁵ Kenya has made a tangible step in harmonizing her laws with the CMP, the challenge resides in the fact of implementing those repealed laws, because putting laws in place is one thing, and the implementation is another thing.

In Rwanda, labor regime is generally governed by the law n°13/2009 of 27/05/2009 regulating labor law in Rwanda.¹⁰⁶ None of its provisions talks about compliance with the EAC treaty or any other protocol, probably because the law was enacted before or almost at the same time with the CMP. The only art 18 deals with foreigner's employment. It says that: *"Apart from issues to working permits for foreigners, working in Rwanda that are determined by immigration laws, the contract of employment for foreigners working in Rwanda shall be governed by this law and shall be written."*

When you go through this law, you realize that, it respects international standards to the extent that even the EAC citizens may find their place without infringing EAC CM regulations though the EAC is not cited anywhere along the law.

As far as work permit is concerned, all the details are found in the Ministerial Order n°02/01 of 31/05/2011¹⁰⁷, establishing regulations and procedures implementing immigration and emigration law.¹⁰⁸ The latter is a general law which is completed by the Ministerial Order.

Art 6 par. 5 of the law on immigration and emigration talks about the use of valid travel document, but insinuate that foreigners may use other travel documents in accordance with an agreement between Rwanda and their respective countries. Here also the EAC citizens find their

¹⁰⁵"The Kenya citizenship and immigration Act n°12 of 2011": The government also embarked on policy and legislation reforms ...that address discrimination of citizens and workers from other Partner States seeking employment in Kenya through the following laws: The employment Act N° 11 of 2007, Labor relations Act N° 14 of 2007, Labor institution Act N° 12 of 2007, Occupation Safety and health Act N° 15 of 2007, Work injury benefit s Act, 2007, Kenya Constitution 2010 and, Industrial Courts Act N° 20 of 2011, are among the new laws that enhance free movement of East African citizens to Kenya as workers without discrimination.

¹⁰⁶ Law n°13/2009 of 27/05/2009 regulating labor law in Rwanda, O.G. n° special of 27/05/2009.

¹⁰⁷ Ministerial Order n°02/01 of 31/05/2011, establishing regulations and procedures implementing immigration and emigration law, available on <http://www.migration.gov.rw>, visited on 21/04/2014.

¹⁰⁸ Law n° 04/2011 of 21/03/2011 on immigration and emigration in Rwanda, available on www.migration.gov.rw, visited on 21/04/2014.

place in case there is any agreement on electronic- readable machine identity card, used as travel document.

Another important thing is that the Rwandan law makes a differentiation between a foreigner coming in Rwanda having already a contract of employment and a job seeker. The first one applies for a work permit 15 days from his entry in Rwanda, while the second one benefits from a special pass for the period allowing him to look for a contract, and the period for him to apply for a work permit starts from the date of signing the contract.(Art 3, 10).

The art 4,8° class H, is challenging because it deals with another segment of employees, apparently out of any competition process since they are considered as special skilled employees.

This categorization brings unbalances on the market since there are some employees who benefit from advantages on the detriment of others. On a same market people should be treated equally.

II.3.2 International labor standards

International labor standards are first about the development of people. Given that work is part of everyone`s daily life and is for the human dignity, there should be the creation of jobs and working conditions in which people should work in freedom, safety and dignity. International labor standards are there to ensure the human life improvement and to create equal opportunity among all partners or players on the labor market. At this level, we analyzed some of those standards, and how much the EAC partner State`s domestic laws are complying with them, and what is the impact on the required harmonization. If international labor standards are met by all EAC Partner States, the harmonization shall be more that a fact.

II.3.2.1 Labor market institutions

Labor market regulations actually include labor market institutions as well as part of labor market policies: they cover wage setting institutions, mandatory social benefits, the unemployment insurance system, as well as different aspects of labor legislation (law on minimum wage, employment protection legislation, and the enforcement of the legislation). Labor market policies (LMP), on the other hand, comprise all kinds of regulative policies that

influence the interaction between labor supply and demand. They consist of policies that provide income replacement (usually called passive labor market policies) as well as labor market integration measures available to unemployed or those threatened by unemployment.¹⁰⁹

The two definitions regarding the labor market institutions and policies, are here taken together even if they are to different concepts, but they are complementary, and once put in place adequately in the market, constitute a good element of a fair competition, because it is a tool that offers opportunities, to access to the job with merit, and once one is in position of employee or employer, enjoys easily all related rights. However, the definition is taken in a broad sense, because it mixes a lot of things regarding separate aspects of labor market, since it combines the labor institutions, labor relations and labor market policies. It is why we analyzed separately these concepts in order to well understand the particularities of each of them and their relations for the benefit of the market players.

As seen here above, it is uncertain to rely to ILO definition, because we may be conducted to take a term for another. But Bertil HOLMULUND precises that the three institutions of interest are minimum wages, unemployment insurance, and employment protection.¹¹⁰ Still the definition is not yet clear, but as we are dealing with the EAC labor Market, we were oriented by what is said by EAC Partner States legislators. In Kenya for example there is a Kenya Labor Institutions Act, which provides for the national labor board, Industrial court, the committee of inquiry, labor administration and inspection, wages council and employment agencies.¹¹¹ The scope of this act gives us an orientation of what can be the labor institutions.

In Tanzania, the same law exists, the labor institutions Act, 2004,¹¹² which provides for Labor, Economic and Social Council; the Commission for mediation and Arbitration; Essential Service Committee; Wage Boards; Labor Administration and inspection and the Labor Court. It is almost

¹⁰⁹ See definition by ILO, "Labor Market Policies and Institutions", available on <http://www.ilo.int>, visited on 27/04/2014.

¹¹⁰ H. Bertil, "What do labor institutions do?" a research paper available on <http://www.eale.nl> visited on 27/04/2014.

¹¹¹ The Kenya labor institutions Act, 2007, available in Kenya Gazette supplement n° 108 (Acts n° 12), on <http://www.ilo.org>, visited on 27/04/2014.

¹¹² The Tanzanian labor institutions Act, 2004, available on www.ilo.org, visited on 27/04/2014.

similar to the Kenyan Institutions Act, 2007. The required substance is shared in these two laws, the only difference being the terminology.

According to the LO/FTF report,¹¹³ Uganda, compared to its East African neighbors, has had several conflicts and strikes in the labor market during the last few years and violations of labor rights in Export Processing Zone have been a particular source of contention. Compliance with labor laws is low and trade unions are complaining that the labor inspectors are very few in numbers. This doesn't mean that in Uganda there is no labor regulation, but the implementation and the will or priority to comply with legal requirement especially the revision of laws is lacking. Even if there are no specific laws regarding some institutions like the advisory board, Labor relations, minimum wages or general labor policy, they are provided by other texts and supported by the Ugandan employment Act, 2006¹¹⁴. So in Kenya, Tanzania and Uganda, even though their labor laws are not updated and brought to the line with the EAC labor market regulatory spirit, they have, substantially almost the same laws governing the labor market. Their acts are detailed enough to include any required international standard. Contrary in Rwanda, the single labor law talks broadly about the entire labor regulation and leaves the execution in detail to the ministerial orders.¹¹⁵ The Rwanda- labor market profile 2013, gives a good explanation on the status of labor regulation in Rwanda emphasizing on how in Rwanda, only one law regulates the whole labor market, with support, of course, of other related legislations, especially the ministerial orders.¹¹⁶

In Burundi, the only main legal instrument, as far as labor market is concerned, is the labor code of 1993, and according to the BURUNDI- labor market profile 2013,¹¹⁷ little of this code has been implemented, and it is announced that the code is being revised. As it is for Rwanda, the

¹¹³ LO/FTF Council, "Uganda – Labor Market Profile 2013". Available on <http://www.ulandssekretariatet.dk>, visited on 27/04/2014.

¹¹⁴ See the Uganda Employment Act, 2007, on <http://www.mglsd.go.ug>, visited on 27/04/2014.

¹¹⁵ See "International labor standards, country profile: Rwanda- basic laws", (National legislation), on <http://www.ilo.org>, visited on 27/04/2014.

¹¹⁶ Rwanda- Labor Market Profile, 2013. P. 6: "Law n° 13/2009 from 2009, regulates labor in Rwanda. It establishes fundamental rights at work, Working conditions, Salaries, leaves, occupational safety and health, organization of workers and employers, collective agreements and labor disputes. The law establishes also the labor inspectorate the ministerial labor inspectorate and the national labor council..., the law regulating labor is the most important labor legislation. Several other legislations exists which regulate and set standards and restrictions for the labor market." available on <http://www.ilo.org> visited on 27/04/2014.

¹¹⁷ Rwanda- Labor Market Profile, *Op. Cit.* P. 6

provisions of the labor code are implemented through presidential or ministerial orders. The Burundi labor code of 1993 establishes fundamental rights at work and National Labor Council and it regulates wages, employment, labor disputes and industrial relations.¹¹⁸ Surprisingly, the Burundian ministerial ordinance n° 660/086/92 of 17/02/1992 regulating foreigner in Burundi, is a blatant infringement of international standards and discriminatory legislation.¹¹⁹ This should be removed for a better competition on the EAC labor market.

II.3.2.2 National Labor Board

As provided by art 7 of the Kenyan labor institutions Act, 2007, the functions of the board are to advise the minister on all matters concerning employment and labor.¹²⁰ This institution is very important in the way the board advises the minister on national, regional and international labor issues, in order for the minister to advise the government on the enactment of laws. It is a tripartite board that puts together trade unions representing employers and employees, with the government.

When you go through this law, you find out that it is a tool that helps to well organize the labor market because it reaches all the corners regarding the market. It goes far even up to other pillar of labor competition since it touches matters relating to labor relations and trade unionism (art 7.c), issues arising from International Labor Organization and international labor organization conventions, (art 7.d), issuing of immigration entry permits and work permit to non-citizens (art 7.2.a),... Briefly this board is an overall advisory to the Minister of labor and to the government. The whole article 7 deals with many functions of the Board.

In Uganda, the Labor Advisory Board is composed by employer`s organizations and trade unions representatives and six ministries are represented to advise the labor minister on labor issues.¹²¹

¹¹⁸ *Ibid.*

¹¹⁹ Recueil de la législation du travail du Burundi, 2002-09, p. 248-251, cited by ILO in Burundi- International labor standards, county profile. Available on www.ilo.org : "L'ordonnance fixe les modalités d'octroi du permis de travail, définit les obligations de l'employeur ayant embauché un travailleur étranger. L'employeur est tenu de payer une taxe calculée sur base des 3% du salaire annuel brut de l'employé concerné. Par ailleurs, la main d'oeuvre étrangère ne peut dépasser 1/5 des salaires de l'entreprise par catégorie professionnelle."

¹²⁰ Art 7 of the Kenya labour institutions Act, 2007.

¹²¹ For details see Uganda employment act, 2006, art 21, on www.ilo.org, visited on 27/04/2014.

The Tanzania Labor Institutions Act, 2004¹²² provides for a labor, economic and social council, which played the same role as other labor advisory boards, the only difference being that it is not limited to labor.

The Rwanda labor advisory Council is provided for, by the art 163 of the law n° 13/2009 of 27/05/2009 regulating labor in Rwanda, and has been created in 2010 through the Prime Minister`s order n°125/03 of 25/10/2010, determining the mission, organization and functioning of the National Labor Council.¹²³ That council has the advisory mission to the labor Ministry on the labor matters in order to revise laws or enact new ones for a good labor administration. The council is also composed by the labor Minister, the representatives of the government, the representatives of trade unions, the representatives of employer`s organizations and the representatives of the civil society (art 4). This component of civil society is a difference towards other council`s composition.

In Burundi the National labor council exists and it is provided for by the labor code of 1993 and the single legal instrument of implementation is the Minister`s ordinance n°10/40 of 24th April 1968, and it is evident that it was referring to another law that has been amended by the labor code of 1992. Laws update in Burundi still an issue to address.

II.3.2.3. Industrial Court

For a good management of the labor market, irrespective of the fact that the labor market is a main component of the wide EAC Common Market, it is not regulated similarly as other areas of the CM. That is why; even issues raised on this market should be brought to a special court, commonly called the industrial court or labor court. The functionalities of this court are to be harmonized within all EAC Partner States in order to offer the same opportunities and facilities to all players.

In Kenya, the industrial court is regulated by the labor institutions, 2007 (art 11-27). It has full powers and necessary enforcement of its decisions towards application, claim or complaint

¹²² See the Tanzanian labor institutions Act, 2004, art 3-11, on www.ilo.org, visited on 27/04/2014.

¹²³ Prime Minister`s order n°125/03 of 25/10/2010, determining the mission, organization and functioning of the National Labor Council. Official Gazette n° 45 of 08/11/2010.

lodged against an employee, an employer, a trade union, an employer`s organization, a federation, the commissioner for labor or the minister(art 12 (2)). Any decision or order of the industrial court has the same force as the judgment of a high court (art 12 (6)).

The existence of this court is a continuity and management of a tripartite relationship within the National Labor Board. It is why to have operational industrial courts within EAC Partner States is another legal tool to establishing a good competitiveness on the labor market.

The Ugandan Employment Act, 2006, art 93 and 94, the provisions send all labor matters to the labor officer for mediation, and in case the parties are not satisfied with the mediation decision, they go to the industrial court, which means that in Uganda that specialized court exists.

It is also the same for Rwanda, where art 140 of the labor law refers the labor disputes to the mediation procedure before being submitted to the labor inspector in case of failure, the competent court settles the matter when the parties are not satisfied before the labor inspector. The competent court in the first level is the intermediate court, especially the labor chamber.¹²⁴ Art 9, Para. 2 of the OL n° 51/2008 of 09/09/2008 determining the Organization, Functioning and jurisdiction of courts, says that the court, beside its responsibilities of hearing civil and criminal cases, comprises also specialized chambers: The juvenile chamber, the administrative chamber and the labor chamber.

Though in Rwanda there is not an isolated court to hear labor matters, the judicial structure above mentioned attests its compliance with international standards, as far as labor issues settlement is concerned, at the same level as other EAC Partner states.

The Rwandan model is also applicable in Tanzania, where a labor court is a division or a chamber of the high court which settles labor disputes referred to it.¹²⁵

The Burundi labor code of 1993 regulates labor disputes and refers to ILO conventions, but the ILO reports attest that only few paragraphs of labor law have been applied in practice.

¹²⁴ See OL n° 51/2008 of 09/09/2008 determining the Organization, Functioning and jurisdiction of courts, art 9, OG, special n° of 10th Sept. 2008.

¹²⁵ Tanzania & Zanzibar- Labor Market Profile 2013 p. 8, available on <http://www.ilo.org> visited on 27/04/2014.

II.3.3. Labor relations and policies

As it is the case for labor institutions, the International Labor Organization set up international standards, in order to harmonize among the Member Countries, labor relations and labor policies. The EAC Partner States are all parts on ILO conventions and their internal laws refer to those conventions. Of course in some countries this compliance meets challenges tied to particular realities on the ground. Whatever the case, ILO conducts regular monitoring of the implementation of its recommendations regarding labor regulation, countries are obliged to include those recommendations into their laws, and make sure the provisions are enforced.

It is in this perspective that labor relations comprise all the labor provisions regulating bargaining between employers and employees, tripartite relations, as well as all the rights related to each party in labor relations.

Labor policies regard all written and enforced measures to protect the labor environment. This includes labor insurance and social security, the establishment of employment agencies for job advertisement and awareness, health and safety policies to the work environment, measures aiming the protection of unemployed people and retired ones, etc.

For all those international requirements, the EAC Partner States have put their national laws on the right path, which brings automatically the harmonization at a certain level because there is a common denominator: The ILO and international labor standards.

At this level, one shall assume that because of this compliance, the EAC labor market is well organized, therefore, fair competition implemented. Our note on that was the difference that exists between law's enactment and its implementation and enforcement. A number of laws lose their force because they are written and not used. This is the challenge that was analyzed through the following chapter reserved for challenges and recommendations.

II.4 Challenges to effective integration on the labor market

If we are talking about the EAC labor market organization and competitiveness, there are conditions or requirements tied to the character of different players that have to be met for the purpose of giving equal chances to all players. The absence of a single element leads to destroy the market. That is why efforts are made, notwithstanding the inherent challenges.

As we have pointed out, three leading actors in the labor market are: Workers, Firms and government. This classification is not a hazard, because each actor has her own role to play for the success of harmony within the market.

Workers and firms enter the labor market with conflicting interest. Many workers are willing to supply their services when the wage is high and few firms are willing to hire them. Conversely, few workers are willing to supply their services when the wage is low, and many firms are willing to hire such workers. As workers search for jobs, and firms search for workers, these conflicting desires are balanced out and the labor market reaches equilibrium. In a free market economy, equilibrium is attained when supply equals demand.¹²⁶

This equilibrium, in other words, is a fair competition guided by harmonized laws, which is the role of governments, to allow firms to search worker in the light of a preconceived legal framework, whereby every player may find her position, and workers to supply their services with a legal guideline to limit excessive ambitions, but granting the enjoyment of genuine rights. Whatever the cost, this must be respected, otherwise chaos governs the market. Here the main role comes to the governments and this chapter clarified the way forward, challenges faced, and proposed solutions.

II.4.1 Current status of integration on the labor market

In order to have a competitive labor market, the commitment of the highest level of government and active participation of partner states is a key ingredient, and that is why from the creation of the EAC, columns was positioned since the treaty of establishment reserved a place to the labor market organization through articles 76 and 104.

¹²⁶G.J.Borjas, *Labor economics*, McGRAW-Hill International edition, Fifth edition, 2010, pp. 4.

The CMP and its annexes was a direct product of the EAC treaty of establishment, and provide for what must be the shape of the EAC labor market, guarantying the free movement of labor/workers (art 10), harmonization and mutual recognition of academic and professional qualifications (art 11), harmonization of labor policies, laws and programs (art 12) and the rights of establishment and residence (art 13, 14). This chain challenges member countries to do their best, and make sure that their internal laws are in compliance with what is provided by the CMP in relation with labor market.

Another important element is that, the International Labor Organization (ILO), by her policies and standards may fill gaps that can be created by the insufficiency of the CMP provisions because all the EAC member states are signatories of the ILO conventions, including the Labor Inspection Convention n° 81 of 1947¹²⁷. This means that EAC countries are bound by the provisions of this convention, which gives the purpose of labor inspection, as ensuring compliance with legislation, minimum standards and terms of any collective agreements that contain relevant standards. So it is the responsibility of government to put in place an effective framework for labor inspection, and all stakeholders would be mobilized in the promotion of the fundamental rights and principles at work.

The role of EAC as an umbrella of the member states is not limited on the fact of putting in place laws and guidelines and leaving the free implementation to the countries, her commitment reaches also a supervisory role up to the imperative compliance completion by member states, through formal signed agreement and organizational structure of the community.

II.4.1.1 Implementation of the free movement of workers

According to CLADHO,¹²⁸ although the free movement of labor is nearly four years old since the commencement of the implementation of the CMP, employers still constrained in their attempts to recruit competent labor from other Partner States, and workers in the regions are not fully enjoying the benefits of this freedom.

¹²⁷ CLADHO, "Survey in the field of common market protocol with emphasis on social security and labor legislations in the EAC member states", Kigali, 2014, p. 25

¹²⁸ *Id.* P. 23.

This seems to be contradictory, since the protocol entitles a worker to move freely in the territory of the other partner state, and in addition to that the protocol also provides that workers shall have the right to be accompanied by the spouse and children. The spouse and children are also entitled to be employed as workers or engaged in economic activities subject to the national labor laws. The protocol prohibits national discrimination by providing that citizens of the Partner States will be entitled to the same assistance as that accorded to the citizens of the host Partner State.¹²⁹

Further in the annex on the free movement of workers,¹³⁰ the protocol confers to the EAC secretariat, of course in collaboration with Partner States, the obligation to undertake manpower surveys to determine available skills and gaps in the labor market. On basis of the findings of the manpower surveys, the secretariat is constraint to develop a data base to facilitate the monitoring of the labor market. The regulation 15 of the annex of free movement of workers emphasizes that the implementation shall be in accordance with the schedule for free movement of workers.

First of all, the fact that all workers are not allowed to move is a kind of discrimination in contradiction with article 10.2, even though the provision gives the precision that the said discrimination is the one which is exercised in the employment circumstances, which means that it concerns workers who are already eligible to move. This is not fair because, in order to install non discrimination practices on the labor market, the market itself should not be discriminatory, since the objective on the community in the labor market is to enable all citizens to look for better living conditions within the whole community. The challenge we found out is that a number of workers can't enjoy the free movement because they are not eligible according to the schedule for the free movement of workers.

¹²⁹ EAC, Protocol of the Establishment of the East African Community Common Market, art 10.

¹³⁰ EAC, Protocol of the Establishment of the East African Community Common Market, annex on the free movement of worker, regulation 14.

1. Schedule for the free movement of workers

This schedule was made in 2010 according to ISCO job classification basing on the skill levels as it is prepared by the International Labor Office.¹³¹ This classification provides for ten groups of jobs, but EAC Partner States preferred to pick up only four, and this choice was not supported by any clear reason because the schedule was likely to reach other remaining groups. Unfortunately, the process has stand still since 2010, and even the choice already made was and still being suspected to not respect the community principles of non discrimination, national treatment (NT), most favored nation (MFN) and information sharing.

The only channel for job information is the respective ministries of EAC within Partner States. It is not enough, and there should be public or private labor information agencies¹³² recognized by harmonized laws, in order to avail information on available jobs to a large number of beneficiaries.

For the purpose of transparence related to job advertisement and acquisition, a labor market information system (LMIS)¹³³ for regular survey of the labor market was initiated but not yet on its completion. This should be a priority, to tackle the obstacle of lack of awareness by citizens, due to the lack of accurate and timely information.

To determine the level of skills supply, compared to the demand, a manpower survey, as it is provided by the CMP¹³⁴ in its annex II on the free movement of workers, must be implemented because the survey should assist in generating data on the current stock and characteristics of skilled manpower, vacancies, and provide information that would march supply and demand on the labor market.

The EAC initiated in 2008 the process of conducting the manpower survey on the national and regional level, but till now the process was tackled by the budget constraints and is not yet

¹³¹ ISCO-8, Structure, group definitions and correspondence tables, Vol I, see on <http://www.cbs.nl> , visited on May 13, 2014.

¹³² See regulation 13. 2 of annex of free movement of workers,.

¹³³ See 13. of the same annex.

¹³⁴ regulation 14.1,2 of the same annex.

implemented. This is a great challenge because, without those data, the community can't know the stock of skills it has in order to avail the needed labor to the market. It is clear that even the schedule for free movement of worker would have prepared in accordance with data provided by the manpower survey. Lack of such data limits labor market search, job-matching and employment growth. Without an update stock of skill, the region cannot fully benefit from the free movement of labor; therefore, it cannot develop and implement occupational classification standards, a critical ingredient for an efficient labor market.¹³⁵

Another main constraint to the free movement of workers is the education background .The competition is not clearly regulated, because we don't see anywhere, any provision regulating the harmonization of quality standards for all competitors. Competitors are coming from different educational backgrounds, where systems are completely different, and they are required to meet the same standards.

If this is not taken seriously into consideration, some competitors will be automatically eliminated from the market before they compete.

In the integration process, it is important to set up minimum acceptable standards for the region on issues regarding the participation of people coming from different sovereign States. On the EAC Labor market , the competitors have different education backgrounds, some are really advanced because their education systems has not been distorted , like in KENYA and UGANDA ; other like RWANDA and BURUNDI even TANZANIA , the education level is very Low, some are on a renaissance period, while others are moving ahead peacefully since many years ago.

Another serious handicap is that RWANDA and BURUNDI, not only they still fighting to improve in terms of education; but they have been colonized by French speaking countries, and are now integrating in an English speaking system. This is a factor that unbalances the labor competitiveness in EAC. As processes and policies are being put in place to overcome or to mitigate those challenges, we hope that young generations will take advantage to those

¹³⁵ CLADHO, *Op. Cit.* p. 6

preparations, but for now, there is not equality in the labor competition, and it is why in some countries they can make a kind of labor protectionism, because, if they open, and they are not sure that their people are enough competitive, there is a risk that all jobs may be absorbed by foreigner workers. This is not an adequate solution because, for a country to develop, has to attract investors, and a foreign labor, when its own labor is not enough and not efficient.

To mitigate the risk or challenge, the CMP provisions should be respected and implemented. They might be enforced enough, in order to bring solutions to the gaps on the market, and enable workers to move freely. How can we talk about competitiveness of the EAC labor market, when, in addition to the lack of data showing the stock of skilled labor (regulation 14 of the annex II of the CMP), the mutual recognition of academic and professional qualifications¹³⁶ doesn't yet have solid base of harmonizing curricula, examinations and accreditation of educational and training institutions. For us, although the mutual recognition is being implemented, it is done reversibly; the startup should the education system harmonization, otherwise, there is a category of people which will not be welcomed to compete on the market, implicitly discriminated.

2. Acquisition of the work permit

A citizen of one Partner State moving to another Partner State is allowed to work on condition of having a work permit availed by the hosting country. This is subjected to an immigration procedure provided for by internal laws in accordance with the CMP.¹³⁷ At this level, for a fair competition on the labor market, the issuance of work permit should be harmonized within all countries members of the EAC.

Available data show the number of workers to whom the issuance of work permit has been successful, but there is no record of those to whom work permits have been denied, and for which reasons¹³⁸. The lack of this crucial information hides the reality on the non-discrimination

¹³⁶ See EAC Common Market Protocol, art 11.

¹³⁷ Annex II of the CMP, Regulations 6-8.

¹³⁸ See EAC Conference report of 1st-2nd 2012 on the achievements and challenges of implementation of the protocol for movement of labor. Pp.10-11: Kenya has made remarkable progress in guarantying freedom of movement of persons from the Partner States into its territories. As of May 2012 a total of 107,165 persons from

and equal treatment among the citizen of the community. Besides, the lack of uniformity on fees charged on work permit, and the time limit of its issuance that is fixed differently according to non harmonized immigration laws brings unbalances on the labor market, and it is a great harm to the free movement of workers. Application procedures and work permit fees should be harmonized. In Rwanda and Kenya, work permit is free of charge, but in Kenya, with a wage less than USD 2000, the work permit can't be given. All challenges turn around harmonization of laws.¹³⁹

II.4.1.2 EAC model of integration on the labor market

One of the ingredients of integration in EAC common market is the harmonization of laws principle. Article 12 of the EAC Common Market Protocol provides for harmonization of labor policies, laws and programs,¹⁴⁰ and the implementation is subjected to the directives and regulations issued by the council.(art 12.3.). It is in this perspective that the EAC council put in place an institutional framework having the mission of conducting the process of harmonization in accordance with the article 12 of the CMP. The structure is leaded by the council as overall, but under the council, there are sub-committee and task force which are supported by internal National labor councils (NLC), headed by Ministers of labor in respective Partner States, and composed by representatives from employers, employees, and, in some cases like in Rwanda, the representatives from the civil society. In addition to this structure, the legal reform commissions based in each Partner state are of a great help because task force members are recruited there.

Harmonization process takes into account international standards and general principles. Domestic laws are analyzed to see which provisions are in contradiction with international standards and the principles of the CMP, for being removed. Some of those principles are the

other Partner States travelled into Kenya...But also there is no report of irregular denial of EAC citizen entry into Kenya.

¹³⁹ From the interview with Mr. SEBAHIZI Prudence, the National Coordinator of EACSOFRwanda

¹⁴⁰ The Partner States undertake to harmonise their labour policies, national laws and programs to facilitate The free movement of labor within the Community (art 12.1.), The Partner States undertake to review and harmonize their national social security policies, laws and systems to provide for social security for self-employed persons who are citizens of other Partner States (art 12.2.)

non-discrimination principle, the most favored nation principle, the national treatment principle, the information sharing principle, etc.

On the EAC level, the Council oversees the harmonization and approximation of laws exercise. Under it is a Subcommittee on Approximation of Laws, established with a mandate to study all the national laws with a view to harmonizing them and advising the Council on the various aspects of the exercise. The Subcommittee consists of Chairpersons of the Law Reform Commissions and, in the case of the Republics of Rwanda and Burundi, the bodies carrying out equivalent roles of law reform work. The Subcommittee reports to the Council.

The Taskforce on the Approximation and Harmonization of Laws was established to facilitate the mandate of the Subcommittee. The Taskforce consists of high level officers most of whom are lawyers from the Law Reform Commissions, Ministries of Justice/ Attorney General's Chambers and Ministries responsible for EAC Affairs. It reports to the Subcommittee.¹⁴¹

The harmonization process is initiated by studying and analyzing Partner States laws, in order to establish gaps, divergences, convergences and weaknesses of the various laws. The outcome is then shared through the reform commissions.

After comparing those laws with international best practices, recommendations for amendment or alignment of respective national laws to EAC laws are made and submitted to the council by the sub-committee in collaboration with the task force.

According to Edward KITONSA,¹⁴² another role of the task force is to facilitate the implementation of the CMP by studying key principles of the protocol with a view to point out the divergences that are likely to slow down the process of implementation of the CMP.

We note that, for the success of the process, approximation should be enforced, in other words, necessary controls and penalties might be provided for, to ensure that the law is complying with, fully and properly. This mechanism is unfortunately lacking, and good initiatives and recommendations still not being taken into consideration.

¹⁴¹E.Kitonsa, "The Status of the EAC Legal Harmonization Process in UGANDA", a paper presented at the conference on creating a predictable and facilitative legal environment for business in the EAC, 6th -7th August 2012, Arusha Tanzania, P. 4.

¹⁴²*Ibid.*

Johnson Okoth OKELLO,¹⁴³ confirms the role of harmonization organs, that of analyzing national laws and confront them to EAC laws and make recommendations, but he points out a new element that a national law which is in advance in the process of approximation may serve as reference or a model law.

II.4.1.3 Labor laws harmonization process within member states

According to the EAC report on the status of the implementation of the Common Market Protocol, some of the Partner States reported that they have amended, while others are in the process of amending their respective national laws to eliminate discriminatory provisions in relation to employment and remuneration.

1. Kenya

On the side of free movement of workers, Kenyan authorities reported that there are no laws discriminating against employment of citizens of other partner states. The employment act, n° 11 of 2007, outlaws all forms of discrimination against migrant labor. The Kenya constitution 2010 and industrial courts act n° 20 of 2011 are among the new laws that enhance free movement of East Africa Citizens to Kenya as workers. Kenya has also put in place the following laws to facilitate free movement of labor: Kenya citizenship and immigration Act n° 12 of 2011, Kenya citizens and Foreign Nationals Management Act n° 31 of 2011.¹⁴⁴

The Kenya labor market profile 2013¹⁴⁵ shows that tripartite framework is developed in Kenya, and it contributed to meet deadlines for tabling and adopting legislative reforms to implement the new constitution of 2010 which has several references to workers rights and that others labor laws have to comply with. This is why a number of tripartite institutions were established and

¹⁴³ EAC network of reformers conference, Arusha , Tanzania: The first step of approximation process is the analysis and comparison of Partner States laws, EAC treaties and protocols, and existing national legislations to determine the existing state of conformity and the appropriate national response. The evaluation is made by checking if there is national law legislation covering the subject matter, and weigh the level of conformity with EAC laws and also among national laws...recommendations are made for adoption through the EAC organs. available on <https://www.wbginvestmentclimate.org>, visited on May 13, 2014.

¹⁴⁴ CLADHO, *Final report on CMP*, April 2014, p. 24.

¹⁴⁵ ILO, "Kenya - labor market profile 2013", available on <http://www.ulandssekretariatet.dk>. visited on May 13, 2014.

contributed in improving the industrial relations, to have a closer look on salaries and wages in Kenya. For this specific aspect, the Kenya labor market profile 2013, reports that wages boards were not properly functioning for some years, but tripartite forums contributed enough to revise minimum wages for the private sector in 2011 and 2012. A well functioning national tripartite board is a solution to the process of harmonization of labor laws, advocates for the rights of different payers on the market.

In Kenya, most of labor issues are handled through tripartite structure, whereby, beside the National labor Board, whose role is to advise the Minister of labor on labor legislation and labor matters, other sectoral tripartite councils like wages council, are established to be consulted by the Minister of labor.

In addition to labor laws in Kenya, the government of Kenya has ratified several ILO conventions, therefore, binding her in the process of enacting and revising internal laws.

As far as social security is concerned, according to the Kenya labor market profile 2013,¹⁴⁶ Kenya has two contributory programs: the national social security fund (NSSF), and the National Hospital Insurance Fund (NHIF). NHIF provides hospital cover for members and their dependants. NSSF is compulsory for salaries workers and can be joined voluntarily by informal workers.

Concerning approximation status in Kenya, Johnson OkothOkello, of Kenya law reform commission, explains the Kenya context and current status, and says that, for labor law, laws are up to date.¹⁴⁷ Although Kenya is in advance comparing to other EAC member states, we note an exaggeration in the affirmation because there are areas that are not yet fully approximated like the field of social security. However Kenya is in a good path because it established a Taskforce (TF) to consider all the laws and align them with the Common Market Protocol. The TF finalized the work, prepared a bill recommending the laws to be reviewed to align with EAC

¹⁴⁶ ILO, "Kenya - labor market profile 2013", *Op. Cit*, p 17.

¹⁴⁷ "EAC network of reformers conference", Arusha , Tanzania: A number of legislation have been considered in the area of business laws. Company law (bill being finalized), insolvency law (bill being finalized), partnership law (new laws in place), labor laws (in Kenya laws are up to date), etc.

laws.¹⁴⁸ Kenya has also, with Rwanda commenced to use a readable electronic ID, as a travel document, and the work permit is free of charge, contrarily to Uganda, Tanzania and Burundi.

2.Uganda

The Uganda current status of integration in the EAC labor market through harmonization or approximation of laws, might be the result of the model that has been set up by the community, conferring authority to the task force established to follow up on harmonization and approximation of national laws in EAC context, whereby the activity is mainly headed by the law reforms commissions and ministries of justice and constitutional affairs. The task force, a technical committee working on behalf of the subcommittee which is chaired by the heads of law reform commissions of partner states, gives proposals on harmonization and approximation of laws. The subcommittee forwards the proposal to the council with formulates recommendations for amendment and reviews to submit to concerned Member States. Although the structure is conceived as such, every Partner State may adopt her own internal mechanisms to identify laws that need to be reviewed and discussed on, during subcommittee meetings at the regional level.

It is in this range that, Uganda through its Ministry of East African Community Affairs (MEACA), sought a technical assistance whose purpose was to identify the needs and constraints of the ULRC to review, amend or repeal their laws so as to align them with the CMP and relevant council decisions and directives.¹⁴⁹ The assessment revealed 54 national laws identified as relevant to the four freedoms, rights and other areas of cooperation under the CMP that need to be aligned to the CMP, among them 8 laws were relevant to the free movement of workers. The proposal for harmonization is progressively discussed within the regional subcommittee meetings.

The Uganda Labor market profile 2013,¹⁵⁰ Labor market in Uganda is regulated up to now, by old laws among them the constitution of 1995, the employment act of 2006, the trade union act of 2006 and the occupational safety and health Act of 2006. Harmonization of laws process in

¹⁴⁸ J.O.Okello, "EAC network of reformers conference", Arusha , Tanzania, available on <https://www.wbginvestmentclimate.org>, visited on May 13, 2014.

¹⁴⁹ E.Kitonsa, *Op.Cit.* p. 8.

¹⁵⁰ The EAC Labor Market Profile is a survey made by ILO on compliance of Partner States to the International Standards.

Uganda is moving slowly, work permit is charged and the readable electronic ID is not yet used as an accepted travel document, which is a restriction to the free movement of EAC citizens.

3. Rwanda

Harmonization and approximation is a long process because laws and policies that have to be harmonized to the CMP are of different fields of cooperation that meets financial and human resources constraint. The only exit is a firm commitment and willingness of the high level decision makers, which actually characterize Rwanda in her process of integration in the EAC common market. Rwanda applied for EAC membership in 1996, and officially became a member on 1st July 2007, but her commitment and willingness to comply with the community direction, put her in advance, compared some of member states like Burundi, Tanzania and Uganda, in terms of integration through harmonization, approximation of laws, as well as other areas of cooperation.

The harmonization model set up by the community was respected by Rwanda, but also it put into place an internal structure that helps to well identify laws that might be reformed and be sold to the subcommittee meetings for amendment proposal.

Rwanda has put in place Sector Working Group on Legal and Judicial Affairs made of permanent members such as the parliament, the Ministry of justice, The Ministry of East African Community, Prosecutor General, Judiciary, Law Reform Commission, Bar Association and the Private Sector Federation. This working group may invite any other *ad hoc* member according to the sector that requires laws review. It is in this frame that all proposals concerning harmonization and approximation of Rwandan laws are made in preparation of regional subcommittee meeting, and the outcome is given to the Rwandan task force in order to submit it to the regional meeting.¹⁵¹ Surprisingly, Civil Society is not part of this commission.

The Rwanda labor market profile 2013 shows that there are few laws in Rwandan labor legislation. This includes: the constitution of 2003, law n° 13/2009 regulating labor which is a

¹⁵¹ Interview with Msr ASIIMWE Souzan, Legal advisor in the Ministry of Commerce and *ad hoc* subcommittee member for commercial laws reform.

very important legislation because, one law comprises the whole labor regulation, supported of course by other related regulatory tools.

According to Asimwe Souzan,¹⁵² during labor law harmonization session, only Kenya and Rwanda, were without recommendations to review their labor laws, which means that, basing on the different subcommittee's proposal, the EAC council came up with a number of recommendations against all Partner States, except Kenya and Rwanda because their compliance level was satisfactory.

The Ministry of East African Community of Rwanda¹⁵³ reports that citizens of Partner States move to Rwanda without restrictions and are automatically granted up to six months stay and freedom to seek employment, and no citizens from EAC Partner State are being denied entry or work permits in Rwanda. Report continues saying that common national identification documents have been issued to all Rwandan citizens above the age of 16 and modalities have been developed for the operationalization of the use of machine – readable and electronic national identity cards as travel document.

Another successful step made by Rwanda, according to MINEAC report 2012-2013, is manpower survey that was carried out and the draft analytical report has been validated by stakeholders.

4. Tanzania

Tanzania political structure undermines the implementation of harmonization strategy because the mainland of Tanzania and the semi- autonomous Zanzibar have separate labor laws, trade unions, etc. and are therefore distinguished where possible in the profile.¹⁵⁴

Labor market is regulated by the constitution of the United Republic of Tanzania, of 26th April 1977¹⁵⁵, which is applicable within the whole Republic of Tanzania, the employment and labor relations Act of 2004, the labor relations Act of 2003, and the labor institutions Act of 2004. Specifically Zanzibar labor affairs are regulated though the constitution and the labor Act of

¹⁵² Legal advisor to MINICOM.

¹⁵³ MINEAC, Annual report 2012-2013.

¹⁵⁴ ILO, Tanzania- labor market profile 2013, p.1, <http://www.ulandssekretariatet.dk>, visited on May 13, 2014.

¹⁵⁵ See on <http://www.judiciary.go.tz>, visited on May 13, 2014.

1997.¹⁵⁶This illustrate how slow the harmonization process is, regardless several council binding recommendations addressed to concerned EAC member States.

5. Burundi

In Burundi, labor and employment laws met a challenge of being enacted in French, therefore it is based on French tradition (Code Napoleon) which vary significantly from those of English speaking. This is why the EAC council of Ministers instructed the secretariat to extend the study on the harmonization of labor laws and employment policies to Burundi and Rwanda. Secondly, since Burundi has joint the EAC, labor laws have never been reviewed at the EAC context. Labor law in Burundi is, up to date, governed by code du travail (Labor code), of 1993; code de sécurité sociale (social security code) of 1999 and statut des fonctionnaires, of 2006.¹⁵⁷ILO reported also that, for other member states, the employment policies were adopted since 2006, but for Burundi, there is no employment policy although a National Labor Council has existed since 1973. So the current status of labor laws harmonization is challenged compared to other co members.

Labor laws in Kenya, Tanzania and Uganda were revised with ILO technical assistance under the auspices of the sub-regional project “strengthening labor relations in East Africa” and are thus harmonized to a great extent.¹⁵⁸The ILO report doesn’t precise the exact period of this technical assistance, therefore, we assume that this partnership with ILO technical assistance in revising labor laws wasn’t aiming harmonization with EAC laws, but with International Standards set up by ILO, and more those laws are in compliance with International Standards, more they are to a great extent in compliance with EAC laws, because their enactment was referring to International standards.

We realized that harmonization process in EAC touches a number of cooperation areas that includes also the labor field, which is the object of the study. This huge responsibility can’t be a short term achievement but a process that needs evaluation at the end of each step. It requires also a great commitment of Government in implementing without delay, all the

¹⁵⁶ Tanzania- labor market profile 2013, Op. Cit p. 8.

¹⁵⁷ ILO-EAC, the East African Community Decent Work Programme, 2010-2015, p. 14.

¹⁵⁸ ILO-EAC, the East African Community Decent Work Programme, 2010-2015, p. 14.

recommendations made by the council in relation with labor laws reform. Otherwise, work may be well done, reports produced and recommendations made, but without implementation, coming from willingness of government the community existence reason loses its sense.

Harmonization is not just a fact of bringing about uniformity of laws, but it is an integration tool, because it involves various domains, therefore, it encourages investment and growth of the market. So, each EAC Partner State has interest to speed up harmonization programme for the benefit of the EAC citizens.¹⁵⁹

II.4.2 Harmonization of social security policies and benefits

Harmonization of labor law can't be effective without harmonization on the level of social security policies in the region, because this is an incentive to encourage worker to move selling their labor, knowing that every where they are working their social security is covered, not only for the existing employment, but also for the previous legal commitments in relation with labor.

Social security refers to a former system or arrangement concerned with protection against socially recognized conditions, including poverty, old age, disability, unemployment, sickness, orphanage, etc.

It is important for laws to determine clearly areas to be covered according to international standards, the covering *rationaemateriae*. The ILO convention n°102 published basic norms for any established social security system to be observed. It is about minimum harmonized risks that might be covered. These are: The cost of medical treatment, professional incapacitation,

¹⁵⁹E.Kitonsa, *Op.Cit*: Integration processes involve the process of harmonization at various stages for different purposes. One effective method of bringing about international cooperation is through the harmonization of laws. Law is not just a tool for implementing economic integration, it is indeed a basis for economic integration because stable, clear and uniform legislation once commonly implemented, will encourage investment and growth of markets. Alignment of national laws requires the review of national laws against community legislation/policy to bring about changes in the national legal enactments to facilitate the intended objectives of the cooperation.

unemployment, old age, work accident, professional illnesses, maternity, invalidity, death (benefits go to the survivors) and family assistance.¹⁶⁰ Although this is provided for, as a benchmark it is not implemented by all the countries in the same way, and the convention is not automatically ratified by all.

In any multilateral community having a common market, harmonization of social security is a key element that treaties and other regulations take care of. The EU treaty of Rome¹⁶¹ talks about the free movement of workers, and insists on the fact of removing restrictions, but does not talk about harmonization, because at the beginning of its creation, a commission has been put in place having the mandate of drafting key model laws that should be directly in application within all EU Member States. This measure prevented the community from the hard working of harmonization of laws. The EU treaty reserves however a special focus on the rights and benefits related to social security for workers within EU labor market.¹⁶²

According to André/Burchadt, in order to reinforce international cooperation in terms of social security, there should be many conventions between states, also for avoiding prejudices against beneficiaries of social security benefits. At EEC level those conventions take care of the old age, accidents, illnesses, family assistance and partially unemployment for foreign workers.¹⁶³

The treaty of establishment of EAC, is clear enough on the social security issue, providing for social security and social protection¹⁶⁴ and the CMP¹⁶⁵ obliges the member countries to coordinate and harmonize their social policies so as to promote and protect decent work and

¹⁶⁰ N. Métusera, Droit social, Manuel de droit rwandais, UNR, 1993, p. 31.

¹⁶¹ See Treaty of Rome of 1957, art 48.

¹⁶² Art 51 OF THE Treaty of Rome talks particularly about the field of social security, in setting measures that are necessary to provide freedom of movement of workers. *Those measures include* .

- *The aggregation, for the purpose of acquiring and retaining the right to benefit and calculation the amount of benefit, of all periods taken into account under the laws of several countries.*
- *Payment of benefits to persons resident in the territories of member states.*

¹⁶³ A. Burchadt, Le travail et la sécurité sociale en République Fédérale d'Allemagne, 4ème éd., Bonn, 1980, p. 55.

¹⁶⁴ Art 120 of the Treaty of establishment of EAC.

¹⁶⁵ See Art 39 of the EAC Common Market Protocol .

improve standards of living of citizens. So far, however, this commitment has not been actualized within the region.

The Common Market Protocol defines the free movement of workers by including the enjoyment of the rights and benefits of social security as accorded to the workers of the host partner state, for all workers of the EAC.¹⁶⁶ The CMP further joins the council of ministers to issue directives and make regulations on social security benefits, the portability and transferability 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.¹⁶⁷

Under the protocol, free movement of workers entitles workers to benefit of social security as accorded to the workers of the host country. The CMP also instructs the council of ministers to issue guidelines to be followed by Partner States in this regards. However the EAC council of Ministers has not yet issued guidelines to facilitate harmonized implementation of the protocol provisions on social security which today is largely governed by national legislation. In EAC countries the social security laws are not harmonized; this is one of the challenges in EAC integration process. The process is also delayed by lack of will within EAC partner states, because the Republic of Rwanda is the only partner state that has completed the review of its national labor laws and has thus recognized East Africans in the new social security law.

As far as international portability of social security rights is concerned, it allows international migrants who have contributed to a social security scheme for some time in a particular country, to maintain acquired benefits or benefits in the process of being acquired, when moving to another country.¹⁶⁸ International portability of social security benefits is achieved through bilateral or multilateral social security agreements between states.

We note that, to date, the East African partner states are yet to conclude those agreements, because it requires a *sine qua non* harmonization which is not yet implemented. The lack of portability of social security benefits, undermines the whole process of integration on the labor

¹⁶⁶ Art 10.3 (f) of the EAC Common Market Protocol.

¹⁶⁷ AIMS Law Chamber Consortium, study on Analysis and Advocacy for proper harmonization of social security and labor legislations in EAC Member States.

market, because a worker moving within one EAC partner state, enjoying social security benefits governed by an isolated domestic law, will not be motivated to move to another country to start a new job, because he loses all the contributions he made with the social security scheme as well as related benefits, to start on a new step.

II.4. 3 Main constraints to the achievement of efficient and effective integration

The intent of setting up initiatives for a good legal framework is to establish a viable climate of good relationship among labor market actors, rights enjoyment of ones, being barrier to the infringement by others. “Rights arrest rights.”

One important reason to correctly determine whether someone performing work is actually employee is because the internal revenue cares about it. If someone is an employee, her employer is required to withhold income taxes and to pay employer`s shares of social security and other benefits. Secondly, to know whether employment relations exist, most employment laws must confer rights on employees specifically and do not apply in the absence of an employment relationship...stemming from an employer`s own policies and benefit programs.¹⁶⁹

In the process of integration of the EAC Partner States, given that they are requested to lose some benefits, and sometimes a part of their sovereignty, on the benefit of the supranational interest, challenges are obvious, because any change comes with uncertainty as far as success is concerned, and before taking any decision, a state thinks twice. Besides that, a lasting existence of a nation confers her to build its own culture, social, economic and political systems, closer to her population, to the extent that any change may harm the normal style of life. It is why; the process of integration in the EAC Common Market goes slowly, because the entire stakeholders are not on the same level of understanding on the benefit of the integration.

Across all steps that have to be reached, harmonization of laws is a key initiative, since it enables the citizens who move from a Partner States to another, to operate easily, because he is supported by a harmonized tool which is law. Law is a language that is understood by everyone irrespective his country of origin, and it replaces culture and any other society values, proper to an isolated

¹⁶⁹ D.J. Walsh, Employment law for human resource practice, Miami University, 3rd edition, 2010, p. 32.

country, therefore can't be harmonized. The only exit, for all the areas of activity, is the harmonization of the domestic laws, and their approximation to the best practices and international standards, which is not an easy exercise because, in some circumstances, it requires the consensus of all the stakeholders and the willingness of the Partner states. The lack of will by one party delays the whole process until when the common understanding is installed. This requires the appointment of the supervisory authorities on the top of any initiated process, but this also must be decided by consensus.

Before going into any analysis, we found unavoidable to give explanations of the terms that are used in the process of repealing laws of EAC Partner States:¹⁷⁰

- Harmonization is used for the process by all Partner States being together, in order to repeal laws regulating different areas of activities, and they go through the law, article by article and they do it by consensus.
- Approximation is the fact for a country, of changing its laws, basing of the benchmarks set up by the community, referring itself to the best practices and international standards. Waivers and additions are made unilaterally by each Partner state, to comply with the principles of the community it belongs to.
- Domestication means the act of including the provisions of the community legislation into domestic laws, or referring to them. For the present case EAC partner states should domesticate the provisions of CMP.

The process of integration on EAC labor market is undermined by social, economic and political divergences and conflicts of interest within EAC Partner States. A fragrant example is the use of a machine-readable and electronic identity card, and fee charged the work permit, because the removal of pass-port and the grant of work permit free of charge shall cause a financial shortage on the regular income that was earned through the two documents. This lack of will to make concessions on the benefit of the community is a great harm to the timely achievement of EAC objectives for a better integration.

¹⁷⁰ From the interview with Mr. SEBAHIZI Prudence, the National Coordinator of EACSOFRwanda.

While the community is creating the favorable environment to the investment, and so other good policies, the East African Community, faces a great issue of the enforcement of its decisions within the Partner States. There are no clear measures applicable to non compliance cases to council recommendations relating to the labor relations at the community level.

Culture, history background, is barriers to the deep and free integration. People of East African are urged to take advantage of the bigger market to earn more, regardless many challenges related either to their culture or political systems, because if you do not integrate in the community, while you live in the globalized world, you perish.¹⁷¹

Another major issue that constitutes a handicap to the integration in the EAC labor market is ignorance of a big portion of the EAC population, the level of awareness of the existence of EAC initiatives on the benefit of beneficiaries, and lack of harmonization of academic and professional education.

We realized that, on the EAC labor market, competition is not clearly regulated, because we don't see anywhere, any provision regulating the harmonization of quality standards for all competitors, because the competitors are coming from different educational backgrounds, where systems are completely different, and are required to meet the same conditions.

If this is not taken seriously into consideration, some competitors will be automatically eliminated from the market before they compete.¹⁷²

In the integration process, because of the fact that harmonization of education field is not yet implemented, it is important to set up minimum acceptable standards for the region on issues regarding the participation of people coming from different sovereign States. On the EAC Labor market , the competitor have different education background, some are really advanced because their education systems has not been distorted , like in KENYA and UGANDA ; other like RWANDA and BURUNDI even TANZANIA , the education level is very Low, some are on a renaissance period, while other are moving ahead peacefully since many years ago.

Another serious handicap is that RWANDA and BURUNDI, not only they still fighting to stand steal in terms of education; but they have been colonized by French speaking countries, and are

¹⁷¹ MINEAC, East Africa Hand Book 2011, infrastructure Key Economic Integration, P.4.

¹⁷² C. Musoni, *Op.Cit.* p. 16.

now integrating in an English speaking system. This is a factor that unbalances the labor competitiveness in EAC. As processes and policies are being put in place to overcome or to mitigate those challenges, we hope that young generations will take advantage to those preparations, but for now, there is not equality in the labor competition, and it is why some countries make a kind of labor protectionism, because if they open the doors, while they are not sure that their people are enough competitive, there is a risk that all jobs shall be absorbed by others. This is not an adequate solution because, for a country to develop has to attract investors, and a foreign labor when its own labor is not enough and not efficient.

The competitiveness of Labor Market in EAC, faces also, amongst other challenges the security problem. Although the Partner States make efforts to establish durable security within respective countries, the security is not totally covered. Insecurity is an issue that occurs especially in the period of elections. That happened in Uganda, in KENYA and recently Rwandans were chased from Tanzania. Not only security is not yet steady within the community, but also the region is surrounded by countries like Somalia, DRC and Soudan which are not secured and the EAC region stability can to a large extent, be affected by those countries.

By all those facts mentioned above, Insecurity can be a great harm to the free movement of workers and a challenge to the competitiveness.

II.4 Solutions to effective integration

Due to the challenges we pointed out, integration on EAC labor market is not a materialized achievement which has clear scientific implementation indicators, but it is a process made by successive steps, and supported by a good regulatory guidance. This is emphasized by Stefan Reith/ Moritz Boltz¹⁷³ where it is said that the EAC itself acknowledges that the implementation of the agreed decisions is inadequate, practical implementation of the Common Market is therefore increasingly being regarded as a process that must take place over time.

¹⁷³S. Reith & M. Boltz, *Op. Cit...* p. 94.

This statement is quoting the secretary general of the EAC; Richard Sezibera who admitted that implementation would probably take decades.¹⁷⁴

When we consider the previous integration stages, we are conducted to conclude that the above confirmation is not an exaggeration, it is a reality on the ground, and it doesn't mean that efforts are not made by concerned stakeholders, but it is a genuine fact although such a delay might discourage some Partner States, and the consequence is the fact of not giving priority to EAC integration.

This is not however the particularity of EAC, because other regional communities have met similar challenge due to several reasons: Jean Michel Servais¹⁷⁵ said that the protection of the labor market is a natural ambition that drives Government to regulate migration, imposing at the same time work permits and passes and avoiding foreigner to integrate informal labor market, and this is supported by national worker, especially in case of unemployment within the host country. Here the concerned community is the EU.

In the same frame of harmonization of laws in EU member states, Langer Stein¹⁷⁶ in 1992, talked about the EU established in 1957, and said that harmonization of labor law on the community level, is far from being perfect, because there are deep divergences within different member states, and this is due to divergences of national traditions, and the source of the labor law according to the legal system that governs EU member states. For some of them, there are labor codes where all labor legislation is found. For others, they have first to make a compilation of different laws; others rely to case- laws as main source of labor law.

This gives us a picture of how much integration has to be taken carefully, and the first solution to achieve the objective is not to give up. Beneficiaries of EAC initiatives are eager to enjoy the achievement of the community and this is the motivation for the Government decision makers to go ahead whatever the cost in different terms. The EAC was initially founded in 1967, and due to challenges that still being in existence even to date, it collapsed in 1977 after 10 years of existence. The refreshed EAC has now thirteen years old, and it can't repeat the previous failure

¹⁷⁴ In the conference of June 2011 in Arusha Tanzania

¹⁷⁵ J. M. Servais, *Normes Internationales du Travail*, Université de Liège, 2004, p. 196

¹⁷⁶ L. Stein, *Le marché du travail en Europe*, Vol 8, 1992, p. 72-73

occurrence. Thus, the second solution is to learn from bad experiences the EAC passed through in order to save enough energy to continue the journey.

It has been noticed that the awareness of the EAC within citizens, is not existing at all, which means that information still being retained by those who are involved in daily monitoring of EAC policies. Beneficiaries are a force which has been, for a long time ago, ignored and neglected, and we are totally convinced that “he/she who plans without involving beneficiaries, in planning in vain.” This because once they are aware of the benefits that EAC intends to offer, they are the first ones to fight themselves for the attainment. So, awareness campaigns are a priority.

We can't talk about solutions and forget the security issue. Security should be analyzed in both ways, either the security of the community as an international legal entity that has to be secured from external threats occasioned by neighbor country of the entire community and the region in general, but also and importantly the internal conflicts within EAC member states, either declared conflicts of *cold* ones. Those are issues that might be tackled by all together, and take adequate measures against the author of insecurity, and this should be the priority before undertaking any other decision. We do not ignore that some provisions of the treaty undermine the implementation of this solution, because all the EAC decisions are taken with consensus. This conducts as to propose the removal of such provisions as a solution to move ahead.

EAC now needs to be extended and get more members to strengthen its efforts, and before including other countries, there is a noble initiative of cooperation that is already in process, which might be a solution on harmonization and security issue, and the market shall be extremely widen. This is a tripartite cooperation between COMESA, EAC and SADC.

This common market (COMESA- EAC-SADC) comprises 26 countries with a combined population nearly 600 million people. The heads of states of those communities met on 12th June 2011 and signed a declaration launching negotiations for the establishment of the COMESA-EAC-SADC Free Trade Area (FTA).¹⁷⁷The accomplishment of this project shall be a beginning of solution to all challenged that we pointed out. We don't doubt of the efficiency of the

¹⁷⁷“Tripartite cooperation”, available on www.sadc.int/about-sadc, Visited on 3rd June 2014.

increment of the community membership, because the inefficiency of a small number of members can't impact on the general policies of the community, including the effective integration, whereby the research shows that, although it is a process, integration is possible and its failure is due to the lack of governments will to enforce council resolutions.

The main solutions find out this section turn around the setting up of principles guiding high level decision makers in the community, in the way that integration can't be achieved by a generation, but each player has to well perform his role where performed work shall be a motivation to inheriting generations to continue the process. This solution shall help to avoid a giving up behavior that occurred even in the young existence of the community.

Involvement of beneficiaries through awareness campaigns, and addressing security issues by constituting a community military force shall facilitate effective integration. In addition to that, amendment of undermining provisions contained into the EAC treaty shall conduct to effective laws harmonization, because good policies, benchmarks and international standards are available, what is lacking is the enforcement by member government because of some conflicts of interest, fearing to lose on the benefit of the community interests.

GENERAL CONCLUSION

Basing on what have been said above, really there are challenges, but also many achievements were realized in EAC. Example is the starting of the regional integration, regional infrastructure development, and Investment and trade promotion, co-operation in political affairs etc. It is a long journey but it has started, and the contribution of each citizen is highly needed.

As far as competitiveness of the labor market is concerned, we talked a lot about efforts made and challenges, let us conclude saying that in some cases we need to learn from our predecessors. We can take the example of European Union and see how they have broken through for being where they are now.

The European Union didn't commence without hesitations, and some countries in Europe like the Great Britain refused to join the community. Margaret Thatcher , Prime Minister of the Great Britain from 1979 to 1990 , in her speech showed her doubt against the EEC(European Economic Community):*"To try to suppress nationhood and concentrate power at the centre of a European conglomerate would be highly damaging (...) We certainly do not need new regulations which raise the cost of employment and make Europe's labor market less flexible and less competitive with overseas suppliers (...) And certainly we in Britain would fight attempts to introduce collectivism and corporatism at the European level - although what people wish to do in their own countries is a matter for them"*¹⁷⁸.

This shows how difficult was the integration even from superpower countries organization. From the EU establishment treaty of Rome in 1957, people asked themselves the same questions as it is now in EAC, some countries fearing their national labor market should be undercut by a cheap-labor service companies operating in another member state. The trend continued without a proper regulation, where countries were implicated in the processes of outward relocation and inward investment, because the labor quality, skills and productivity, the lower cost of labor attract the investment.

¹⁷⁸"Margaret Thatcher, celebration speech", <http://www.historiasiglo20.org/europe/acta.htm>, on 9th May 2012.

Apart from that, the competition regime resulted in social dumping, and it is why European Commission found as a serious reason of creating a single European market and forwarded a shape of a series of legislative initiatives aimed to constraining the scope for social dumping and to guaranteeing employees voice.¹⁷⁹

When we realize the effort that the EAC Council has used from its creation, and the achievements in terms of integration, we can afterword say that the community is in a good direction, but it is asked to update the regulatory system and harmonize with the new realities, and enforce its decisions. Within the Members States, there should be standardization in their educational, political and social systems, to facilitate integration and free movement of citizens. And everything shall be regulated, and the regulations enforced.

We do not take the same position with those who are on a negative side, like Stephan Reith and Moritz Boltz saying that, *the rhetoric of the leading decision-makers often contrasts sharply with the sobering political realities because the EAC is strong on papers but weak in implementation of its decisions*. He continuous saying that *it is at risk of losing the support of civil society ... and in these circumstances it is doubtful whether the right timetable can be adhered to ... because there is a difference between aspiration and reality*.¹⁸⁰

The implementation issue is a fact, but is not a convincing indicator of imminent collapse of the community. It is indeed a result of the complexity of a unification of different sovereign nations having different historical and economic realities and background. It is a challenge that might be mitigated but not a weakness because achievements are obtained from a process full of failures and successes.

The culture, political and historical background of each Partner State shall be a burden to the integration in the region in terms of labor market, people have to be educated, not only in academic skills, but also, about social and political realities, because if people have difficult to support each other within their own nations, how could they compete peacefully on a common market with others coming from other nations? Then, all the people will have to be mobilized

¹⁷⁹“The Enlargement of European Union and Labor market”, <http://www.google.rw/>, on May 9th 2012.

¹⁸⁰S. Reith & M. Boltz, *Op. Cit...* p. 1.

together for a common market and a political federation, the education and good governance must take the primary level, of course the steady legal framework is the pillar.

Not yet being competitive for some reasons shall not be the cause of protectionism, but it shall be an opportunity to attract investors, and workers to create an open mind to the local competitors, who will learn from others. Rwanda is a good example: Given that every year, universities send to the labor market thousands and thousands of graduates, even by protectionism the government of RWANDA is not able to employ them. It has opened to the EAC labor market, and in many areas where special skills are requested, foreign competitors take over the positions, and then there is a double gain for the country: The work is done for the economic growth, and people around are learning.

The comparative approach with other communities should not be a solution for the successful integration and achievement of objectives in EAC, because they differ from a number of aspects.

The quick example in the EU. It is important to compare economically and geographically the two communities (EU and EAC). The fact is that EU is made by developed countries while the EAC is made by developing countries, and this aspect shows us that the needs for the two communities are not the same. The objectives are different; therefore their strategies are also different.

Geographically, EU is made of twenty seven (27), member states which give the community a wide coverage area, compared to the EAC which is only made of five countries and financial constraints to a fair laws harmonization that meets EAC do not exist in EU, and it is why at the creation of EU, a specialized commission was put into place to draft model laws applicable in all EU member states, which is now a challenge to EAC. So, commentators, have tendency to see what was happened to other “*similar*” communities, to set up defective conclusions.

The EAC approach of integration on the labor market by harmonizing national laws to the Common Market regulations, especially the free movement of workers regulations, by putting in place permanent and *ad hoc* institutions for implementation, such as the high level Task force and TF at national level, Subcommittee and national law reform commissions, etc. is a good model appropriate to local requirements, the handicap resides to the management of this channel,

and the commitment of member states to implement because the enforcement of EAC council decisions still lacking. Poor coordination of all stakeholders in labor laws reforms and harmonization might create a duplication of work.

We support the Rwandan approach of creating a comprehensive Sector Working Group on Legal and Judicial Affairs, which involves all stakeholders for preparing all together what the national Task Force has to sell to the subcommittee meeting. This contributes to know better what a country wants to review, according to the requirements of the region market regulation. This is recommendable to all member states.

To facilitate the effective implementation of the Common Market Protocol through the elimination of contradictory statutory provisions, we recommend that the harmonization program be undertaken as a high priority activity by all the Partner States.

The treaty should be revised, especially on the side of modalities of losing membership, because a member country which is not committed to the community initiative slows down the process, and it is preferable for the benefit of the community, that to determine exit modalities, to welcome new committed members.

We recommend also a tangible involvement of the Civil Society, in all kinds of advocacy, because victims of the non implementation of good policies on the labor market are citizens and not high decision makers.

Within the community structure, there should be an overall body, responsible for monitoring and evaluating the implementation of the community policies and propose solutions.

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