

**THE IMPACT OF EAST AFRICA COMMUNITY ON IMMIGRATION POLICIES:
CASE STUDY OF KENYA IMMIRATION POLICY**

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DECLARATION

Declaration by the Student

This research project is my original work and has not been presented for a degree in any other University.

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MR. GERRISON IKIARA

DEDICATION

To my husband Mukhwaya, my sons Simon Lionel, Angelo Odaba and Faustin Maende for your understanding and support that gave me the courage to soldier on when things looked difficult and impossible. To my dear father for encouraging me to pursue a Masters degree. For my colleagues in the office who stepped in to do my work when I was away in class or in the library. To my classmates at the Institute of Diplomacy and International Studies (IDIS), Nairobi for their support throughout the program.

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Abstract

This study endeavors to examine the impact of East Africa Community integration on Immigration Policies and in particular the Kenya Immigration Policy. The study sought to achieve the following specific objectives: To investigate the effect of East Africa integration to Immigration Policies in Kenya. To establish how free movement of persons has impacted on immigration. To establish how free movement of services and labor influences the issuance of work permits by Kenya. To establish how the rights of residence and establishment has affected alien management in Kenya. The study used both Primary and Secondary source of data. The units of observation was department of EAC and that of immigration with emphasis being the Permit Section, Administration and border stations that neighbor both Tanzania and Uganda. The findings of the research show that Kenya Immigration Policy has undergone a lot of changes both in form and content leading to new, open, liberal and progressive less restrictive policies. The security experts hold the opinion that there are more security risks given the nature of regional borders leading to trans-border crimes such as human trafficking , smuggling in persons and goods including the infiltration of contraband goods, drugs and psychotropic substances.

List of Acronyms

AEC	-	African Economic Community
AU	-	African Union
BCP'S	-	Border Control Posts
CMB	-	coordinated Border Management
CMP	-	Common Market Protocol
COMESA	-	Common Market for Eastern and Southern Africa
DDF	-	Departure Declaration Form
EAC	-	East Africa Community
EALA	-	East Africa Legislative Assembly
EAMU	-	East African Monetary Union
ECOWAS	-	Economic Community of West African States
EDF	-	Entry Declaration Form
EEC	-	European Economic Community
EU	-	European Union
IBEA	-	Imperial British East Africa
IBM	-	Integrated Border Management
IGAD	-	Inter-Governmental Authority for Development
IOM	-	International Organization for Migration
KEPHIS	-	Kenya Plant Health Inspectorate Service
NAFTA	-	North Atlantic Free Trade Agreement
OMC	-	Open Method of Coordination
OSBP	-	One Stop Border Post
REC	-	Regional Economic Community
SADC	-	Southern African Development Community

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CHAPTER ONE: INTRODUCTION, PROBLEM STATEMENT AND OBJECTIVES

1.1 Introduction

This study endeavors to examine the effect of deepening regional integration in East Africa on immigration policies. The study aims at analyzing the interplay between two policy domains viz a viz: regional integration policies and regional immigration policies. This study inquires into the nature of the relationship between integration and immigration policies, how regional immigration policies function and the impact of regionalism on immigration policies and vice versa.

Migration is the oldest human activity. It is human nature to migrate given naturally human beings are especially mobile Bohning (1998)¹. The mobility rights were bestowed to man and woman by their creator. The advent of states from the Westphalia (1648) treaty ushered in new challenges as to the movement of human beings. The introduction of state boundaries meant man would no longer enjoy the luxury of free movement. States in asserting their sovereignty introduced all kinds of policy restrictions to limit flow of migrants into and out of their territories. In fact some states in their policies assumed an ideological dimension and would only allow their citizenry to travel to certain ideologically correct countries. The reasons for migrations were intertwined to politics of the day.

The coming of globalization meant states were to refashion their policies to resemble their believe in globalization as being able to reduce most of the individual disadvantages. International cooperation to regulate the movement of people and harmonize migration policies

¹ Bohning W.R. 1984: Studies in International Labour Migration. New York St, Martin's Press P 12-13 As Quoted In Moses W.J. 2006: International Migration: Globalization's Last Frontier. Zed Books London P 35

of states therefore has over the years been the trend in international politics of migration even as states aggressively pursue state centric policies.

The mid 1980's saw the intensification of regionalism. Most states assumed regionalism as the only buffer to individual economic vagaries of global decline and uncertainty. It was therefore assumed that the only force to counter the effects of globalization would be to regionalize rather than face globalization as individual state. This regionalism was mainly driven by economic ambitions. The process of regionalization thus is not surprising that begins it with economic integration. This confirms the assumption that migration integration is only possible where economic integration is well developed since economic integration facilitates the easy movement of factors of production. The case of EU clearly confirms this argument about migration integration and economic integration. This experience of the EU will be compared to the experience of other regional cooperation initiatives such as ECOWAS and EAC so as to confirm this link.

With the introduction of regionalism, redefinition of national borders as defined by proponents of state sovereignty and states centrists is required. These poses challenges to policy makers and institutions of governance at national, regional, and international levels. This is made more difficult in trans-border communities which are identified by ethno-linguistic² similarities thus begging the question of why they should be separated by colonial artificial borders.

This study analyses the relationship between EAC integration and immigration policies in the region to establish the impact of this integration to these policies. To achieve this end, Kenya immigration policy is used as the case study. The selection of Kenya is informed by the

² Sachdev I. 1995: Language and Identity: Ethno-Linguistic Vitality of Aboriginal Peoples In Canada. *The London Journal Of Canadian Studies* 1995 Volume 11/ 41 See Also Accessed [Http://Www.Mendoza.Com/Blog/?P-1081](http://www.Mendoza.Com/Blog/?P-1081) On 11/04/2014

importance of the country in global politics, its strategic geographic position, its inter linkage with international community and perceived commitment to integration. The experience of EU and ECOWAS will be used for comparative purposes to analyze the EAC situation and therefore Kenya.

Kenya has five neighbors namely: United Republic of Tanzania, Republic of Uganda, Ethiopia, South Sudan and the Federal State of Somalia. Kenya is a member of the African Union (AU), Intergovernmental Authority for Development (IGAD), East African Community (EAC) and the Common Markets for Eastern and Southern Africa (COMESA). In projecting and positioning its place in these RECs, Kenya is guided by its Vision 2030. In this Guideline document, Kenya has as its roadmap a quest to be “a globally competitive and prosperous country with high quality of life by 2030” and subsequently to transform Kenya into “a newly –industrializing, middle-income country providing a high quality of life to all citizens in a clean and secure environment.”

In making this bold declaration, Kenya positions itself with the citizenry in mind that they need to grow economically, socially, and politically. In courting any regional arrangement, Kenya is keen to see the advancement of these three pillars. In adopting the EAC, Kenya places a lot of premium on the pillars of integration namely: the Customs Union; Common Market; Monetary Union; and ultimately Federation. These ideals resonate well with Kenya’s Vision 2030.

1.2 Problem statement

Immigration has been a major focus as Kenya and her partners took strides towards Regional Integration. On the one hand, the capacity to control territorial boundaries as a mark of sovereignty, Agrawaal, 2001³ requires that states adopt inward looking state centric policies. Most States accomplish this power through among other strategies; immigration management.

³ Agrawaal, 2001

Ideally, an Immigration agency ought to strike a smart balance between facilitation and security - the very two principles that grant a state sovereign powers to determine who enters and who leaves its territory (the right to leave any country is part of customary international law though this right is not absolute). On the other hand, Common Market Protocol is hinged on the free movement and facilitation of people, goods, capital services, labor and the rights of establishment and residence as its key pillar and therefore prescribes for outward looking open policies.

These freedoms and rights demand that old immigration laws and policies be changed to reflect a new practice for the citizens of the Community. In this light, Kenya has had to review its laws to be in line with the Protocol.

Even then, one wonders how the changes in law and policy have affected the mandate of immigration departments, charged with the duty of implementing these new laws and regulations. All evidence confirms the contrary. Nothing has changed yet; whether the law or practice of immigration in Kenya.

If these aspects have been the traditional preserve of the Department of Immigration, one wonders how immigration policy and practice has changed, since the signing of the CMP. Have immigration policies and laws changed in as far as entry/exit procedures for EAC nationals are concerned? What has been the place of the integration in developing these policies and laws? This study seeks to establish how the realization of the EAC integration impacts on immigration regulation in Kenya.

1.3 Objectives of the Study

1.3.1 General Objective

1. To establish the impact of the EAC integration policies to immigration policies in East Africa.

1.3.2 Specific Objectives

1. To investigate the effect of East Africa integration to immigration policies in Kenya.
2. To establish how free movement of persons has impacted on immigration entry and exit procedures in Kenya.
3. To establish how free movement of services and labor influences the issuance of work permits by Kenya.
4. To establish how the rights of residence and establishment has affected alien management in Kenya.

1.4 Literature Review

1.4.0 Introduction

In this chapter, relevant literature for this study is explored within the selected themes as set out in the objectives.

1.4.1 General literature on Integration

Regional integration is a trending global activity in recent times. Regionalism is defined as the tension within a state between a territorially concentrated group and the state or more than one state⁴. Regionalism endeavors to create a borderless world⁵. This is a borderless world

⁴ Schrijver F. 2006: Regionalism After Regionalization: Spain, France and The United Kingdom. University Of Armsterdam P 21

⁵ Telo Mario (Edt) 2007: Eu And New Regionalism: Regional Actors and Global Governance In A Post Hegemonic Era. Ashgate P21

economically, socially, culturally, politically and even diplomatically. Migration enshrined in free movement is an exercise of and reflection of borderless world.

1.4.2 The EU Integration

Western European countries started experiencing regionalism in the 1950's. From these countries, the project of regionalism spread to other parts of the world including Asia, Latin America, and Africa among others. The formation of the European Economic Community EEC and later the signing of the Treaty of Maastricht in 1993⁶ ushered in a big leap as far as European integration was concerned. These were to later emerge as case studies of successful regional integration. The change of name from EEC to EU⁷ signified the expansion growth the union was undergoing. These developments were not only political, but also economic, social, cultural and linguistic changes. The institutions created under this community played a significant role in strengthening and buttressing the community to what it is today. That the EU integration is developed to the extent of having a full legal system and jurisprudence is pointer to how successful integration can be. A reference to EU law⁸ which has become part of comparative legal studies across the world is one such proof. Among the EU laws are legislations on and provisions of the EU treaty on immigration, visa regulation, and free movement of persons

⁶ Treaty Of Maastricht (Treaty Of The European Union) 1993. Article 2 See Also Treaty Of Rome 25th March 1957 Articles 2,3,17,18.

⁷ Ibid

⁸ Papagianni G 2006: Institutional And Policy Dynamics Of EU Migration Law. Martinus Nijhoff Publishers. P 9. See Also *Borchardt* K.D 2010: The ABC Of European Union Law. Luxembourg: Publications Office Of The European Union, 2010

within the union⁹ and outside the union who are citizens of member states or non members. A study of this EU law will reveal the impact of the aforesaid law on integration in the EU.

1.4.3 The Impact of EU Integration on Immigration Policies

The basic distinction in European integration is between negative integration and positive integration, pointing to the observation that the European integration involves both market – making and market – correcting besides assessing the extend and direction of change in domestic immigration policies under pressure from Europe.

Vink 2002¹⁰ in Negative and Positive integration in European Immigration Policies analyses the extent and direction of change in domestic immigration policies under pressure from Europe on the basis of findings from the Netherlands. The author concentrates on issues of free movement of persons/the entry and residence of aliens). Asylum (the protection of political and humanitarian refugees) and citizenship (the acquisition and loss of nationality) as part of his analysis.

According to Vink¹¹ “direct institutional impact of negative integration is limited in the sense that it does not so much specify how member state governments should run their country, but rather tells them what they cannot do”¹². In so saying the author is denying the fact that by

⁹ Baldoni E 2003: The Free Movement Of Persons In The European Union: A Legal-Historical Overview. Pioneer Working Paper No.2 2003 See Also Van Der Mei 2003: Free Movement Of Persons Within The European Community: Cross Border Access To Public Benefits. Hart Publishers. Oxford

¹⁰ Vink M.P. P 2002: *European Integration Online Papers*

¹¹ Vink M.P OP CIT

¹² *Ibid*

telling the governments what they cannot do, the EC is influencing decisions in governments and in a way running the governments.¹³

Unlike the negative integration¹⁴ which the author says is rather limited, positive integration¹⁵ takes place when European directives, regulations or soft instruments like the open method of coordination (OMC) prescribe or encourage a new institutional model at the domestic level to regulate such areas as consumer protection, environment policy or safety at work. The domestic implementation of positive European policies requires a much more coordinated effort depending on the extent to which there is a fit or misfit between European and domestic policies¹⁶.

The author should have brought to light the impact of supranational immigration policies on domestic policies in addition to the loss of national regulatory power which is crucial in avoiding market distorting state interventions such as financial support for unprofitable national industry or discriminatory measures with community law.

1.4.4 Dynamism in immigration laws and Practice in EU

Just as in most policy areas, European Immigration Policies have dynamics which are complex. Negative Integration in the field of immigration policy is essentially driven by the free movement of persons, which is one of the community's four fundamental freedoms. The implementation of (Article 39 (2) EC Treaty)¹⁷ which prohibits member states from discriminating between their own citizens and community nationals as regards employment,

¹³ Vink M.P. Op Cit

¹⁴ Ibid See Also Telo M 2007 Op Cit

¹⁵ Ibid See Also Telo M 2007 Op Cit

¹⁶ Ibid

¹⁷ Treaty Of Maastricht (Treaty On The European Union 7th February 1992 Article 39,2

remuneration and other condition of work and employment. The author is not bringing out exactly how this act is implemented and the mechanisms that have been put in place to ensure it is implemented and the consequences of implementing it.

According to Vink¹⁸ negative integration in practice is more about equal treatment and the abolition of functional borders. Abolition of functional internal borders is a requirement that the author should not generalize as being acceptable by all member states.

According to Geddes¹⁹, Britain, Ireland and Denmark are some of the members of the European Union that have opted out of key EU developments and looked to North America rather than Europe for policy lessons when developing immigration policies.

Laura Huntoon²⁰ in her article that examines immigration to Spain: Implications for a united European Union Immigration Policy says that establishing a Joint Policy regarding the free movement of people within Europe has many sticking points. As much as she is talking about harmonizing, she has not explained if the member states are already implementing the policy on free movement of persons as implementing leads to harmonization.

To Hunton²¹, Spain serves as an excellent case study to consider the regional aspects of immigration policies. Spain faces various challenges of harmonizing immigration policies to satisfy a constituency that is varied. Besides that, there is administrative control of entry

¹⁸ Vink Op Cit

¹⁹ A Favell and A Geddes, EU, Working Papers RSC No. 99/32

²⁰ Hunton Laura, 1998

²¹ Hunton Op Cit

estimates of legal and illegal immigrants and the bilateral relations that exist between Spain and Morocco if examined illustrate the political difficulties of a unified immigration policy within the Spanish society and the European Union. This makes the Schengen five worry that Europe's soft underbelly could let in the many illegal immigrants (The economist).

Favell and Geddes²² talk of the European Commission as the instrument that has made the policy to prosper and implementation is through the European Court of Justice which enforces adherence to Treaty agreements; this makes the European Community law to carve out its role as supranational overlord to national level legislation. The role of a supranational overlord that is assumed by the European Community law ignores the impact of these policies on the member states.²³ The two authors in their writing have not shade any light on the same. The authors only talked about the caution with which the supranationalism is handled leading to different balances being struck in different policy sectors.²⁴

1.4.5 The experience of NAFTA and its Member States

Trujillo²⁵ says US immigration law and policy has hindered multilateral cooperation and hence has not helped improve global and regional security. Unlike EU and other regional bodies which have strived to have a Joint immigration policy, NAFTA member states have each their own immigration policies. These policies came into force immediately after the September 11 terrorist attack on the US. Canada passed its own immigration legislation designed to improve national security. Mexico has ensured there is a strict immigration movement through its territory to limit the number of immigrants from Central America headed to the United States.¹⁸

²² Favell And Geddes OP Cit

²³ Ibid

²⁴ Ibid

²⁵ Trujillo B, 2007, Immigration Reform, National Security after September 11, Minisota Law Review, 91(5)1369-1406

Immigration goes hand in hand with security but NAFTA policies fail to address immigration and the impact that it would have if there was a joint policy. This has made Trijillo²⁶ in his writing to concentrate on America and the post September 11 terrorist attack. He does not bring out how the lack of joint immigration policy in NAFTA has affected the region when it comes to immigration which is closely related to security. To Trujillo there is emphasis on bilateral border control enforcement initiatives since September 11. The “Smart border” agreement between United States and Canada, which is designed to increase security and facilitate lawful cross border movement of persons and goods is one example of these bilateral initiatives.

As Hakim and Litan²⁷ say NAFTA barely addresses vital issues such as immigration policy but rather concentrate on the framework of two bilateral relationships that is between Canada and United States and between Mexico and the United States. Hakim and Litan have not only singled this fact but have not brought out the importance of having immigration policy and the impact it could have on the member states. The writers have left a gap that needs to be explored further through research for the betterment of NAFTA. The gap here is lack of a uniting supranational immigration policy that helps the members have a common immigration instrument for operation.

1.4.6 African Integration

Africa and indeed East Africa have been integrating ever since antiquity. The story of Africa reads like the story of integration, colonial division and re-integration. During colonial times and

²⁶ Ibid

²⁷ Hakim And Litan 2007, The future of North American Integration: Beyond NAFTA, Brookings, Institution Press, Washington D.C.

agitation for independence, African integration was expressed in the form of Pan Africanism. It is this Pan Africanist²⁸ movement that initiated the famous road map for African development with those who believe of Africa solution to African problems. This road map is referred to as the Lagos Plan of Action in 1980²⁹. This initiative was cemented by the adoption of the Africa Economic Community (AEC)³⁰. Despite the lack of specific regional agreement on immigration, it remains a central permanent feature of any integration project from Europe to Africa to Latin America.

The AU guidelines on migration control are the first African synchronized form of legislation at continental level aimed at managing migration.

1.4.7 The SADC integration

The Southern African Development Community (SADC) was established in 1980 as the Southern African Development Co-ordination Conference (SADCC). Its membership include: Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe. In its formation stages SADDCC operated without a Legal framework, treaty or protocol. The founders opted for a loose organization for promotion, co-operation and coordination rather than formal integration. The primary activities were aimed at the co-ordination of members' development initiatives and assisting in raising donor funds for these

²⁸ Fanon F 1964: *Toward the African Revolution: Political Essays*. Grove Press See Also *The Wretched Of The Earth* 2005. Grove Press.

²⁹ Lagos Plan of Action for Economic Development of Africa 1980-2000. United Nations Economic Commission for Africa. April 1980 P 104

³⁰ Abdia I.I. 2008: *The Challenges of Political Integration in Africa: A Case Study Of East African Community*. M.A Thesis University of Nairobi. P1

projects. SADC signed various regional protocols in the 1990s giving effect the principals of national cooperation and integration within the community.

This resulted in progress in other fronts leaving the immigration and migration conflict ridden and the prospect of a regionally harmonized approach to cross border movement as elusive as ever. Article 21 of the SADC treaty does not include immigration as an area of cooperation among the member states. The question is how the states relate when it comes to immigration matters that arise every other time. Although there have been generations of long migration movements which have played a major role in both economic and infrastructural development of several countries and its role in households and to individuals, immigration policies in SADC focus on control and deportation and not on freedom of movement and regional integration.

South Africa's position has been anti-immigration with a view that SADC is trying to impose an inappropriate European Economic Community model on Southern Africa by advocating for free movement of persons.

Every member state for SADC has its own immigration laws which serve when it comes to free movement of persons, right of residence and movement of labor. That is to say there is no common policy for SADC members in matters of immigration. In this case we cannot talk of the place of supranational policy when implementing national policy. This is strengthened by the fact that member states emphasize national immigration laws that regulate non-citizens' entry into and residence in their states. There is no provision that exempts citizens of the member states from the requirement of work permits.

As Chingono and Nakana³¹ say, “In a fully integrated region, people, goods and services are able to cross national borders freely. Despite many of the protocols and institutions, citizens of member states do not interact freely nor is it easy to cross the borders. Xenophobia is on the rise, and the immigration regime of South Africa in particular is increasingly becoming restrictive and discriminatory”. The lack of the free movement of persons and goods which forms an important part of integration explains why as stated by Chingono and Nakana, there are acute differences in the sizes of the economies of SADC countries. The more powerful partner tends to reap off more benefits in any interaction with the weaker partner; this hampers cooperation and the progress in integration.³²

To Ndegwa³³ harmonization of cross border population movement and regional migration management is necessary even if the policy is not harmonized. This raises questions as to why SADC did not specify free movement of persons as an explicit objective or aim yet it features prominently in the founding text of regional economic alignments.³⁴

1.4.8 The Integration of ECOWAS Member Countries

The Economic Community of West African States (ECOWAS) was formed in 1975 to foster and accelerate the economic and social development of the member states in order to improve the living standards of their people. Member states include Benin, Burkina Faso, Cape Verde, Cote

³¹ Chingono M and Nakana S.2009, the challenges of Regional Integration in Southern Africa – African Journal of Political Science and international Relations Vol. 3 (10) 396-408 October 2009. A

³² Ibid

³³ Ndegwa Stephen N. 2000, The Uncertain Promise of Southern Africa Indiana University Press.

³⁴ Ibid

D'ivoire, the Gambia, Ghana, Guinea and Guinea Bissau others are Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

The economic integration enabled the free flow of persons, goods and services stimulated the enactment of the protocol on free movement of persons, and the right of residence and establishment in 1979. The ECOWAS Treaty on Free Movement of Persons stipulates that “citizens of member states should abolish all obstacles of their freedom of movement and residence within the community.” The treaty also emphasizes that member states should sign bilateral agreements to allow each other’s citizens exemption from holding visitor’s visas and residence permits.

1.4.9 ECOWAS Protocol on Free Movement of Persons

According to Touzenis³⁵ the member states of ECOWAS have come up with protocols in three phases. Of these phases only Phase I had been fully implemented in full by the member states. The Failure of implementing these protocols forced the member states to set up national committees to monitor the implementation of the free movement of persons. The implementation then was effected in Benin, Burkina Faso, Ghana, Guinea, Mali, the Niger, Nigeria, Senegal, Sierra Leone and Togo.

The member states which have not implemented this protocol are weighing between the option of embracing supranational policy and sticking with a national policy. These are the members who had the opinion that embracing a harmonized policy is ceding part of their national sovereignty.

³⁵ Touzenis. K. 2010 Free Movement of Persons in the European Union and Economic Community of Africa.

The ECOWAS integration can be commended for reinforcing better and closer cooperation between member states. It is through this integration that the Francophone, Anglophone and Lusophone have come together, but on the other hand Touzenis failed completely to bring to the fore the impact that this supranational policy has brought to the member states that have implemented the protocol.

Touzenis has talked of the oil boon in Nigeria that attracted thousands of ECOWAS nationals in regular and irregular situations, the oil boon was poorly managed leading to a drop in the living standards and competition for jobs and to devaluation of the currency and high inflation forcing the Nigerian government to revoke Article 4 and 27 of the Protocol³⁶ so as to expel the aliens, the majority of whom were Ghanaians. This in itself shows the impact the supranational policy can have if implemented with the national policy.

1.5 The Integration of COMESA Member States

The Common Market for Eastern and Southern Africa comprise of 20 countries which are: Angola, Burundi, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Zambia, Zimbabwe and Uganda. Its two major objectives is to put in place of a customs union as well as monetary and financial co-operation between member states. Strengthening of immigration and free movement of persons is one of the priorities that COMESA has undertaken. Some four

³⁶ ECOWAS Protocol on Free Movement Of Persons, Residence and Establishment. Adopted On 29th May 1979
Article 4 And 27

countries are in full compliance with the protocol that is to be implemented in several stages, with the first stage being removal of visa requirements. To remove all barriers to enable free movement, COMESA came up with a timetable for the period between 2000 and 2014.

There has been a focus by many Regional Economic Communities to encourage the free movement of persons within such communities. The movement of persons happens to be the primary responsibility of Immigration. In the EAC context, nationals of the five Partner States had to make provisions that encourage free movement of Persons. Formerly, Rwandese and Burundians visiting Kenya were required to obtain an entry visa and pay the requisite 50 US Dollars. Subsequent to their joining the community citizens of Rwanda and Burundi were given gratis visa before this requirement was done away with.

The COMESA member states are faced with a setback that emanates from its members belonging to multiple economic communities, the writer did not mention this but this fact has been a stumbling block to the implementation of the policies passed by the members. Within COMESA, there are members who belong to the East African Community EAC, Inter-governmental Development Authority, IGAD and Southern African Development Community, SADC. All these communities have policies on free movement of persons which end up to conflict. This conflict leads to some members resorting to ignore the supranational policies and implementing their national policies to the disadvantage of the integration process.

1.5.0 Literature on East African Community

Literature review on EAC is perhaps the most scarce source of information we have today.

The Treaty of the East African Community,³⁷ which entered into force in 2001, established a community that consisted of Kenya, Uganda and Tanzania. In 2008, the community was expanded to include Burundi and Rwanda.

The history of the EAC dates back to the scramble for Africa era³⁸. In its present form, the EAC is a resurrection of the East African Community established under the 1967 Treaty on East African Cooperation. Under article 5 of the EAC Treaty, the objectives of the community shall be to develop policies and programmes aimed at widening and deepening cooperation among the member states, for their mutual benefit, in the political, economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs³⁹. Pursuant to these objectives, the states have undertaken to establish among themselves a customs union, common market, monetary union and ultimately a political federation. In July 2010, the EAC common market was launched – a major feat for economic integration in Africa after the establishment of a customs union five years earlier. Plans for a monetary union are at advanced stage though it has been delayed for some time. Also recent efforts to fast track a political federation are welcome signs of the commitment of regional leadership to the EAC integration project. Recent bilateral and trilateral agreements⁴⁰ on a number of issues some covered in the treaty like immigration,

³⁷ Fitzke S. 1999: The Treaty for East African Community: Can East Africa Successfully Revive One Of Africa's Most Infamous Economic Grouping? Minnesota Journal Of Global Trade Vol 8 P 127

³⁸ Mbogoro D.A.K 1978: The Common Market Concept and Economic Development: Tanzania's Experience In The East Africa Common Market. University Of Dar Es Salaam

³⁹ Ibid Line 1. See Also Treaty On The Establishment Of East African Community 1999

⁴⁰ Recently Kenya, Uganda And Rwanda In What Is Dubbed Coalition Of The Willing Entered Into Trilateral Agreement On Various Infrastructure Projects Such As The Lapset Project, The Standard Gauge Railway, Pipeline Among Others. Also The Coming Into Force Of A Single Customs Window Which Is Spearheaded By The Same Coalition Is Ongoing. These Agreements Though Allowed By The EAC Treaty Have Raised Political Concerns In The Region Over Attempts To Sideline Other Community Members, Which Is Inimical To The Spirit Of The Community.

infrastructure among others all work towards invigorating the desire for an integrated East Africa.

Apart from EAC integration project, the new found energy among regional leadership in drawing of bilateral agreements and trilateral agreements all work towards reinforcing and babysitting regional integration. Such close working relationship will enhance ties within the community and thus help reduce friction resultant from integration.

1.5.1 Gap in the Literature

It would appear that in signing of the Treaty that establishes the EAC, Partner States were committed to the integration of the region and technically to the review of their laws for the sake of the Community and its people. The nexus of the discourse, and as exposed in the literature is the place of supranational policies in the implementation of national policies. The literature so far reviewed does not address itself to how the Treaty⁴¹ and Protocols⁴² in the region are to be viewed in relation to national instruments. On migration, there is no provision identifying the Protocols as superior to national laws on migration management. Perhaps this is informed by sovereign state tendencies dominating member states perception to regional instruments or sheer individual state suspicions. Several bilateral agreements that have been entered into regionally have no full support of law given they are originated as political statements and remain just that. No single part of literature assesses the impact of integration in East Africa. The literature above on EAC integration can be said to be more descriptive of the integration itself based on the details of chronology of integration and not analytical by looking at the process and impact of

⁴¹ Treaty In This Study Unless Otherwise Stated Means Treaty On The Establishment Of East African Community Signed At 1999

⁴² Protocol(S) In This Study Unless Otherwise Stated Means Protocol On The Establishment Of East African Community Common Market Also Referred To As Common Market Protocol.

this integration. It simply describes an account of events. There is urgent need for development of literature on East African integration through continuous research to capture both the history, the process and impact of EAC integration on all areas of social and economic, legal and policy development brought about by this integration.

Compared to the EU, where integration is well advanced and with it literature and studies on EU integration, African integration in general can be said to be in its early stages of development. The EU integration is advanced both in form of institutions and structure including academic research on EU integration than Africa.

1.6 Justification of the Study

1.6.0 Policy justification

Each partner state has had a history, though similar, of how immigration practice, policies and laws have developed over time. All the five Partner States have made efforts to incorporate the second stage of integration namely the establishment of a common market. How this move then affects or refines the long history and perspectives on immigration have been a venture that few scholars have dared to engage. This study is intended to examine the impact of this integration on policies (immigration policies). This will help to realize the policy successes and short falls for consideration by policy makers and implementers

There is need to document the existing problems in implementing the Customs Union and the Common Market, capture the feelings of partner states from the perspective of the implementation and establish the bottom line in visualizing the desired integration. This study will contribute to policy formation and implementation, in that the findings will inform the

administration of the Department of Immigration on the impact of regional integration on Kenya's immigration policies.

1.6.1 Academic justification

Given the situation described in the literature review above, this study offers academic insights and inquiry into the happenings in African integration and more locally East African integration. The study attempts to contribute to knowledge by analyzing the impact of EAC integration to immigration policies in Kenya and thus all the Partner states⁴³ in view of the fact that there is no study so far conducted on this phenomenon, this study hopes to fill this gap.

1.6.2 Hypothesis

1. East African integration significantly influenced the changes to immigration policies in the region.
2. Free movement of Persons has compromised entry and exit procedures at the East Africa borders
3. Free movement of labor has lowered the required thresholds for acquisition of work permits
4. Right of establishment and residency set hurdles for the management of Foreign Nationals in Kenya.

⁴³ These Are The State Signatories To The EAC Treaty And Its Protocols. These States Are: Burundi, Kenya, Rwanda, Tanzania, And Uganda.

1.7 Theoretical Framework

1.7.0 Theory of Regional Integration

The theory of regional integration has been associated with Haas⁴⁴ a prominent neo-functionalist known for his concept of “The uniting of Europe”. This is because Europe remained the focal point for most of the works on regional integration theory although in the recent past the application of integration theory to Latin America, Africa and Asia has increased⁴⁵. Haas and Schmitter developed a conceptual framework that has spread the process of regional integration beyond Europe in industrial and non-industrial settings with a concept approach that is applicable to both⁴⁶. The basic postulation of neo functionalists is the decline of nationalism and nation-states and their replacing by large units more suited for the roles they play in society. The neo functionalist thus does not see nation-states as units of analysis but the whole region as a unit. Modern neo-functionalist who were inspired by European integration still exist and put emphasis on supranational institutions, among them are Sandholz and Sweet 1998⁴⁷ and multi-level governance, Marks, Hooghe and Blank 1996⁴⁸

Among the opponents of regional integration was Haas⁴⁹ himself, Lindberg and Scheingold⁵⁰.

This was after the European integration process started to experience a crisis in the mid 1960s.

⁴⁴ Ernst Haas, *The Uniting Of Europe: Political, Social, And Economic Forces, 1950-1957* (Republished By University Of Notre Dame Press, 2004) See Also Haas And Schmitter "International Integration: The European And The Universal Process," *International Organization* 15 (1961), 366-92,

⁴⁵ Philippe Schmitter, 'A Revised Theory Of Regional Integration', In Lindberg And Scheingold, Eds., *Regional Integration*, 232–64;

⁴⁶ Ibid

⁴⁷ Sandholtz W And Sweet A.S, "European Integration And Supranational Governance" *Journal Of European Public Policy* 4 (1997), 297-317.

⁴⁸ Marks, Hooghe And Blank 1996

⁴⁹ Haas E B. 1975: *The Obsolescence Of Regional Integration Theory* Berkely, CA: Institute Of International Studies

³⁷ Lindberg And Scheingold, *Europe's*

⁵⁰ Lindberg And Scheingold: , *Europe's Would-Be Polity*, 284;

Haas and these scholars concluded that his theory was too deterministic and Haas admitted that he had not foreseen a rebirth of nationalism and resilience of sovereign nation-states within functionalist organization of supra-national institutions referred to as regionalism. Lindberg and Scheingold singled out some of the major mechanisms and dynamics. It was concluded that neo-functionalists had not studied domestic politics sufficiently and that they could have exaggerated the role of supranational institutions⁵¹.

The other opponent of neo-functionalism is Pierson⁵², Pollock 1996⁵³, Scheneider and Aspinwall, 2011⁵⁴ who used the new institutionalist approach to integration studies. According to Pierson there are gaps that emerge among the member states which are difficult to close. These gaps are created by autonomous action of integration institutions, the restricted time horizons of political decisions makers, unanticipated consequences and shifts in policy preferences of governments⁵⁵. This makes the gaps very difficult to close because of the reluctance of supranational actors, institutional barriers to reform and various costs to change. Due to this gaps and the difficulty in closing them, Pierson⁵⁶, Pollock⁵⁷ and Scheneider and Aspinwall⁵⁸ argue that this forms the foundation of disintegration rather than integration. Therefore these authors see nothing than disintegration as states pursue their own agenda defined as state interest among community of states. This disintegration and the consequent pursued by

⁵¹ Haas E.B 'Technocracy, Pluralism and the New Europe', In Stephen R. Graubard, Ed., *A New Europe?* (Boston: Houghton Mifflin, 1964), 62–88.

⁵² Pierson 19

⁵³ Pollock 1996: 1971),

⁵⁴ Scheneider And Aspinwall 2011:

⁵⁵ Ibid Line Two

⁵⁶ Pierson Op cit

⁵⁷ Pollock op cit

⁵⁸ Schneider and Aspinwall op cit

individual interest is therefore a source of disharmony since it is equivalent to a chaotic state of nature. With this state of nature, states are likely to disagree and by extension war erupts.

The war is a war in a whole community of states. As states push and shove over their interests, there is likely war in the whole community while in the individual states, there will be peace.

This in Nye⁵⁹ phrase is the “peace in parts”. The parts are individual states which internally are at peace but externally in relation to other states are not, as each state attempts to promote and protect its own self interests, there is no peace i.e. the states are in a state of war always in their protection and promotion of self interest. Nye’s thesis rests on rather simple question of how there can be integration as proposed by neo-functionalists when there is no peace in the whole but only in the parts. Rather how can the peace existent in parts be utilized to guarantee peace in the whole. Simply how can states be at peace while they all pursue their own self interest in the same environment? These according to Nye’s thesis is an impossibility.

This theory is relevant because it talks about collective decision making. Policies in EAC are determined by consensus which covers a varying number of functional areas. Ernst Haas came up with the concept of spillover which “refers to a situation in which a given action, related to specific goals, creates a situation in which the original goals can be assured only after taking further actions, which in turn create a further condition and a need for more action and so forth”⁶⁰. This refers to policies that are agreed upon and the partner states need to implement them for the prosperity and continuous existence of the integration.

⁵⁹ Nye J.S: 1971, The politics of European Integration

⁶⁰ Hass E. Op Cit

1.8 Research Methodology

In conducting this study both primary and secondary sources of data are used. The unit of observation is the Immigration department and the department of East Africa Community who are the practitioners charged with policy formulation and implementation of immigration policies in Kenya. The unit of analysis is the impact of EAC integration on residence, entry, stay and exit of East Africans, establishment, work permits and free movement of persons among other immigration policies. Secondary data was collected through library research, information from written reports, annual reports, project proposals, journals, books, newsletters, periodicals, government publications, research papers, reports and abstracts. Secondary data informed this study in terms of activities, amendments and policies that have been done in previous years. The changes and amendments that have taken place through integration and how they impacted on the Kenya Immigration Policy. The study is predominantly descriptive in nature, giving room for the researcher to describe things as they will be seen in the course of the study.

Primary data was empirically collected. For this study, a selected sample population of 44 representatives of the target population of 500 technical officers from immigration department and East Africa Community was selected using stratified random sampling and data collected via the use of research instrument. Questionnaires and in-depth interviews for those charged with policy formulation. Sampling design involved both non- probability and probability methods. Non-probability technique demands that the researcher relies on personal judgments to select units that are representative of the population in this case it is the top management and

junior officers who have participated in policy formulation forums. In probability sampling method the study came up with representative data on integration.

The following section purposively forms the strata given their place in the implementation of the protocol that encourage integration: Permits and Passes, Permanent Residence, EAC and Immigration administration, Border Stations of Busia, Namanga, Isebania, and Malaba. In depth interviews were conducted focusing on policy makers as points of reference especially when the spirit of integration is to be accessed in the light of what national policies advanced.

In line with Mugenda and Mugenda (Revised 2003) sample size is the representative population of the whole population under study. Using a confidence interval of 14 at a 95% confidence level and with a population size of 500, the sample size is 45, calculated by use of an online sample size calculator. The research drew the 45 respondents from the five sections and border stations mentioned above.

The sample is distributed as follows:

Table 1.8.1: Sample population distribution

STATION	POPULATION	SAMPLE SIZE
PERMITS	30	3
IMM ADMINISTRATION	10	1
PERMANENT RESIDENCE	20	2
BUSIA	38	4
NAMANGA	20	2
MALABA	42	4
JKIA	241	22
MEAC ADMINISTRATION	59	6
TOTAL	500	45

Source: Researchers own sampling frame.

1.9 Ethical Consideration

In conducting this study I sought consent to give questionnaires and conduct interviews. The confidentiality of all the people answering questionnaires and those participating in interviews was to be protected by keeping their names anonymous. The views given by the respondents will be respected and treated as individual opinions without leading the respondents to predetermined opinion either by this researcher or any other person. The information obtained will be disseminated in accordance with rules governing any publication. A copy of this study may be stored at the Kenya immigration libraries for future researchers and reading purposes.

1.10 Scope and Limitations

The scope of this study is limited to the impact of East Africa Community integration on Kenya Immigration Policy and not other partner states of the East Africa Community integration. The study will also focus on the Common Market Protocol and its regulations and how these provisions influence immigration policy of free movement of persons. The study was restricted to the selected sample population shown above to help reduce bias in the study.

1.10.1 Limitation of the Study

Limitations of this study are the fact that I work for the Department of Immigration as this may be a basis to limit contact with colleagues; the researcher will use an assistant who is not familiar to the respondents. The people to be interviewed might withhold information or true expression about the EAC integration and should the researcher personally undertake the study. Once again research assistants will be used in the collection of relevant data. Finances are a limitation and the researcher will delimit this by restricting herself to the budget items geared to this study. Once again research assistants will delimit this.

1.11 Chapter Outline

1.11.0 Chapter 1: Introduction, Background to Study Area, Objectives, Literature Review and Methodology.

This chapter serves as the introductory chapter to the study where important aspects of any research are discussed as indicated above.

1.11.1 Chapter 2: A Comparative Overview of the EU and EAC Integration Process

This chapter highlights the various issues that touch on immigration. The main focus is on the steps that have been taken so as to effect the integration in each case study comparatively. The milestones that have been achieved so far, for example the Customs Union, the Common Market Protocol and the Monetary Union so as to help in assessment of strengths and weaknesses in each integration programme and how the processes have influenced the EAC integration and immigration policies during the period under review.

1.11.2 Chapter 3: EAC Immigration policy And Kenya Immigration Policy

In this chapter is an overview of the Kenya immigration policy and how it has evolved since the colonial period when the immigration policy frame was undertaken. The chapter will also examine the effect of EAC integration policy most especially the Common Market Protocol on the Kenya immigration policy.

1.11.3 Chapter 4: An Assessment of the Impact of EAC integration to Kenya Immigration Policy.

This chapter undertakes a comparative exploration of the integration policies as enshrined in the CMP and the Kenya immigration policies with the objective of establishing the link between regional integration and immigration and whether the CMP has affected or otherwise the conduct

of immigration practice in Kenya and the region at large. This will enable us to appreciate the policy changes so far instituted.

1.11.4 Chapter 5: Summary of Findings and Recommendations

The chapter will make a summary of major findings on the objectives of the study comparative to the hypotheses. Subsequently, conclusions will be drawn and a number of recommendations proposed. In the final analysis, recommendations for further study will be made.

CHAPTER TWO: A COMPARATIVE OVERVIEW OF EU AND EAC INTEGRATION PROCESS

2.0 Introduction

This chapter provides an overview of the East Africa Community's integration process in comparison to the EU integration, and more importantly the chapter sheds more light on the evolution of the East Africa Community from the time of the colonial rule. The steps that have been taken so as to effect the integration. The milestones that have been achieved so far for example Customs Union, Common Market Protocol and the Monetary Union. The chapter sheds light on how these milestones were implemented. The Common Market Protocol has selected issues touching on Immigration which forms the core of this study.

2.1. The EU Integration

Perhaps the oldest, longest and most advanced integration project worth of study is the EU. The conception of a European Union dates back to 1920's just like the East African region, yet today the EU is the most surviving integration project in the world and perhaps the most successful. The present day EU came into being in 1993 by the signing of the treaty of Maastricht⁶¹ on the foundations of the European Economic Community. The EU consists of twenty eight member states who have delegated some of their mandates to common regional institutions for the purpose of coordinating the regional EU policy without however creating a super state.

The institutions of the EU presently are the institutions of the European Union, its parliamentarians, judges, commissioners and secretariat, the governments of its member states as well as their people, all play a role in European Integration. Though there may be contention as to which institution is most important, all these institutions work in cooperative effort to

⁶¹ Treaty of Maastricht 25 march 1993

achieving the region's integration. Recent decisions of the EU court on integration related to disputes have cast it as more important of all while the political arm consisting of the presidents and some of the decisions and resolutions they have adopted are also of significance to the Union. The Union has laid down procedures on the EU cooperation with other regions and states both within the union and without the union. This community approach to some of the global issues gives the EU more soft power than individual states. Though the EAC has the same organization institutionally, the political arm of the community is the most conspicuous and outspoken one to the detriment of the other arms. Sometime even the judicial arm of EAC seems like nonexistent and subservient to the national jurisdiction of individual states even on matters regional. This has the effect of slowing down the development of the region's integration.

2.1 Evolution of the East African Community

2.1.1 East Africa Colonial Era Cooperation

The East Africa Community consists of five countries which include Kenya, Uganda, Rwanda and Burundi. South Sudan is still waiting to be admitted as a member of the community. The surface area that the EAC region covers is about is about 1.82 million sq km. It has a combined population of 135.4 million.⁶¹

The region has a vast potential in minerals, forestry and wildlife resources and large deposits of oil and gas have recently been discovered. The region depends on agriculture, livestock, industrial production and tourism which are its major income earner. Its people, share a common history, language/culture and infrastructure. It is a common belief in the region that the region was one people before the scramble and partition of Africa. Otherwise what would explain the common border community, environmental terrain and common linguistic identity?⁶²

The three East African states of Kenya, Tanzania and Uganda have enjoyed close historical, commercial, industrial and cultural ties. Cooperation between them can be traced back to 1894-1917 during the early colonial initiative involving Kenya and Uganda. It was during this period that there was the construction of the Kenya – Uganda railway line from 1897-1901 to be exact, followed by the establishment of a customs collection centre in 1900, the East African Currency board in 1905 and the Court of Appeal for Eastern Africa (1909).⁶³

The colonialists later came up with an initiative that involved Kenya, Tanganyika and Uganda from 1918-1960. During this period the colonialists came up with the East African governors' conference in 1926, the East African Income tax Board in 1940 and the Joint Economic council in 1940. The formation of these bodies was for the sole purpose of enhancing cooperation. The colonial governments in the three East African countries later formed an East African High Commission in 1947 – 1961 whose responsibility was deal with all cooperation activities. The East African Common Services Organization was formed between 1961- 1966.⁶⁴

2.1.2 Independent EAC 1967-1977

The first East Africa Community was established by a treaty in December 1967. The treaty also established various organs: the East Africa Authority, the committee of East Africa ministries, the secretariat, the East African Development Bank. With these organs the community enjoyed services that included rail, lake, air and aviation, harbors, telecommunications, postal and telegraphic services, tertiary education – university of East Africa, meteorology, industrial research and customs and exercise.⁶⁵

The first East Africa community faced a number of challenges that ranged from persistence of the market inequalities besides the centralization of most of the headquarters of the common services in Nairobi, Kenya, created a centre periphery relation in the region. There was also the inevitable fiscal distribution of gains, inter territorial imbalances, incoming system was not harmonious and there were constitutional impediments. Due to these challenges the partner states withheld approval of the General Fund Services Budget for the year 1977 leading to the treaty establishing the EAC to be dissolved in 1977⁶⁶

2.1.3 Period of dissolution of EAC 1977-1983

Through the mediation agreement of 1984, the division of the assets and liabilities of the former EAC took place, something that brought dissatisfaction among some member states which complained that Kenya had benefited by accruing a big number of assets there were also political differences in regional leadership where the leaders pursued differing ideological convictions. Despite the dissolution, under the mediation agreement, the three countries agreed to cooperate in identified areas indicating the spirit of integration that continued to exist among the people of East Africa long after the collapse.⁶⁷

2.1.4 Re-launch of EAC 1992-1997

From the year 1992-1997, there were efforts to re-launch the East Africa integration, which resulted in the establishment of the Commission of East African cooperation. On 30th November 1993 through the establishment of Permanent Tripartite Commission for cooperation between Tanzania, Kenya and Uganda, the East Africa Community was revived. On the same date the commission was upgraded into a treaty for the establishment of East Africa Community, the

three heads of states: Moi, Mkapa and Museveni are credited with this revival. This was followed by another treaty expediting closer cooperation, which was ratified and came in to force on 7 July 2000. On January 2001 the EAC was formally launched⁶². The Republic of Rwanda and the Republic of Burundi acceded to EAC Treaty on 18th June 2007 this made them full members of the community with effect from 1st July 2007.⁶⁸

2.1.5 Events of 1999 to Date

The events of an agreement re-establishing the EAC Secretariat in 1996 led to the resuscitation of East Africa co-operation in new vision when in November 1999 a Treaty formally re-launched the EAC. The three member states ratified the treaty and it entered into force in July 2000. Several initiatives have been adopted in an effort to further the integration. The signing of a customs union Protocol which came into force at the beginning of 2005 was a major step towards integration. The objectives spelled out included liberalization of the inter-regional trade regime on the basis of mutual benefits, promotion of efficiency in production within the community and the promotion of economic development and industrial diversification. The protocol also provided for the establishment of a common external tariff and trade remedies. After the Customs Union, partner states progressed to a Common Market to improve macro-economic policy synchronization and co-ordination, especially the fiscal regimes, this was in 2009. The member states have ratified the monetary Union which is undergoing implementation.

⁶⁸ *Makandala op cit*

⁶⁹ *J Nduku & Mutalewa, 2002*

2.1.6 Objective of EAC Integration

The EAC member states came together to form a renewed integration with an objective of strengthening and consolidating cooperation in agreed fields to enhance equal development in member countries by establishing a single market and investment area in the region and promoting sustainable utilization of the region's natural resources and effectively protect the environment.⁶⁹

According to the EAC Treaty, the full integration is to be achieved through the four pillars of: A Customs Union, a common market, a monetary union and finally a political federation. The community achieved a customs union on January 1, 2005 and the Protocol for Common Market on 20 November 2009 which envisaged various rights such as free movement of goods, free movement of persons, free movement of capital, free movement of labour, right of establishment and right of residence. The common market marks the second stage of the regional integration process as it is spelt out by Treaty for the Establishment of the East African Community. The Common Market Protocol is a significant step towards the achievement of the next milestones in the integration process namely the monetary union and EAC Political Federation: this is slowly being realized by the small steps that have been taken to enhance it, which includes the launching of the East African Business council and East African Defense Affairs Unit. So far the EAC Treaty has been followed to the inclusion of the first pillars as stipulated in Article 76 of EAC treaty.

2.1.7 The Process of Integration

Article 75 of the treaty establishing the EAC emphasizes the aim of the Community as that of integration. Pursuant to this, specific milestones were set to take the Community to the desired integration, ultimately the community envisages a people with a common purpose pulling together and celebrating their differences in political federation. Towards the federation, the community set other proceeding milestones: - a Customs Union, A Common Market and a Monetary Union.

The EAC Partner States agreed to establish a Customs Union on January 1 2005, significantly to eradicate all tariff barriers. The push factor at the time was the need to have free movement of goods to facilitate trade between the partner states. In essence the Customs Union sought to influence the operations of the various Revenue Authorities in the region. The free movement of goods presupposed the role that human beings play in terms of movement as well as ownership.

On November 25, 2009 the Summit, the highest decision making organ in the EAC signed into being a protocol that established the Common Market. The CMP seeks to ensure that there is a wide and deep co-operation among Partner States in the socio-economic sectors to the benefit of the states and their citizens. CMP presents the case of free movement of goods, services, capital and the rights of establishment and that of residence. The specific objectives of the Common Market are: to accelerate economic growth and development of the partner states through attachment of the rights spelt out in the protocol. To strengthen, co-ordinate and regulate the economic and trade relations among the partner states in order to promote accelerated, harmonious and balanced development within the community. This was supposed to sustain the

expansion and integration of economic activities within the community, the benefit of which shall be equitably distributed among the partner states.

In 2007 the Heads of the Partner States decided to fast track agreements on key protocols of the East African Monetary Union by 2012. The establishment of the EAC Monetary Union is to benefit the members by: - Enhancing the benefits from the EAC Customs Union and EAC Common Market and deepen the integration of EAC economies. Thus reducing the costs and risks of conducting business in the region. Granting the region a single currency and removing the costs of transaction in different currencies and the risk of adverse exchange rate. The success of the EAMU will be determined by the harmonization of existing monetary policies. A Common Monetary Policy will dictate the use of the same instrument across all countries.

2.1.8 Immigration Issues in EAC Integration

There are immigration connotations to the attainment of the Common Market Protocol. Indeed the Common Market Protocol is to immigration what the Customs Union is to Customs officials. The movement of goods presupposes that of people and for the community it entails crossing the borders. Similarly the movement of services and capital includes labor and when such matters touch on foreigners it includes immigration.

The principle of EAC Common Market is non-discrimination of nationals of other partner states on grounds of nationality, equal treatment to nationals of other partner states to ensure transparency in matters concerning the other partner states and share information for the smooth implementation of the protocol. The right to free movement of persons entails the abolition of any discrimination based on nationality; this right includes entering the territory of a partner state

without a visa, the right to move freely within the territory of a partner state. The entries and exits are facilitated by the partner states' reciprocating by keeping open and manned border posts for 24 hours throughout the week.

The partner states also have a responsibility to guarantee the protection of the citizens of other partner states while in their territories. The partner states will also prosecute and facilitate extradition of a national of a partner state who commits a crime in another partner state.

The Common Market Protocol allows workers from any partner state to seek employment within any country in the region. Besides employment, nationals of the partner states will establish their business in any partner state and pursue economic activities with the national laws of the partner state. Persons working and doing business are entitled to social security schemes in the host country, besides a guarantee of the right to reside in any partner state, along with their spouse and children. The host partner state has the obligation to issue residence permits for a specified period and choose to either charge a prescribed fee or issue the permits gratis as per the bilateral agreements signed between two member states. A case in point is the agreement between Kenya and Rwanda where nationals living in either of the countries do not pay for a work permit.

In all partner states, immigration controls the entry, residence and exit of persons besides manning the borders. For the purpose of regulating entry, stay and exit of persons, the Common Market Protocol is central to immigration functions if the EAC integration is to be achieved. It is in line with this that the EAC secretariat came up with Article 5 of the EAC Protocol on adoption of Integrated Border Management system among partner states. In this system various agencies

such as Immigration, Police, Customs, Kephis, Interpol and others come together to plan , co-ordinate, control, monitor and evaluate in order to manage the border.

These agencies cooperate in areas such as legal and regulatory framework, institutional framework for Border Management System, human resource training and development, communication and information exchange and elimination of corruption.

2.1.9 Benefits of EAC Integration

The views of member states on the benefits of integration vary by country. Kenyan enterprises viewed regional integration as an opportunity both in short and long term. Uganda and Tanzania were cognizant of the economic rewards over the long term. There is the potential for specialization, resulting in economies of scale. Competition between cross-border regional enterprises could lead to gains in comparative advantage, wider markets and optimum production. A wider market could attract a more direct foreign investment with free movement of persons, goods and services', bearing in mind the different ethnic groups in the region, there is bound to be cultural exchange, technology and skills transfers. The region will avoid cost duplications and put resource to better use,

. The seasonal productivity is better distributed (especially in agriculture where regions have varied seasons due to differences in nature, terrains and climatic conditions. EAC just like a majority of regional economic communities will have an enhanced bargaining power at global level. The member countries will also have an advantage of marketing East Africa as a single tourist destination.

Regional integration will eliminate the need to duplicate major infrastructure projects such as satellite communication systems. The free movement of goods and services expands market scope given the concept that borders will “no longer exist” or limit trade. The EAC is blessed with enviable natural assets that make it more attractive than any other region in Africa. This eases the marketing.

CHAPTER 3: EAST AFRICAN IMMIGRATION POLICY AND THE KENYA IMMIGRATION POLICY

3.0 Introduction

This chapter explores the immigration policies at regional and national level. The conception of an east African immigration policy though remote, has in recent past received a big impetus with a number of efforts in integration made by the partner states.

The CMP contains some guiding provisions on the management of immigration in the region especially in relation to citizens and the conception of an East African citizen thus distinguishing them from the rest of the people in the region who should be regarded as aliens. The issue of treatment of East African citizens though contentious and requiring further debate according to the CMP is meant to give equal treatment to regional nationals so as to eliminate discrimination on the basis of nationality.

The implementation of the CMP was to be carried out in structured measurable manner. For this reason, various regulations were drawn up so as to implement the CMP. Among these regulations is the regulation on the free movement of persons which is the guiding immigration policy on the management of East African citizens. The regulations in annex one addresses itself to issues of free movement, documents, establishment, residence, stay among other issues by an East African national.

3.1 An Analysis of CMP (Regulations on free movement of persons annex 1)

The Protocol on the Establishment of the East African Community Common Market was adopted on 20th November 2009 and entered into force in July 2010⁷⁰ the implementation of the protocol therefore kicked off the moment the protocol came into force.

Part of the protocol consists of regulations governing various aspects of the common market protocol⁶³. These regulations were adopted in various months in 2009 and came into force together with the protocol in 2010. They are annexes I-VI. These annexes implement various provisions of the protocol. Some of the provisions were to be implemented immediately from 2010 the time when the protocol became effective whereas other provisions were to be progressive. Provisions of article 16 on free movement of services and free movement of capital were part of the provisions to be progressively implemented.

For instance regulations on free movement of persons in Annex I implements provisions of the Protocol in article 7; free movement of persons, 8; standard identification system, 9; travel documents., article 10 on free movement of workers is implemented by regulations on free movement of workers Annex II that also includes articles 11 and 12. Regulations of rights of residence Annex IV and rights of establishment Annex III implements articles 13 and 14 of the protocol. The purpose of these regulations is primarily to “ensure that there is uniformity among the Partner States in the implementation of the Articles and that to the extent possible, the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.” These regulations regulate on the scope of application, procedures of acquisition and denial of various permits, procedure of treatment of citizens of East Africa and related issues directly concerning migration.⁷¹

⁷⁰Protocol on the Establishment of the East African Community Market 2010

⁷¹ Regulations On Free Movement Of Persons 2009

3.1.1 Implementation of Regulations on Free Movement of Persons

The regulations on free movement of persons applies to the following categories of persons who are citizens of East African Partner states and who may be seeking to move to, enter, stay in, or exit partner states:

- (a) Visitors;
- (b) Persons who seek to enter a Partner State for the purpose of medical treatment;
- (c) Persons in transit through the territory of a Partner State;
- (d) Persons who are admitted as students in training establishments in a Partner State; and
- (e) Persons entering a Partner State for any other lawful purpose other than as a worker or as a self employed person.

These categories of persons form the bulk of arrivals and departures in the region and Kenya in particular. As this study will show in preceding chapters, the total number of arrivals in Kenya for various reasons over the past years after the Protocol has significantly increased. Most regional transits take place through Kenya given the superior infrastructure; the quality of education has attracted regional population who enter for study purposes. The regulations on free movement of workers applies to citizens of partner states who move to, stay in and exit another partner state as workers, spouses of workers and children of workers. The regulations on right of establishment applies to citizens of partner states who seek to establish themselves in partner states as self-employed persons in the territory of another state and the spouse and children of these persons. It also applies to companies and firms seeking to be established in the territory of a partner state in accordance with the national laws of the partner state⁷².

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* ⁷² CMP: Regulations on Right of Establishment Annex III

The regulations on right to residence applies to citizens of partner states who seek to move to, reside, and exit another partner state as workers, self employed persons and spouses, children and dependants of these categories of person⁷³

3.1.2 Work and Residence Permits

This is contained in Annex II Regulation 6, Annex III Regulation 6 and IV Regulation 5, 6 East African states have national laws and regulations governing the acquisition and otherwise of work permits in each state according to that state's manpower and skills needs. Among these laws are the Uganda Citizenship and Immigration Control Amendment Act 2009, Tanzania Citizenship Act No 6 of 1995 and Regulations of 1997 part VI and Tanzania Passports and Travel Documents Act Of 2002 and Regulations 2004.

These laws and regulations stipulate the requirement for work or residence permit for citizens of East Africa countries wishing to reside or engage in an economic activity in the respective states. The Kenya Citizenship and Immigration Act (*No. 12 of 2011*)⁷⁴ and the regulations thereof the Kenya Citizenship and Immigration Regulations 2012⁷⁵ regulates the acquisition, issuance and cancellation of work and residence permits in Kenya. These provisions are contained in articles 36 to 42 of the immigration Act No 12 of 2010 laws of Kenya. These articles address themselves to permit types, residence acquisition and cancellation, issuance of permits and invalidation of these permits.

These national laws were meant to protect domestic labour markets from foreign domination in what was called the “domestication of the economy”⁷⁶ under the large philosophy of

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⁷³ CMP: Regulation on THE Right of Residence Annex iv

⁷⁴ Government of Kenya: The Kenya Citizenry and Immigration Act No. 12 of 2011, Government Press

Africanization which dominated largely African thinking and policy making in the late 1960s and 1970s. This strategy has been the core of control of foreign labour in Kenya for many decades. While the policy was of great importance at independence when there was the need to curtail the large number of foreign residents that the country inherited who dominated its economic spectrum at the expense of the indigenous population, it is still expected to play a crucial role in the present day labour market by regulating the number of foreign workers and expatriates joining Kenya's labour market.

The implementation of the above regimes and policies on work permit therefore remains an important undertaking in the achievement of the greater benefit associated with this programme. Challenges resulting from the implementation and institutional beauracracy in the department of immigration together with actual skills inventory in the country need to be addressed in order to make this programme more beneficial to the country's labour needs.

In accordance with article 47 of the CMP on approximation and harmonization of laws, policies and systems, Partner states committed to harmonizing their laws and systems in implementing the Protocol. States have so far complied by harmonizing some of the laws including immigration laws, policies and systems with the protocol complying with the requirement that laws be amended to be in tadem with the protocol and its regulations. though still inadequate in addressing immigration issues in the region especially by failing to provide for investors or residents interests this process has been important in eliminating differences in laws, policies and systems in immigration practice in the region.

The Regulations on Free Movement of Workers and Regulations on the Right of Establishment

⁷⁵ Op Cit

and Residence⁷⁷ represent a regional change of mind on matters of protection of domestic labour market from the hitherto protectionist state centric policies pursued prior to the Protocol. It is a realization by these states of the importance of open economic and social policies guided by the desire for socio-economic and political integration for optimal realization of community benefits and maximization of individual state capabilities through the exploitation of competitive advantage.

The Partner States were expected to harmonize all their labour and social security laws to comply with the Protocol so as to ensure there is unity of purpose in the attainment of community objectives and equitable distribution of the benefits thereof. The implementation status on selected regional policy provisions is demonstrated in chapter four.

The governments of Kenya and Rwanda have gone ahead to abolish all fees charged to East Africans on acquiring work or residence permits in April 2011. This means East Africans are given permits gratis. Calls for the abolition of permit fees for East Africans has been gaining momentum over time now with both business and government leaders calling on EAC states to join Rwanda and Kenya in abolishing work permit fees charged on East Africans.

This year on 19th April 2013⁷⁸, the EALA passed a motion abolishing work permit fees charged on East Africans. It remains to be seen though whether partner states will embrace the decision of the assembly by implementing the motion through domestication in their national parliaments. This is given the fact that Tanzania, Uganda and Burundi still levy charges on work and resident permits to East African nationals.

For nationals of the Republic of Rwanda, it is the government of Kenya policy that they are free to

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work in Kenya without a work permit. In addition, they are free to enter Kenya without passports just as Kenyan are allowed to enter Rwanda by use of their national identity cards. This presidential directives have however not been implemented by both governments of Kenya and Rwanda though it shows the desire to attain free movements.

3.2 Kenya immigration policy and practice

3.2.1 History of Kenya immigration policy

Kenya's immigration system can be traced back to the colonial period. When the British colonial administration took over from the IBEA Company, it had the colonial interest at heart setting stage for an influence on the way immigration policies were to be framed. For instance, the industries in the larger British Commonwealth needed both cheap labour and materials. To achieve these objectives, the colonial government enacted the Native Authority Ordinance of 1912 and the Native Registration Act of 1915 which controlled movement of natives and foreigners ensuring availability of cheap labour. The objectives of the native authority ordinance were at variance with those of the native registration Act 1915. While the former was meant to ensure and promote entry of white settlers in Kenya and their subsequent settlement while controlling entry of Indians on the other end, the later was meant to restrict movement of Natives (Africans) from moving to urban centers thus ensuring cheap labour to white settlers in their farms and denying them the opportunity to be enlightened by urbanization. At the time, it was

* ⁷⁷ Protocol Annexes I-IV Op Cit

⁷⁸ New Times Newspaper of Rwanda 20th April 2013

assumed that the Indian Coolies who had constructed the Kenya / Uganda Railway would have business interest which needed to be regulated.

In the subsequent years, the country's Immigration policy framework was to be shaped by both internal and external factors. For instance in 1950 when most countries were delinking immigration from the mainstream police service, the colonial administration also carved immigration from the Criminal Investigation Department creating an independent civilian oriented immigration department from the police. This action was motivated by the emergent of facilitative, open and people oriented immigration practice as opposed to securitized, restrictive immigration under the tighter control of uniformed police. This had an impact on the immigration laws and policies to be enacted as well as its impact on the human resource. Immigration became a professional engagement with specialized officers in immigration affairs thus allowing them to appreciate the new developments and challenges in immigration practice globally and nationally. The personnel in immigration also increased significantly given the need to fill more positions. With increased personnel came the need to ensure Kenya's borders are well guarded thus more border control posts were opened to control entry of persons in Kenya and accommodate the increased staff. The skills possessed by the officers also changed from purely uniformed skills where security is the driver to more soft people with diplomatic approach to immigration control.

Amendments to the Native Authority Ordinance were made culminating in tighter immigration laws in 1962 and 1964. These tighter laws restricted entry of persons into Kenya, where all foreigners are required to declare their purpose of visit and give a contact address or person

(host) in Kenya. The laws enabled the controlling of residence with a bias to white settlers and Indians. Issuance of travel documents is another area of restriction where few Africans would be given travel documents and allowed to visit specific countries ideologically. The Immigration Act Cap 172 laws of Kenya, was a result of the various amendments that the Immigration function had witnessed prior to independence in 1963.

Independence Kenya, and the repealed Immigration Act, the country has not been an island of its own in as far as immigration policy is concerned. While Kenya has no written Foreign Policy, one may mirror it in as far as immigration practice is concerned. Take the issuance of visas or the granting of citizenship. At operational level, such countries have had their nationals get visas on arrival or have the requirement for visas abolished altogether. In this category one will get most African countries in the Commonwealth visit Kenya without the requirement for Visas. When applicants from the Commonwealth applied for citizenship, the years required of them to have been resident in Kenya for such grant were way less than those from the non-Commonwealth countries.

Further amendments such as the introduction of passports law which hitherto was nonexistent in Kenyan immigration management have been effected on Immigration laws to culminate in the Kenya Citizenship and Immigration Act 2010⁷⁹. Other changes that have occurred on immigration law contained in the 2010 Act include provision for dual/ multiple nationality, review of permits types and requirements including change in their fees, introduction of well defined structure of border management in Kenya legislating on the mandate of border management to immigration and introduction of many other offences on offences section like the in transit offences, introduction of fines for such offences, offences for both officers and travelers among others.

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Another fundamental change in immigration management in Kenya is the legislation on Kenya citizenship and immigration service Act 2011⁸⁰. This Act is intended to create an immigration service, semi autonomous to the civil service. It is thought that this service will be effective in addressing the challenges currently in immigration both institutional, manpower and infrastructural challenges so as to enable immigration to contribute to national security of Kenya through safe delivery of services to Kenyans.

These amendments have both effects on service delivery to Kenyans and on integration. On service delivery, from issuance of travel documents, there has been significant improvement both in terms of reduction of requirements for acquisition of passport in terms of documentation to the number of days it takes to get one. One needs not a security bond to obtain a passport unlike before, one need no parents' birth or death certificate unlike before. It now takes ten working days to obtain a new passport. At ports of entry the length of time Kenyans wait for service has also been reduced to barely two minutes all factors constant, requirement for Kenyans to make written declaration for entry by filling out entry declaration forms has also been done away with, special counters for Kenya at these ports also help to serve Kenyans better by giving them preferential treatment. These changes directly affects integration given they motivate many Kenyans to travel thus deepening integration. This is evident in the number of persons arriving and leaving Kenya as shown in chapter four.

It is important to see how immigration practice proceeds in the face of the many initiatives in the region – specifically in the East African region. The importance of Immigration is marked in what scholars have noted as a mark of sovereignty that requires that sovereign States possess the

* ⁷⁹ G.O.K 2010: Kenya Citizenship and Immigration Act 2010. Nairobi Government Press

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capacity to control the entry, stay and exit of persons within their borders. Other facts of sovereignty include territorial boundaries,¹⁵ legitimate government, common language and recognized currency.

3.3.2 Dynamism in Immigration Laws and Practice

The history stated above seem to indicate that laws and more so Immigration ones are not cast on stone. Changes have continuously been introduced to immigration operations, law and policies. In aligning Immigration laws to the legal and social settings, the new immigration laws sought to repeal the immigration Act cap 172 by addressing aspects that Wanda and Aswani⁸¹ argued have been a walk to strike a balance between security and facilitation. Attendant to this, Wanda and Aswani⁸² have traced some of the factors that facilitated the repeal of the previous immigration laws such as the Kenya constitution 2010⁸³. The promulgation of the new Constitution Article 8-12 and Chapter Three of the new constitutional dispensation meant a departure from the past was to be enacted although not to the exclusion of the past. Previously Immigration Policy drew its legal standing in many Acts – Immigration Act Cap 172⁸⁴, Citizenship Act Cap 170⁸⁵ and Alien Restriction Act Cap 173⁸⁶. These documents are consolidated in the Kenya *Citizenship and Immigration Act*, 2011 and as such repeals the other Acts. Over the years, different classes of prohibited immigrants kept emerging and a review of Immigration laws as informed by immigration practice. Subsequently, a comprehensive list of prohibited immigrants has now been included in the new immigration law.

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*⁸⁰ G.O.K 2011: Kenya Citizenship and Immigration Service Act 2011. Nairobi Government

Take the example of the previous classification of prohibited Immigrants, “Someone who the minister has credible information that their presence in the country would be a threat to national security” (GOK, 1985 this clause included drug traffickers, terrorists, money launders, human traffickers among others. The *Kenya Citizenship and Immigration Act 2011*⁸⁷ repeals these controversial categories from the potential list of prohibited immigrants while recognizing new categories acknowledging that immigration practice will utilize the tough laws set in *Anti Trafficking in Persons Act*⁸⁸

Further, the scholars read in the new laws the less deterrent fines needed some fine tuning and the new immigration Act carry heavy penalties for immigration offenders; Immigration practice had envisaged a practice where most of the services offered by the Department had no founding in law, rather the use of Administrative circulars and directives gave guidance to what the officers in the Department concentrated on. Today, the practice of issuing Visas and Passports has its place in Kenya Citizenship and Immigration Act, 2011 and perhaps one of the issues that concern this study was the need to harmonize what immigration policy has vis-à-vis the implementation of the East African Community Common Market Protocol.

Apart from legal and operational changes that continue to be felt in the country, it will be necessary to say that the formulation of a Migration policy on course will serve to strengthen these achievements and mitigate on the challenges. For many years, the practice of immigration

⁸¹ Wanda and Aswani

⁸² Ibid

⁸³ G.O.K 2010: Constitution of Kenya 2010. Nairobi Government Press

⁸⁴ G.O.K Immigration Act Cap 172 Laws of Kenya, Nairobi Government Press

⁸⁵ G.O.K. The Citizenship Act Cap 170. Laws of Kenya. Nairobi, Government Press

⁸⁶ G.O.K: Aliens Restriction Act Cap 173. Laws of Kenya, Nairobi, Government Press

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in Kenya had not been codified. Today, efforts have been put to codify the practice. Otherwise it is a waiting game for the Migration Policy for Kenya to be unveiled.

Immigration policy and subsequently practice is guided by a smart balance between facilitation where the focus is enabling “free”⁸⁹ movement of persons in and out of Kenya and security whose focus is to ensure only the right people enter, exit and transit Kenya while ensuring that they do not pose any threat to national security. The country places premium on these two related yet radically opposed aspects of immigration. As a country, there is need to facilitate faster movement of persons since people carry along with them capital, skills, technology, income and cultural exchange – which all contribute to the development of Kenya. Similarly, some elements within the same people that engage in migration have in their possession criminal tendencies such as credit card fraud, terrorism, sexual molesters among other crimes. Some seek to spread diseases to the detriment of the country’s social sector. One act of terror for instance can undo the progress made in the economic, social and political development of a State. Immigration officers in the functioning of the sector are tasked with facilitation of genuine travelers and prevention of illegal and irregular migration, they assess border risks; collect and manage migration data; and interrelate with other State agencies⁹⁰. This then calls for a smart balance between security and facilitation.

So with or without regional integration, it is necessary that a person seeking to emigrate or

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* ⁸⁷ Kenya Citizenship and Immigration Act 1020 Op Cit

⁸⁸ Anti Trafficking in Persons Act

Immigrate meets the following conditions of entry as captured by Reina⁹¹. Passenger or seeker of immigration service has to be physically present. This enables the officers to profile and question the said person should there be any need to question; the migrant must be medically fit. This condition is enforced jointly with the Port Health as a measure that ensures that the spread of contagious diseases are not spread across borders. The use of health certificates goes beyond regional treaties and EAC has equally noted the need for such certificates, the migrant must have a known physical address, should there be any need to investigate the persons or verify the information given.

Other conditions to be met include: possession of a valid and acceptable travel document; and that the migrant must not be in the prohibited immigrant's list. A prohibited immigrant is a non-Kenyan who is not desirable in the country. These conditions pre-determine who is admissible in Kenya and who is not. The determination of who to admit and who not to, is a security process. This determines whether the applicant meets the requirements for entry and thus should be admitted or should not be admitted.

When the need for ease of movement is considered, immigration practice should not be entirely thrown to limbo. There is urgent need to ensure that citizens from the non-EAC region do not take advantage of the free movement of persons.

⁸⁹ Shiraku M.R. 2013: A Critical Analysis of the Implementation of Migration Law and Regulation in East Africa: Case of Regulations on Free Movement of Persons M.A. Thesis. University of Nairobi

⁹⁰ G.O.K 2011Op Cit

⁹¹ Reina A (2006) Kenya Immigration Border Procedures Manual Guidelines on Policies and Procedures for Immigration Officers: NAIROBI: IOM

3.3.4 Free Movement Persons in Kenya

There has been a focus by many Regional Economic Communities to encourage the free movement of persons within such communities. The movement of persons happens to be the primary responsibility of Immigration. In the EAC context, nationals of the five Partner States had to make provisions that encourage free movement of Persons. Formerly, Rwandese and Burundians visiting Kenya were required to obtain an entry visa and pay the required 50 US Dollars. Subsequent to their joining the community citizens of Rwanda and Burundi were given gratis visa before this requirement was done with.

The EAC Council has since the inception of the community made several decisions that are geared towards encouraging Partner States to effect certain immigration decision. Some of the decisions made by the Council were: Establishment of Ministries specifically charged with EAC affairs in Partner States. These Ministries were expected to play an oversight role and coordinate efforts geared at integration; Establishment of the Chiefs of Immigration Meetings, where the heads of Immigration in the five (05) Partner States meet to discuss specific technical issues on Immigration and how to actualize the provisions of the Common Market Protocol; The introduction of the East African Passport which would allow holders to travel in the region and have a visitors' period determined by the EAC Council as six months. Each Partner State was to charge the citizens an equivalent of Nine hundred and forty shillings which is way below the fee of international passports. The passport has 48 pages with a validity of ten years; Internationalization of the EAC Passport so that holders of these documents can use the documents beyond the region as is the case with ECOWAS countries. It will be a case of highlight to see how different Immigration offices and particularly Kenya have received this

information. For ease of movement, partner States were to have immigration booths that exclusively serve EAC nationals. In this way, visitors from Partner States were assured of quick attention without disregard to immigration security procedures; To take care of the historical movement of persons across the EAC borders, several documents were introduced, namely; Temporary Permits, Emergency Travel Documents and Border Movement Permits to help facilitate restricted movement. Using some of these documents meant that the holder could go as far as a certain radius from the official border; Borders were to be opened on corresponding basis.

Other decisions include: An Interstate Pass was introduced for Residents in the Region. This decision has since been put on hold due to security reasons; the fee for Pupils' Passes – documents required of foreigners undertaking education in the Partner States – was waived to encourage the free movement of persons as they seek education. This in essence meant that the students were to obtain these documents much as they were given gratis; and hotels and parks were required to charge other EAC citizens the same fee charged on the Partner State nationals. So if a hotel charged 5000 shillings for Kenyans, the same should be charged to Tanzanians, Ugandans, Rwandese and Burundians.

3.3.5 Free Movement of Labor and Issuance of Work Permits in Kenya

As people move, they move with other aspects including skills of labor. Basically, the role of controlling labor in Kenya is an affair that pulls a number of stakeholders including Immigration, Ministry of Labor. Immigration functions to ensure that there is a smart balance between investment and opportunities for Kenyans to pursue their interests and skills. To this end, a

classification of Permits has been done to identify the areas where Kenya is in need of special skills and have this time bound subject to training or apprenticeship of Kenyans

An entire sector is charged with the duty to call up certain areas in the job market where Kenyans have acquired enough skills and hence the need to phase out some of those engagements to foreign nationals. Under the new immigration law, Kenya has had to achieve a number of milestones. There has been a reclassification of the various categories of Permits. The EAC Council had made a decision to the effect that there should be a harmonization of work Permits, fees and forms. Further, the new law has introduced a set of new requirements and qualifications for the various classes of permits as well as non-refundable processing fee for permits except Permits Class M, which is issued to refugees. Related to this has been the general increase in the fees charged for all permits and passes except Class M.

Other changes brought about in the new laws are the introduction the issuance of Internship and Research Passes as well as allowing the validity period for Kenya Special Passes for six months instead of the previous three months. It needs to be noted that Kenya Entry Permits (Classes A-M), Kenya Special Passes, Kenya Pupils Passes and Kenya Dependant Passes – all have a bearing on labor.

The Common Market Protocol Partner States were to ensure the free movement of Persons who are citizens from other Partner States. To this end, Article 7 (2) (c) and (d) gives the visitors the right to stay and exit the territory of Partner State without restrictions. Even with these freedoms, the Article is categorical that such movement is not exempt from prosecution or

extradition. Further there are limitations as regards public policy, public security or public health.²³

The Protocol also guarantees the free movement of workers as agreed upon by the Partner States. In the movement of these workers, discrimination is discouraged in whatever form viz., nationality. Employment, remuneration, or other conditions of work and employment. Workers can therefore apply for and accept job offers; move freely within the territory; stay in the territory for purposes of employment in line with national laws of the host country; freely associate and collectively bargain for better terms; right to be accompanied by spouse and child – dependants whom the host country needs to facilitate with the requisite documents⁹²

In line with the spirit of integration, the Partner States did agree on establishment of a joint program to encourage exchange of young workers from among the Partner States. Two restrictions to the movement of workers are where the subject intends to work in the Public Service of the host country unless this is stipulated in the national laws; and where the movement is restricted on the basis of public policy, public security and public health.

The Protocol gives indication on the model to ensure free movement of workers. For starters, there is agreement that Partner States harmonize and mutually recognize academic and professional qualification and secondly, harmonize labor policies, laws and programs⁹³

These are great strides which target the integration of the EAC community. The manner in which immigration authorities respond to these provisions has led to the establishment of a

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Schedule, where Partner State, perhaps extrapolating mutual feelings for and against what they have reserved for their nationals.

3.3.6 Right of Residence and Establishment versus Foreign Nationals Management

The Protocol provides for the right for establishment for the EAC citizens in any of the five Partner States. Once again reservations are placed against discrimination. As persons seek to be established in Kenya for instance, the Protocol allows such persons to take up or pursue self employment activities or manage economic undertakings in the territory of the Partner State⁹⁴

The rights of such establishment are subject to the laws of national government. As one comes to Kenya for instance to invest as a self employed person, the Permits Section at Immigration will be keen to check whether or not such a position is reserved for Kenyans or an area where there are sufficient skills in the country. If granted, the move would be in conflict with the Protocol and would therefore be subject to the recommendations of the Protocol⁹⁵ Other measures to ensure the right of establishment would include setting up agencies, branches or subsidiaries of companies or firms in their territories.

Other provisions in the Protocol include the right of residence. In these provisions, the Protocol tasks Partner States to issue residence permits to citizens of other Partner States. Kenya has already complied with the provision with the establishment of the Permanent Residency Section that

* ⁹² Ibid, Article 10 (1)

⁹³ EAC Op Cit Article 11 and 12

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processes the applications for residency permits⁹⁶ Of course the permanent residency is subject to national policies and laws of the Partner States.

3.3.7 Immigration and Free Movement of Services

Services and suppliers of services are catered for in the Protocol even affirming that such movement is supposed to be free ⁹⁷Measures should therefore be put in place to ensure that the various territories of the Partner States are accommodative to those seeking to supply services in the various States.

For purposes of the Protocol, Services includes (a) services in any sector except services supplied in the exercise of governmental authority which are not provided on a commercial basis or in competition with one or more service suppliers; (b) services normally provided for remuneration, in so far as they are not governed by the provisions relating to free movement of goods, capital and persons⁹⁸

Partner States have to take such measures to ensure the observance of the measures by local governments and local authorities and non governmental bodies within the Partner States – measures that may have to include laws and administrative act.

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* ⁹⁴ Op Cit Article 13

⁹⁵ Protocol Op Cit

CHAPTER FOUR: THE IMPACT OF EAC INTEGRATION ON KENYA IMMIGRATION POLICY

4.0 Summary of Discussions and Results

This chapter utilizes heavily the primary data collected by interviewing forty five (45) selected immigration officers and officials of East Africa Community department at various BCPs in analyzing the impact of the EAC integration on Kenya's immigration policy. Even though policy in this study has been used in a restricted sense to mean the laid down guidelines to immigration management in Kenya as expressed in immigration law, executive directions and the draft immigration policy, this research is fully alive to the nonexistence of a written, declared, immigration policy. This chapter presents a thematic discussion of selected immigration policy items with immigration officers and how these policies have been impacted by the EAC integration initiative as they were presented to the interviewees during primary data collection stage.

4.1 Kenya Immigration Policy and EAC Integration

In this study, the draft Kenya National Migration Policy 2013 is recognized as the only immigration policy in existence. This policy recognizes the changing nature of international migration and the challenges this poses to national states in migration management. To this end, cooperation of states in migration matters under any arrangement is in the respective state's best interest. The anticipated regionalization of migration management is intended to enhance regional socio-economic integration and migration management; thus promoting regional socio-

*96 Ibid

97 EAC (2006) Op Cit

98 EAC (2006) Op Cit Article 16(7) (A)-(B)

economic development and security. This realization confirms of the interplay between Kenya immigration and regional integration

The Kenya Citizenship and Immigration Act 2011 were cited by respondents in the interviews as the only documented and declared immigration policy in Kenya. The Act provides a guide to immigration practice in Kenya. This law is actually part of the immigration policy in Kenya and as such, it guides all the various aspects of immigration policy beginning from establishment of borders, border management, and admission of persons among others. The immigration practice in Kenya has been one that sought to promote East African integration. For instance admission of East Africans even before the Act of 2011 was less restrictive compared to neighboring countries. Further, East Africans need not obtain a visa to enter Kenya; they are allowed to work even without work permits. The lessening of restrictions for entry for East Africans achieved the purpose of promoting integration of persons and thus states.

The adoption of the treaty of East Africa creating the East Africa Community and the subsequent Common Market and Customs Union Protocols among others just codified an already existing practice. The adoption of these agreements and many more increases an already ongoing integration.

Out of the 45 people interviewed in this research, a contention arose on whether there actually is an immigration policy in Kenya or not. The understanding of a policy as written a document guiding activities of the department of immigration informed the argument that there is no policy. A flexible understanding of policy would not restrict itself to the official character of the

policy but rather on the public effect or good potent in such policy. Of the 45 respondents, 25 respondents translating to 56% expressed adequate knowledge of the immigration policy which is above an average number. This group of respondents acknowledges that there actually is an immigration policy in Kenya. Only 6 respondents, slightly above 10% expressed their understanding of Kenya migration policy as expert. This is given their involvement in training and drafting of the draft immigration policy and the Act of 2011.

This trend was replicated in the question of whether the Kenya immigration policy promotes East African integration. 53% of the 45 respondents positively concurred that the policy promotes integration marginally compared to 32% who had strong believe the policy significantly promotes integration. The 32% constitutes those who are pro-integration wholly and who consider integration as an important element in migration management. The other 53% is composed of the pragmatics that is aware of the integration but would first wait to see its tangible impact on migration in the region in terms of fair and equitable immigration treatment of all East Africans based on the regional citizenship.

A number of provisions were specifically cited to have been adopted in favor of East African citizens. Among these provisions were waiving of permit fees, abolition of visa requirement for East Africans, implementation of six months visitor pass policy, allowing East Africans to engage in economic activities even without permit, and non prosecution of East Africans on minor immigration offences like overstaying. Such is the change in treatment of East Africans by the Kenyan immigration policy and practice to the extent that they are accorded preferential treatment while respecting the principle of non discrimination on ground of nationality as

expressed in regional instruments like East African treaty and international law. This goes a long way in promoting and deepening integration which is a desirable end.

4.2 Kenya immigration policy and EAC Treaty

Article 104 of the East African Treaty 1999 provides the regional basis for migration cooperation and therefore integration of migration affairs in East Africa. Appropriately titled Free Movement of Persons, Labour, Services, Right of Establishment and Residence, the article provides the scope of immigration cooperation in order to realize free movement of factors of production. Section one of article 104 declares that “The Partner States agree to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the Community”⁹⁹

To achieve this purpose and thus actualize the integration of migration affairs, certain minimum standards were set in section three subsections (a) to (h) for adoption and implementation by regional states which give meaning to regionalization of migration. This aspect of cooperation is important in deepening regional integration and thus the realization of socio- economic and cultural benefits thereof.

To achieve the aim of integrating migration affairs, partner states were obligated to adopt measures pertinent for the realization of integration. Such measures as highlighted in section 3 (a-d) are:

- (a) Ease border crossing by citizens of the Partner States;

To this end states have to adopt standard travel documents as in (b) below. This study found

*out during field visits that currently Partner states have adopted uniform entry and departure declaration forms, have proximity of borders being reduced and the One stop border project at various BCPs are in various stages of completion, citizens are allowed entry without visa, adoption of a six months visitor pass, all sum to easing crossing of borders by citizens.

(b) Maintain common standard travel documents for their citizens;

This was meant to make travelling easy in the region. Whether the standard travel document is the East African passport or certain identity cards or use of inter-state passes, or adoption of similar regime on national passports including the regionalization of national passports (where they double up as national and regional passports by making legislation to this effect so that the passport bears names; republic of Kenya and East Africa community on its cover), all these are steps to standardize travel documents. The easier option acceptable to all states should be the way to go. This study found a travel coupon being used for travel to Uganda and Rwanda under the trilateral agreement between the three countries which is vital step in deepening of integration through making movement across borders easy.

(c) Effect reciprocal opening of border posts and keep the posts opened and manned for twenty four hours;

This study observed that currently most land borders in the region are complementary. For instance Namanga Kenya and Tanzania are at the same point opposite to each other as illustrated in table 4.2.1 below.

* ⁹⁹ EAC Treaty Op Cit

Table 4.2.1: Complementary Borders between Kenya, Uganda and Tanzania

Border of Kenya and	Uganda
Busia	Busia
Malaba	Malaba
Suam	Suam
Lwakhakha	Lwakhakha
Border of Kenya and	Tanzania
Namanga	Namanga
Oloitoktok	Tarekea
Taveta	Holili
Isibania	Isebania
Lungalunga	Horohoro

The table 4.2.1 above shows the complementary borders between the three Partner states of the East African community. This set up complies with provision of the Protocol and helps in easing crossing of borders thus deepening integration.

The manning of most of these borders is around the clock with exceptions based on the flow of traffic. The ongoing One Stop Border Post project will also help achieve this objective.

(d) Maintenance of common employment policies;

This has not been possible given that the labour policies have not been harmonized, social security policies remain unchanged and the provision giving Tanzania and Uganda a grace period to retain their individual employment policies is till 2015.

The study sought to establish whether the provisions of the treaty on immigration management are being implemented and whether this implementation has any effect on the deepening of integration. The provisions of article 104 are well provided for in the Kenya citizenship and immigration Act 2011. This proves the integration of the regional instrument in the national laws of Kenya and thus what type of policy the government pursues. Articles 6 on citizenship, 8 on dual citizenship, articles 25 (c) on East African passport, sub section (g) on temporary permit for travel within EAC, 26 2 (a) and 6 (a) on the same; articles 34 on entry and removal of migrants is

similar to other partner states laws, the visa regulations are almost similar save for the regime on referred visas whereby Uganda has no referred visa regime while Tanzania regime has variations on the countries under referral and even those required to obtain visa for entry.

Article 40 governs permit issuance. During data collection, this study confirmed that the classes of permits have been harmonized, and permit fees for East African citizens is being reviewed by partner states in line with the requirements of the CMP. A visit by this researcher to permits section was informed that Kenya, Rwanda and now Tanzania have legislated on waivers of permit fees for East Africans. This is being implemented. The East African legislative assembly has also on several occasions through legislation urged member states of the community to scrap permit fees for East African nationals.

This is evidence of integration of immigration laws in the region and therefore immigration practice to ensure it is predictable, uniform, and harmonized. It is this predictability, uniformity and harmonization of practice, laws and policies in the region which will result into the deepening of integration for significant impact on the socio-economic and cultural wellbeing of the citizenry.

This view of uniform policies and laws is supported by 53% of the respondents interviewed while 25% believe the opposite to be true 15% of the respondents were not sure. This shows a large number of East Africans see uniformity in immigration practice, laws and policies which works towards easing of border crossing since what to expect on next border is no different from what one undergoes in their home country.

4.3 Impact of integration on Kenya immigration policy

4.3.1 Free movement of persons and labour

The coming into force in July 2010 of the Common Market Protocol and the adoption of regulations thereof on free movement of persons and labour have significantly changed the migratory dynamics in the region. Increased movements across borders for business, visits and studies ongoing are attributable to the coming into force and the spirit entrenched in the Protocol especially concerning free movement of persons.

These new trends in migration inflows and outflows of East Africans across the selected BCPs between Kenya, Uganda and Tanzania between July and December 2010 are depicted in table 4.3.1.1.

Table 4.3.1.1: Migratory Inflows and Outflows of EA citizens between June 2010 and June 2014

Border	Inflows			Outflows		
	June 2010	June 2014	% increase	June 2010	June 2014	% increase
Namanga	188,830	379361	50.2	199443	298,293	33.1
Busia	448510	598533	25.1	460877	580,997	20.7
Malaba	214059	354170	39.6	108097	198,197	45.5
JKIA	77088	81336	5.2	80568	85788	5.2

SOURCE: Field Data 2014

The data in table 4.3.1.1 shows an average percentage increase of 28.8% at all selected BCPs in migratory flows for the period 2010 to 2014 across regional borders. From the table, the number of inflows and outflows significantly increased at all borders. For instance at the JKIA, the number of arrivals of East African nationals except Kenya increased from 77088 to 81336, a

slight increase of 5.2%. The rest of the BCPs experienced a higher increase as shown on table 3.0 above compared to JKIA, given most traffic regionally is at the land borders due to their proximity and cost effectiveness. This data refers to the period during which various provisions of the CMP were being implemented including provisions on free movement of persons. The increased inflows and outflows can thus be attributed to benefits of integration. This finally impacts on the immigration policies in Kenya.

The above increase in inflows and outflows of persons can be attributed to the Protocol which requires ease of procedures at borders while at the same time putting obligations to member states of the EAC to relax and harmonize their laws touching on citizens of partner states. The common market and by extension the community spirit seems to be growing strong with the implementation of the provisions of the Protocol and therefore significantly affecting the immigration practice and policy pursued by regional states including Kenya. It can thus be postulated that were all the provisions fully implemented, the migratory flows would be more than as shown by the statistics given the progressive increase as evident in the table 3.0 above.

The trends in the table 3.0 above are a result of harmonization of the border procedures and laws which has helped increase these inflows and outflows significantly. Further, the elimination of requirement for visitors pass to East Africans and travel documents in East Africa should be encouraged and instead identity documents used for travels within the East African region. This will help to enhance integration and help realize the dream of an East African tourists' visa in all the member states. It also will attract investors since they are guaranteed freedom of movement and labour.

The Kenya immigration policy thus has to change to open, liberal and facilitative approach in addressing these increased flows from all fronts. For instance complementary border opening, manning of borders around the clock, staffing and equipment at these borders, security of the borders, issuance of travel documents, adopting an open Kenyanization policy, social security measures among others are policy measures that directly address the increased flow of persons due to integration.

With harmonized laws and policies, movement of labour becomes fairly easy. This has an effect on the uptake of work permits by citizens of partner states given it is easy and certain to obtain the said work permits. This has been the case in Kenya where the integration of EA region and the subsequent conditions for full integration have impacted on the uptake of work permits in Kenya. The table 4.3.1.2 below depicts the picture of events at permits section in Kenya, just before and after the CMP.

Table 4.3.1.2: Permits Issued to East Africans per Country between the years 2005-2014.

year	1/7/05-30/6/06	01.07.06-30.06.07	01.07.08-30.06.09	01.07.09-30.06.10	01.07.10-30.06.11	01.07.11-30.06.12	01.07.12-30.06.13	01.07.13-30.06.14	1.7.13-30.06.14
Tanzania	255	87	326	280	234	271	350	380	410
Uganda	365	78	325	314	293	297	429	403	507
Rwanda	17	1	3	5	4	2	3	7	9
Burundi	13	5	12	9	22	14	19	28	32

SOURCE: Field data at Permits Section Nyayo House 2014

The data in table 4.3.1.2 above shows the impact of the integration process to issuance of work permits between 2005 and 2014. This is the period before the adoption of the CMP and after the adoption of CMP. Before the CMP, it is evident that few East Africans applied and actually were given the work permits to work in Kenya. A total of 2 121 permits were issued to East Africans during the period before the Protocol while after the protocol, a total of 3704 permits were issued. This is an increase by 1583 or 42.7% increase which can be attributed to the change in immigration policy on permits courtesy of the ongoing integration.

While the number of Tanzanians applying for work permits in Kenya has increased by over 20% since the inception of the CMP, the scenario among Ugandans is quite different. The number of Uganda applicants nearly doubled between 2010 and 2014 perhaps the highest number of applicants in East Africa from 293 in 2010 to 507 in 2014. The same cannot be said of Rwandese and Burundians. Kenya has had a soft immigration approach, open and liberal with the signing of several bilateral agreements touching on immigration with Rwanda. This has contributed to the low number of Rwandese permit applicants in Kenya. For instance the abolition of requirement to obtain work permit for Rwandan nationals in 2008 Nov. 20th, agreement enabling use of identity cards for travel between Kenya and Rwanda reached on 21st Oct 2011 are some of the agreements that have impacted on the uptake of permits by the Rwandese in Kenya.

The number of work permits applied for by these nationalities is affected by both political and historical factors existent between these countries as well as the technical skills and education quality thus the excess labour for export available in these countries. While Rwanda's decisions are geared towards bridging the technical labour shortfall, Kenya's decisions are meant to

promote export of its excess labour and therefore employment to its nationals. The case of Tanzania would therefore be cautious given the shortage of skilled manpower due to perceived low quality education system. Therefore few Tanzanians would be qualified to ably compete for jobs in other countries. This will affect the numbers of those taking permits in Kenya.

This study found out that the increased number of applicants of work permits especially Ugandans is attributable to the decision of the government of Kenya to waive work permit fees for all East Africans residing or working in Kenya in line with the requirements of the CMP, regulations on free movement of persons and labour of the CMP and the commitment of the government to the realization of the objectives spelled out in the EAC Treaty 1999. All these measures are meant to deepen and promote East African integration and therefore impact significantly on the immigration policy on the same.

The waiving of work permits policy has the effect of increasing the number of regional citizens who reside in partner states on permits. The more these persons apply for permits, the more integrated the region becomes in terms of establishing stable long term regimes on residence and work permits. This has the impact of deepening integration.

4.3.2 Immigration Entry/Exit Procedures and Integration

On Kenya immigration policy, the entry and exit of East Africans has changed a lot courtesy of East African integration.

This study found that the immigration procedures are uniform regionally following this researchers visit to some of the borders of Malaba, Namanga, Busia and JKIA. This follows

entry- exit format. All travelers are required to declare entry or exit to respective states as a declaration of intent to enter or exit by filling either a DDF/EDF which is legal forms. All exiting persons are not required to fill these forms in line with article 39(2) of the constitution of Kenya 2010.

During field visits at the borders, this study found out that East Africans do not need entry or exit visas to enter or exit Partner states. This is in compliance with the Kenyan immigration policy and the Protocol. Although they are required to obtain visitors pass at the ports of entry which vary in length of stay from one day to six months. This is endorsed as KVP/6M/B/H/I/s respectively in Kenya or VP 6months in Uganda; Tanzania endorse as Allowed six months.

The regulations on free movement of persons recommend that one can be issued with up to six months stay in Partner state. This has so far been implemented by Kenya. The implementation of these provisions has enabled free movement of East Africans therefore enabling interaction of different nationalities. This has its impact in deepening integration since it cultivates a sense of community oneness; a regional sense of belonging to same entity called the East African region. These regulations and the exit/entry procedure have changed due to integration of the region all in an attempt to comply with the requirements of the regional instruments on the same and the desire to move forth the integration project by Kenya.

4.3.3. Integrated Migration Management policy

This study recognizes that the Treaty, Protocol and its Regulations present the platform for integrated migration management in Kenya and the whole region. The implementation of the

provisions in these instruments was expected to have a great impact on the national laws, policies and practices as far as immigration management is concerned. The summary table 4.3.3.1 below presents a number of laws and policies that were required to be harmonized and their present status.

Table 4.3.3.1: Implementation status on selected regional policy provisions relating to migration

Provision	Implementing Agency	Time frame	Status	Impact/ outcome
Regulations on free movement of persons. Proposed action a) entry/ exit b) six months stay c) student passes d) border management i) border crossing ii) opening and manning borders iii) infrastructure and standards of border management iv) Harmonization of immigration procedures. registration	Immigration departments Immigration/ state law office/ ministries of EAC immigration	Continuous 2011	On going On going	EDF/DDF cards harmonized . Six months given to EA nationals by Kenya and Tanzania. Immigration procedures harmonized. Borders manned 24hrs OSBP construction underway at Namanga, Busia, Malaba, Taveta, Gisenyi; Rusumo (complete) Immigration laws are now harmonized.

Establish a common standard of issuing national identification documents	National bureau of registration/ immigration/ depts. Of citizen registration	2011	On going	No progress on this item. Challenges arising from individual state preparedness.
Use of valid common standard travel documents	Immigration/ departments		On going	Only EA passport is recognized common standard travel document
Free movement of workers. Proposed action A) entry, stay and exit b) work permits c)re-unification and employment	Immigration departments, Ministries or labour, Ministries of foreign affairs and East Africa community, Business community.	2010	on going	Exit and entry greatly made easy. In Kenya work permits issued gratis to EA nationals. Agreement between Kenya and Rwanda to abolish work permits Harmonization of labour and social security laws underway

SOURCE: Common Market Protocol

The implementation of the above provisions was expected to result in the following changes and policy shifts as discussed in sub headings below.

4.3.4. Integrated border management (IBM)

Also called coordinated border management (CBM) this is another way of integrating immigration activities across the region. Article 5 section 2 (b) of the CMP recognizes this

approach of integrated migration management thus “ease cross-border movement of persons and eventually adopt an integrated border management system.

IOM posits that IBM “requires that all competent authorities work together in an effective and efficient manner. Cooperation on this should not be established exclusively within an individual country, but also across its borders, with relevant agencies of neighboring States”¹⁰¹. IBM seeks to address three levels of cooperation and coordination: intra-service cooperation, inter-agency cooperation and international cooperation¹⁰². IBM is the organization and coordination of border agency activities to meet the common challenge of facilitating the movement of legitimate people and cargo while maintaining secure borders and meeting national legal requirements. This system seeks to integrate activities at all borders at various levels. This involves cooperation of agencies at the border both intra and inter agency cooperation, integration of the systems, laws and procedures. It involves sharing of information at certain levels necessary for the security of the border. This study found that there is adoption of IBM at various levels at all BCPS. Either, there has been one form of IBM or another before the integration.

During field visits, this study found the IBM project at Busia Kenya border which was already complete and running. All border agencies on Kenyan side cooperate at intra and inter-agency level. This integrated approach to border management has impacts given that it leads to changes in policy. It also deepens and eases migration through ease of movement of persons while also checking on security imperatives arising out of integrated migration.

4.3.5. One Stop Border Post Project

This is a sub set of IBM. This involves having a border like one stop shop in which all operations

*are housed under one roof. Under the OSBP, the operations are situated under one roof. It can take several forms such as border being on one side of the border or having the border straddling across or having border on both sides but the agencies situated on either side of the border.

Where the border is on one side, the border operations take place from one side of the national borders of the neighboring countries. This for instance means the border at Namanga being either on Kenyan side or Tanzanian side. The second scenario is where the border offices straddle or are across the border. The other instance is where the offices are situated on both sides of the border but agencies at the border share the same office in their daily operations on both sides. These projects are currently underway at Taveta/Holili, Namanga/Namanga, Busia/Busia, Malaba/Malaba among others. This was confirmed by field visits.

The integration of the border has the impact of harmonizing immigration practice in the region. This integration is the actual harmonization of the border operations, practices, laws and procedures. Integrated border allows for cooperation and coordination of border operations at all levels. This can be inter-agency where agencies of different states cooperate and coordinate their activities and intra-agency where agencies at national level cooperate. This will definitely integrate the national immigration policies, laws and operations. Thus this project positively impacts on the Kenyan immigration policy by allowing these policies to assume a near universal or regional outlook since the policies apply superfluous to territory of another state.

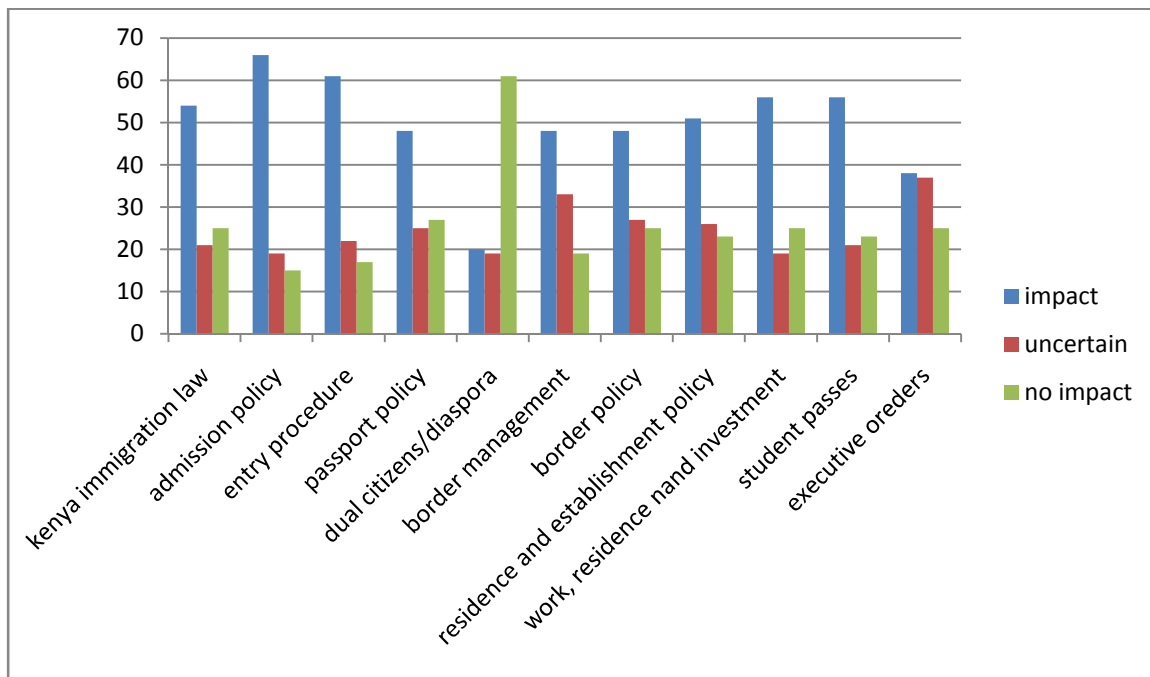
This position is supported by 34% of the respondents interviewed who see integrated borders as an important ingredient in the integration of East Africa. Integration can be made more

* ¹⁰¹ I.O.M 2011:
¹⁰¹ I.O.M Op Cit

structured and deepened with interlinking of certain operations some of which are at the centre of any state’s sovereignty. Continued assertion of sovereignty negatively impacts on integration initiatives the world over. By cooperating and coordinating some activities, the protectionist tendencies which are usually explained as ‘our sovereignty’ tend to wane. while 20% were uncertain as to whether Kenya immigration policies will be affected by IBM/OSBP projects. 34% of the respondents equally held the position that the integration has not affect Kenya immigration policy.

4.3.6. The Impact of EAC Integration on Selected Themes

Figure 4.3.6.1: Graph of the Response Level on Impact of Integration in % (Of Interviewees) Against Selected Policy Themes



SOURCE: Field Responses from Interviews Conducted 2014

Interpretation

From the graph, the level of knowledge of the interface between Kenya immigration policy and regional integration can generally be described as satisfactory. Based on this assessment, their

evaluation of the impact of integration on Kenyan immigration policy can be determined by how many believe that the Kenya immigration policy has changed due to regional integration. The actual impact of integration on Kenya immigration policy is determined by identifying the specific policy items that have been changed as a result of regional integration or owing to the influence of regional integration. This study interviewed respondents from Busia BCP, Malaba BCP, Namanga BCP, JKIA, and head quarters in Permits section, Kenyanization, passports and administration sections.

From the graph, out of the nine themes on which respondent's views were sought on various policy topics identified in the Kenyan immigration law, a total eight (8) returned positive response to the policy themes rating integration to have impacted on Kenyan immigration policy between strong influence and some influence while only one (1) gave negative response of no influence. The positive response was received on topics as shown by the graph above. That large number of respondents agrees that East African integration has significantly impacted/influenced the Kenya immigration policy is a debate worth engaging in. Most policy changes in this policy and the laws themselves reflect a regional outlook. This is out of commitment of the policy makers to supporting integration while acknowledging the importance of cooperative and coordinated approaches to migration management in the region.

From the graph, sixty (60%) percent of the respondents interviewed on two occasions agree that Kenyan immigration policy on admission of persons and entry/exit policy have changed due to influence of EAC integration. On three occasions, respondents agree with above fifty percent (50%) that Kenya immigration policy on residence and establishment, those seeking to study in

Kenya, work/and investment permits and passes has changed given the influence of integration. This is a significant percentage confirming on various occasions the impact of integration on Kenya immigration policies. Respondents give on three occasions a further 40% confirmation of the impact of integration on Kenyan immigration policies on border management, border policy and passports policy. This is still a favorable and strong conclusion that most policy changes in the Kenyan immigration law and policy including the immigration outlook have occurred with the influence of EAC integration.

On only one occasion do the respondents see the influence of EAC integration on the policy issue; this is the Diaspora issue as being marginal. The reasons given by respondents for this variance are many and varied ranging from politics to individual preferences and geographical location of the dual nationals. On this occasion, 61% of the respondents think this policy was actually not influenced by EAC integration. The argument is that it's all about citizenship or a determination of citizenship which no international or regional law can purport to respond to authoritatively. Issues of citizenship according to international law are individual state matters. It is the states which determine who is their national and who is not. Therefore a regional law or policy cannot address itself to this issue without causing discomfort among partner states over varying understanding of citizenship.

From the foregoing, the interplay between Kenya immigration policies and East African integration can be sufficiently established where the desire for regional integration has greatly impacted on the direction of Kenyan immigration policies.

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATION

5.0 Summary

5.1. Summary of Research findings

This research sought to analyze the Impact of East Africa Community Integration on Immigration Policies (Kenya Immigration Policy).

The thesis of this study is that Kenya immigration policy/law has undergone a lot of changes both in form and content leading to new, open, liberal and progressive, less restrictive policies courtesy of East African integration initiative. The immigration policy in Kenya found itself faced with two key policy directions which could not be assumed. These are the constitution of Kenya 2010 and the CMP all which had very radical and hitherto considered controversial propositions which had to be integrated into the immigration policy provision. These two policy departures (constitution and CMP) have had significant impact on the Kenya immigration practice and policy to date. This has not been without challenges. Regional pessimists have it that this changes are cosmetic and a public relations exercise and that the integration project will collapse with them. The optimists/ progressives hold it that these policy changes should in fact have been initiated many years ago to give the citizens of Partner countries the incentive to invest and even think of their home countries. The security experts on their part in securitizing migration reject the integration project on grounds that it is more of security risk given the nature of regional borders.

The study was guided by three objectives viz;

To investigate the effect of East Africa integration to immigration policies in Kenya

This study sought to establish the link between the East African integration and immigration policies. More important is an inquiry as to whether the East African integration in itself engenders integration of migration practices and laws in the region. To this extent therefore one inquires into the nature of the impact of integrated immigration policies and laws to national policies and laws of individual states. This study realized that there have indeed been a lot of policy changes to the immigration policy and laws in Kenya and by extension the immigration practice in Kenya has had to change too to embrace these new developments. This paradigm shift can be attributed to the “regionalization” of migration practice, policies and laws courtesy of the East African integration to the extent that several policy approaches already running are leaning towards integration of the region. Example of integrated policies identified by this study are: complementary opening and operation of borders, manning of borders 24hours, integrated border management systems being tested at borders, One Stop Border project, standardization of travel documents, common classes of work permits, waiving of work permit fees, implementation of six months visitors status to East Africans and common EDF/DDFs. These changes did take effect under the influence of the east African integration.

To establish how free movement of persons has impacted on immigration entry and exit procedures in Kenya. The study sought to establish the departure from the hitherto existing immigration exit/entry procedure as it was provided for under the immigration laws cap 172 laws of Kenya and the new Immigration Act 2011 on the same and the influence of this shift from regional integration standpoint. The entry/exit procedures at all BCPs are harmonized and synchronized with the procedures on the opposite BCPs. Thus the procedures are the same. The CMP sought to make these procedures certain and backed by laws and not mere administrative

practice which can be changed by anybody hiding under sovereignty. Even the EDF/DDF forms used have been changed to bear the title of East African community followed by the national state name. The details sought on these forms are the same. This is similar to details provided for on the visa application forms. The endorsement of visitor passes has also been regionally accepted to have six months stay as per the regulations in annex one and two of the CMP. This uniformity in immigration management is an essential aspect of East African integration. This study established that indeed the entry/exit procedures have changed to reflect a regional outlook.

To establish how free movement of services and labor influences the issuance of work permits by Kenya. The governance of work permits as provided for in national immigration policies and laws of Partner states to the EAC, reflect the anticipation of the CMP and its regulations contained in annex one and two on free movement and labour. This study considered the influence of free movement regime to issuance of work permits particularly in Kenya. The study established that this regime has changed to comply with the requirements of the CMP and integration project itself. The changes realized in work permits regime are among others: requirement for waiver of permit fees for East Africans; this has been implemented by Kenya fully as all East Africans now obtain work permits gratis (free), harmonization of work permit classes; this has been implemented across the region where permits now fall under similar categories for instance permit classes a for---b for --- c for ----d for ---- among others, harmonization of labour laws which is ongoing, harmonization of academic certificates and establishment of pool of human resource which is also ongoing, issuance of student passes to East African student is issued gratis to all of East Africans.

To establish how the rights of residence and establishment has affected alien management in Kenya.

This study also sought to clarify on the implementation of the two rights as enshrined in the Protocol and its annexes, and how this is likely to affect the management of aliens in Kenya.

The right to residence and establishment are actually new rights in East Africa and Kenya in particular. The actual realization of these rights remains controversial. The right of residence is particularly implemented in the issuance of work permits. A compilation of the permits issued to East African nationals has been provided in preceding pages. The low uptake of permits in Kenya still confirms that the consumers of this good are also heard and respected. The difference between the two rights is that the right of residence is concerned with retired and working people. The right of establishment intends to provide for investors and business persons in the region. This is the most abused right by East Africans as they are not ready to seek for such permits and would rather prefer living on visitor passes than obtaining such permits. Majority of East Africans actually stay on visitor passes only even though they should obtain these residence permits. This is a big obstacle to issuance of permits in Kenya.

5.2 Challenges

During the time period of this study, several challenges were identified as impeding the full integration of the East Africa region and therefore the integration of migration matters. Both endogenous and exogenous in nature, these challenges can be summarily presented as follows.

- Slow harmonization of national laws on migration, labour and social security to comply with the Protocol's requirement thus making implementation difficult to be undertaken and evaluated.
- Lack of political will to support and enforce the provisions of the Protocol and policies. This arises out of suspicion among member states and different self interests of the member states. This leads to shifting of blames as to who is causing the present lag in the implementation.
- Lack of full sensitization and involvement of the citizenry in the integration project. The integration was brought to the people as a product and not as a condition or new way of life.
- Lack of enforcement mechanism of the provisions of the policies, a weakness evident in national and international law.
- Official bureaucracy from officers implementing the policies and unfounded fear among state agencies.
- Trans-border crimes such as human trafficking and smuggling in persons and goods including the infiltration of contraband goods, drugs and psychotropic substances.
- Lack of a common implementation and enforcement framework which also affects the implementation of the policies and their monitoring and evaluation.
- Resistance of sovereignty centric mindset to adopt libertarian and globalised migration approaches to migration management.

- Poor response by nationals of Kenya and East Africa on the changes in place and the lack of embracing these changes. It is like producing where there are no consumers.

5.3 Recommendations

This study has been interrogating the Impact of East Africa Community Integration on Immigration Policies (Kenya Immigration Policy). From the study, one goes on to ask whether EAC integration has any impact on migration policies and laws of Partner states. This inquiry is thus important in enabling us to appreciate the policy shifts so far experienced either in compliant with the regional agreements or as an enabler to regional agreements.

For EAC integration to be certain and complete, states need not only harmonise their laws and align the policies but also investigate the impact of these changes to customary state practice and consequent policies and laws. The primary objective of the EAC integration is to bring about equal social, political and economic development for the benefit of its citizens. Regionalization is thus to be considered economies of scale factor that engenders specialization. Migration is the equalizer in this arithmetic thus it should be encouraged.

A relook at these policies displays a lack of inbuilt enforcement and monitoring mechanism that is essential for the evaluation of the progress. This helps in appreciating the progress and achievement of the policy changes.

Uniformity of policies and laws is not the ultimate prize of integration but a means to deeper integration of the region. To this end, states must seek to align all their policies both fiscal and social policies to reflect the aspirations of the EAC integration.

Finally codification of a substantive Kenya immigration policy is long overdue. Continued reliance on Kenya immigration laws is not enough and this believe in there being no policy needs to be worked on.

5.4 Conclusions

The findings of this study not only serve as an eye opener to the challenges of integration but also bring to light the very serious misunderstanding of both national and regional policies and laws in East Africa and Kenya in particular. This study centered on how Kenya immigration policies have changed after the adoption of the EAC treaty and Protocol. During data collection, an argument on the existence or otherwise of a Kenyan immigration policy emerged. This exposed the conventional way with which policy is understood among its own implementers. Secondly, there is need for close monitoring of the EAC integration in order to appreciate whether the intention is being achieved or not. For this matter, monitoring will involve an assessment of the impact of integration on these policies.

LIST OF INTERVIEWEES

1. Mr Onguru S.I.O Busia
2. Mwa Mwashigadi S.I.O Busia
3. Mr.Chondos.I.O. Busia
4. Mr.Mutua P S.I.O Busia
5. Mr.Njenga S.I. O JKIA
6. Mr. Thiong'o S.I.O JKIA
7. Mr.Waweru S. S.I.O JKIA
8. Mr Awili G S.I.O JKIA
9. Mr. Ndombi S.I.O JKIA
10. Ms Wambui Kimani I.O.I JKIA
11. Ms Wanyaga A S. I.O.I JKIA
12. Ms Nyambura L I.O.I JKIA
13. Ms Lucy S.I.O JKIA
14. Mr. Mutua S.I.O. JKIA
15. Mr Gitau A Jkia
16. Mr. Nyikuli J Jkia
17. Mr. Aketch Jkia
18. Ms Okumu C Jkia
19. Mr. Njenga K Jkia
20. Mr. Muthui P. Jkia
21. Mr Omondi C Jkia
22. Ms. Shanyisa J Nyayo House

23. Ms Nsamamu J Nyayo House
24. Mr. Rotich E Nyayo House
25. Malhlda R Nyayo House
26. Mr. Anaynda M NYAYOHOUSE
27. Ms Soita Rose Nyayo House
28. Ms Mutua J I.O.I Namanga Border.
29. Mr. Khaoya P.W. S.I.O Namanga Border
30. Mr. Odhiambo W P.I.O Nyayo House.
31. Mr. Moses Malaba
32. Mr. Muganda P.K. Malaba

Interviewees whose names were withheld 19

QUESTIONNAIRE

Dear respondent, the gist of this study is to examine the impact of EAC integration on Kenya's immigration policy. We welcome you to participate in this debate by taking your time to share the following questions.

a) Preliminaries

Date of interview_____

Location of interview_____

Job Designation_____

Job group_____

b) Personal information

Please state your gender: female [] male []

Education level: certificate [] diploma [] bachelors [] graduate [] others []

Work history

Past stations served and length of stay

1.

2.

State any special responsibilities_____

i) Kenya immigration policy

1. a) What is your knowledge of the Kenya immigration policy?

Basic []

Intermediate []

Expert []

b) Give reasons for your responses

2. a) To what extent does the above policy promote integration in East Africa?

Does not promote integration []

Does promote only to marginal extent []

Does promote integration to a large extent []

b) Explain your response to question above.

ii) East African integration

i) East African treaty

a) What is your knowledge of the EA Treaty?

Basic []

Improving []

Intermediate []

Expert []

b) (i) Does the treaty encourage uniformity in migration management in the region?

Yes []

No []

Not sure []

(ii) Please elaborate your response to the question above.

ii) East African common market protocol

a) In a rank order of 1-5, what do you consider your understanding of the Common market protocol?

	5	4	3	2	1
basic					
intermediate					
expert					

b) Do you think the above protocol is important element in EAC integration?

Yes { } no { } not sure { }

c) Comment on how the protocol promotes integration of immigration affairs

iii) EAC (CMP) regulations on free movement of persons and labour

i) The regulations implements various provisions of the common market protocol

Yes { } no { } not aware { }

ii) The regulations advance uniform immigration practice

Yes { } no { } no comment { }

iii) Explain your response above

iv) Does the above uniformity in immigration practice promote EAC integration?

Yes { } no { } not sure { }

iv) Impact of integration to Kenya's immigration policy

i) In a scale of 1-5, indicate the extent to which you agree/ disagree that the EAC integration has affected Kenya's immigration policy by.

(1) Strongly agree (2) Agree (3) Uncertain (4) Disagree (5) Strongly disagree

	1	2	3	4	5
Providing avenue for free movement of persons.					
Promotes regional platform for migration management.					
Promotes feeling of belonging (community citizenship)					
Harmonized immigration practice in the region					

ii) What would you rate on a scale of 1-5 is the influence of the EAC integration on the following policy shifts in Kenya;

(1) strong influence (2) some influence (3) uncertain (4) marginal influence (5) no influence

	5	4	3	2	1
Kenya immigration law of 2011					
Kenya's admission policy on East Africans					
Immigration practice at entry points					
Kenya passports policy					
Kenya's dual citizenship policy					
Border management policy					
Kenya's border policy					
Kenya's policy on residence and establishment					
Policy on work permits					
Policy on students passes					
Kenya's policy on the diasporas					
Executive orders and administrative directions					

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