

**The EAC Common Market Protocol and the Harmonization of Labour Laws**  
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**Introduction**

The East African Community (EAC) brings together five member countries of Burundi, Kenya, Rwanda, Tanzania and Uganda. The block bids to create a single East African market that will entail easing travel restrictions, harmonizing tariffs, increasing co-operation among security forces, improving communications, sharing electrical power and addressing Lake Victoria issues, among others. All this will be achieved through the establishment of a Customs Union as the entry point of the Community and a Common Market. The next proposal is the creation of a Monetary Union and, ultimately, a Political Federation of the East African States.

The establishment of the EAC Common Market is the most significant phase in the EAC integration process. The Common Market is considered to be of paramount and strategic importance as it is proposed to form the foundation for a people-centred political federation. This is envisaged in the Treaty for the Establishment of the East African Community.

The signing of the EAC Common Market Protocol by the Heads of State was done on 20<sup>th</sup> November 2009 in Arusha, Tanzania. This development paves the way towards the creation of a common market in East Africa from July 2010.

This Common Market, in other words, means borders of the member states have been extended and populations multiplied, for example countries will no longer be looking at their current populations, because they may even double.

A raft of major changes are expected and some may drastically transform the lives of the East Africans, for example, business competitiveness, economic opportunities, capital inflows, foreign direct investments and donor finance. The long-term impacts like effects on prices of land, labour and size of government are also going to be witnessed when the Common market comes into effect.

Unfortunately, member states are yet to educate a vast majority of their citizens on the implications of the Common Market protocol on their lives. The signing of this document was supposed to have caused more excitement among the citizens; however it turned out that some citizens of member states were rather scared and opposed to the Common Market Protocol being signed. This means partner states need to redouble their efforts to educate and sensitise their peoples about the implications of having the Common Market in place.

### **What is the Common Market Protocol?**

The EAC Common Market is the second stage of integration after the Customs Union, which came into being on 1<sup>st</sup> January 2005 for the three original EAC partner states of Kenya, Tanzania and Uganda. On 6<sup>th</sup> July 2007, Burundi and Rwanda also joined the East African Community. This brought to five the number of EAC member states. The Common Market is the most comprehensive stage of the integration. The other stage is the creation of the Monetary Union that is still under consultation and full negotiations are soon to kick off. The ultimate stage in this process is the Political Federation.

The Common Market Protocol is a legal and binding commitment to a deeper and stronger functional integration by member countries to remove all trade barriers on goods and services, and liberalize the movement of the factors of production amongst themselves.

The Common Market Protocol provides for the following:

- the free movement of goods;
- the free movement of persons;
- the free movement of labour;
- the right of establishment;
- the right of residence;
- the free movement of services; and
- the free movement of capital

Its further covers a macro-economic policy on fiscal, monetary and other areas of co-operation.

***Free movement of Goods (Article 6)***

Goods may be sold across borders, without any trade barriers, such as tariffs and non-tariffs. In other words, goods will essentially be duty-free.

***Free Movement of Persons (Article 7)***

Partner state citizens will be able to move between states without restriction or discrimination in relation to their nationality. However, paragraph 5 states that the free movement of persons will be subject to limitations of the partner state on grounds of public policy, public security or public health. Furthermore, citizens shall still be required to carry a standard form of identification in order to cross borders.

***Free movement of Labour (Article 10)***

Workers shall be able to work in any of the partner states without any discrimination based on their nationality and enjoy the same working rights as the nationals. Article 10, paragraph 11, states that the free movement of workers shall be subject to limitations imposed by the host partner state on grounds of public policy, public security or public health. The movement of workers and professionals within the region will remain restricted with borders only being opened progressively and in phases, in Kenya and Uganda by end of 2010, and in Tanzania much later. Rwanda and Kenya currently stand out as the only two countries in the region to have scrapped work permit requirements for all EAC citizens.

***Free movement of services (Articles 16-23)***

Services and the supply of services will not be restricted by state boundaries, and services from one nation can be accessed by consumers in another. Services include all sectors except those supplied in the exercise of governmental authority. Article 21 provides a list of the general exceptions to trade in services; this means that there is a degree of ambiguity in the clause that would allow for a fair amount of regulation. The schedule for liberalization of professional services has been annexed by the protocol.

***Free movement of capital (Articles 24-28)***

There will be no restrictions on the movement of capital belonging to member citizens. Article 26, paragraphs 1 and 2, discuss vague safeguards that nations can take if capital “disturbs” financial markets and distort conditions of competition. This means that capital movement will have to be implemented gradually, with restrictions and schedules for this have been stretched as far as 2015.

***Right of establishment and residence (Articles 13-15)***

Citizens will be allowed to settle in the territories of member states without restrictions and discrimination. They will be issued with residence permits and allowed to pursue economic activities (set up businesses and work). The right of establishment and residence shall be subject to limitations imposed by the host partner state on grounds of public policy, public security or public health. A self-employed East African citizen will still be subject to restrictions regarding the business type he/she is engaged in, and other protocol schedules that will be eventually eliminated by 2015. Furthermore, article 14, paragraph 7 states that matters relating to permanent residence shall be governed by the national policies and laws of the partner states. This will also be the case in matters of access to land.

**The EAC Common Market Protocol and Harmonization of Labour Policies, laws and Programmes**

Even with big business rejoicing about the opportunities that lie ahead with free movement of services and goods, they have to remember that a true common market must have free movement of people, labour and capital. Consequently, the harmonization of labour policies, laws and programmes is not only fundamental in promoting free movement of persons, labour and rights to establishment within the region, but also in addressing the mass unemployment and poverty levels within the region. It also a great step towards strengthening the implementation of the regional and country decent work programs.

A stock take of the legal reforms towards the achievement of the common market protocol by member states shows that East Africans will have to wait until all the five partner states domesticate its provisions for them to start enjoying the benefits. For the five freedoms to be achieved EAC member states have to harmonize their laws.

Currently, all partner states have fully attained the free movement of goods while all are still in the process of amending laws on free movement of persons. Only Kenya and Rwanda have partial waivers on the free movement of labour. The remaining freedoms, rights of establishment and residence, as well as free movement of services are yet to be amended.

Harmonization of labour policies and laws in the East African Community is mentioned under Article 104 of the Treaty for the establishment of the East African Community that provides for co-operation on Free Movement of Persons, Labour, Services and Rights of Establishment and Residence.

In addition to the treaty, it is also in accordance to Article 5 part 2 (c) that talks about the scope of co-operation in the common market and harmonization of social policies, and also Article 12 on harmonization of national labour policies, laws and programmes. The Article clearly states that it is only through harmonization of the national labour policies, laws and programmes that EAC will achieve the free movement of workers.

Article 12 clearly states that, partner states shall undertake to harmonization of national labour policies, laws and programmes to facilitate the free movement of labour. It has also clearly stated the need for harmonization of national social security policies, laws and systems to provide for social security for self employed persons within the partner states.

### **Role of Stakeholders in Implementation of the Common Market Protocol**

A treaty or a signing a piece of legislation alone is not enough to ensure the implementation of the Common Market Protocol. All key stakeholders have a role in taking steps to ensure that benefits of the Common Market are filtered down to the correct places. The stakeholders need to have an access to key facts and data on what is needed to realize a common market on the ground with mechanisms to translate these strong messages for policy-makers.

There are important process that stakeholders should be involved in making the Common Market dream come true. They need to be involved right from the Policy initiation stage when policies are formulated in attempts to achieve the objectives of a Common Market, and to ensure that all interested parties are presented in discussions at this early state. This participation should be present in the decision making procedure and the final implementation stages of the policies.

As the trade union movement in East Africa, EATUC has been actively involved in the negotiations of the EAC Common Market Protocol and its annexes. Accordingly, EATUC has been organizing a number of activities to debate and discuss the harmonization of labour laws, employment and social security policies. This is due to that fact that effective regional integration cannot be realized if labour and employment issues are not coordinated or harmonized.

Therefore EATUC as workers' representative body at the regional level has been at the forefront of promoting and advocating the implementation of the above mentioned Article 12; and also Article 39 which among other things urges the Partner States to coordinate and harmonise their social policies in order to promote and protect decent work and improve the living conditions of the citizens of the partner states for the development of the Common Market.

## **Conclusion**

It is important for us to understand that the positives that come with a Common Market can only be achieved and only depend on whether or not we can manage the transition process very well with all mechanism in place. This is a great change for the EAC and with every change comes challenges and the ever resistance to this change. Therefore all member states should be ready to extensively educate their citizens on this process of economic integration, the benefits and challenges that may as well come with the integration.

It is obvious that the harmonization of labour laws, programmes and employment policies in the East African Community will be based upon the principle of national competence. This means that the EAC is setting standard goals and objectives for the policy areas and leave the implementation of the policies up to the individual partner states. However, harmonization should produce an active coordination so that the policy arrangements reflect a coherent ideological position of the region.

It is against this background that the EAC partner states should move at a steady speed to harmonize their labour laws and programme for the effective implementation of the EAC Common Market Protocol.

Equally importantly, integration is not about governments; it should be people-centred. In this regard, EAC and its partner states should involve all key stakeholders and citizens in this process if the dream of integrating the region is to be achieved.

**Ends// Carolyn Khamati Mugalla//East African Trade Union Confederation**