

INTERNATIONAL MIGRATION PAPERS

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Migration Legislation in East Africa

Flora Mndeme Musonda



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INTERNATIONAL MIGRATION PROGRAMME

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Forewords

This report comprises part of the ILO working paper series *International Migration Papers* that disseminates current research findings on global migration trends and seeks to stimulate dialogue and policy development on issues of regulating labour migration.

The importance and immediacy of better regulating labour migration in Africa motivated the ILO to establish a programmatic *Africa Labour Migration Initiative* in 2002. The evident starting point for this initiative was to expand the knowledge base as a proper foundation for effective technical cooperation and practical activity. As a result, this report comprises one of a special series of 31 regional and national studies from East, West and Maghreb Africa being published in 2006 as International Migration Papers starting with IMP number 74, and/or posted on the Project website¹.

Migration has come to the top of the political and social agenda across all of Africa. In recent years, regional integration initiatives have made considerable progress in development of frameworks, legislation, and mechanisms for increased economic and social integration among concerned states. At the continental level, the African Union and the Economic Commission for Africa have both taken up the challenges of exploring greater labour mobility across the region.

This report is the product of a process initiated by the ILO and supported by the European Commission on the basis of constituent recommendations and requests for engagement. An ILO project “Managing Labour Migration for Integration and Development in the Euromed Region, East Africa and West Africa” was established in 2004, supported by the EC budget line for cooperation with third countries administered by DG Justice, Freedom and Security. Following consultations with ILO constituent governments and social partners in East Africa countries, project activity has been ongoing over the last 18 months. Central aims of this project are:

- to enhance the capacities of ILO tri-partite constituents for managing labour migration as an instrument for development
- to promote social dialogue and to raise awareness among stakeholders regarding regional labour migration issues
- to obtain knowledge and data essential for governments and social partners to effectively set policy and regulate labour migration
- to enhance cooperation between East Africa, West Africa, North Africa and Europe on labour migration.

In East Africa, the Project responded to requests to the ILO for cooperation on labour migration management by East African Partner States at the International Migration Policy Seminar for East Africa and the Horn of Africa in Nairobi in May 2002 and the subsequent IMP Seminar for East Africa and the Horn of Africa in Addis Ababa in June 2003. Specific expectation of ILO cooperation on migration was expressed in terms of the partnership

¹ ILO-EU Project “Managing labour migration for integration and development in Africa” Website: <http://migration-africa.itcilo.org>

cooperation agreement between the East Africa Community (EAC), comprising Kenya, the United Republic of Tanzania and Uganda, and the ILO.

Since labour circulation is recognized as an integral part of the regional integration and development process in the East Africa Community Treaty, the EAC governments and social partners recognized the need to establish, modernize and improve their laws, policies, practices and administrative structures on migration. At the tripartite conference launching the East Africa ILO labour migration project effort in December, 2004, labour ministers from the three countries and the President of the EAC Council of Ministers called for immediate commencement of negotiations for an East Africa Community Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Residence. The negotiations are currently underway at mid-2006.

This report is one of a complementary series of three sub-regional research studies covering East Africa countries intended to assist governments and social partners to address the fundamental building blocks of effective policy and practice to regulate labour migration and enhance eventual implementation of the labour circulation Protocol.

This paper analyses existing national legislation on labour migration –the legal foundation for State action on migration-- and in particular notes the extent of incorporation of relevant international normative standards and potential harmonization of national legislation with that of neighbouring countries, the relevant EAC Protocols and international conventions. Another study assesses the current state of data collection and suggests specific measures to improve and harmonize collection and analysis of statistical data on labour migration and to more effectively use it in policy formulation. A third regional study examines a number of key linkages between migration and development in order to identify what action and what policy tools can contribute to ensuring that migration indeed enhances development.

This report starts by outlining the rationale of international standards for the protection of migrant workers and by giving an overview of the regional existing instruments on labour migration in East Africa, followed by a presentation of the national laws and regulation in the region. This is followed by a look at the state of ratification of relevant international conventions and the provisions of the relevant EAC regional Protocols on labour circulation and establishment. Subsequently, a number of constraints and obstacles for greater harmonisation are identified that lead the authors to make several recommendations for legislative adjustments and improved regional cooperation on labour migration in the region.

As the research emanating from the project shows, there remain a number of obstacles to the effective management of intra-regional labour migration or from East Africa. Key challenges concern the availability of accurate data necessary to make informed policy decisions, the need to fully incorporate relevant provisions of international standards in national law, and the establishment or improvement of institutional structures and mechanisms with specific competence and capacity to regulate labour migration. We sincerely hope that this report will serve as a building block for our member governments and social partner constituents to address the migration challenges before them. We also hope that dissemination of these research findings will enhance regional policy dialogue and cooperation on labour migration.

We wish to acknowledge the diligent and arduous work of Dr. Flora Mndeme Musonda who prepared the report as well as efforts of Ali Likumbage Kilindo to supervise the research.

Appreciation is noted for the cooperation received from concerned governmental offices and agencies in Kenya, Tanzania and Uganda that shared perspective, concerns and data essential to this effort.

Thanks are also due to the ILO East Africa project team based in Arusha, Ali Likumbage Kilindo, Laura Kikuli and Marietta Faransa for their support, editing and coordination efforts, and to the Director of the ILO Area Office in Dar-Es-Salaam, Mohamed Ali Ibrahim, and to Anthony Rutabanzibwa for their editorial review and liaison work with governments and social partners.

Christina Holmgren, Senior Specialist on Legislation and International Labour Standards in the ILO Sub-regional Office for East Africa in Addis Ababa (Ethiopia) reviewed and edited this report to ensure its technical accuracy. Finally, we note the dedicated attention by David Nii Addy, ILO Africa Project Officer, to ensuring that the entire research, writing and review process was carried through to completion, and the editing and publication support by Céline Peyron.

Geneva, June 2006.

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Acronyms

ATE	Association of Tanzania Employers
CHF	Community Health Fund
DRC	Democratic Republic of Congo
EAC	East African Community
EALA	East African Legislative Assembly
FDI	Foreign Direct Investment
GATS	General Agreement of Trade and Services
GDP	Gross Domestic Product
HD	Human Development Index
ICT	Information and Communication Technology
ILO	International Labour Organization
IOM	International Organization on Migration
KIA	Kenya Investment Authority
NIC	National Insurance Corporation
NICs	National Identity Cards
NSSF	National Social Security Fund
PPA	Participatory Poverty Assessment
PPP	Purchasing Power Parity
PRSP	Poverty Reduction Strategy Paper
RQAN	Return of Qualified African Nationals
SADC	Southern African Development Community
SSA	Sub-Saharan Africa
TIC	Tanzania Investment Center
UBOS	Uganda Bureau of Statistics
UN	United Nations
UNDP	United Nations Development Programme
UNDESA	United Nations Directorate of Economic and Social Affairs
WTO	World Trade Organization

Executive Summary

Significance of Labour Migration in East Africa

This report reviews policies, legislation and practice related to labour migration in East Africa, covering Kenya, Tanzania and Uganda. The report demonstrates that labour migration is an international phenomenon which takes place in rich and poor countries. Migration is propelled by economic, social, political reasons and in recent years globalisation is another factor that has made movement across the globe much easier. In East African countries the history of labour migration is long. During the colonial period, forced and unforced movement of labour was encouraged to supply labour to plantations and estates. There was also movement of labour for other reasons such as building the Kenya -Uganda railway. Of late, much of labour movements are due to refugee reasons and also high unemployment in the East African countries.

Migration Legislation

The three East African countries have similar immigration laws that restrict rather than encourage mobility except for the purposes of promoting foreign investments. Even with the case of labour immigration as part of foreign investment, movement of labour is conditional on the countries not having the requisite skills domestically. The practice is even more restrictive with unpredictable administration hurdles, but also many departments dealing with the immigration are uncoordinated. Immigrants are not protected and lack social security. The migration policies are even more un-harmonized.

The national laws do not address the wide-ranging concerns of migrant workers: knowledge of employment opportunities; entry and exit; terms and conditions of work; freedom of association including trade union rights; financial arrangements including mobility and portability of earnings; movement of families; and availability of information. These concerns are not comprehensively addressed in the laws.

The laws are compartmentalised and the Departments have no integrated network necessary to manage migration issues comprehensively. The laws do not completely cover migration concerns and have numerous gaps that need to be filled.

Indeed, while the East African countries have signed many of the ILO and other conventions on migration, their legislations do not take into account all the elements stipulated in the conventions. Many of the Laws and Acts are quite restrictive and do not support migration except for those related to foreign investment. In nearly all the cases migrant labour is only permitted if there are no equivalent skills available in the local market.

It has been difficult in East Africa to ensure rights of migrant workers due to xenophobia, increase in unemployment especially after the Structural Adjustment Programmes, redundancies and increased regional insecurity. Many local citizens regard migrant workers as competitors in the labour market. In many cases politicians are also caught in the same line of thinking thus restrictive policies are enacted and implemented.

Many of the issues in ILO conventions have not been incorporated into the national laws and Acts. Some issues have been included to some extent by some countries, others have not yet done so.

East Africa faces a number of migration challenges including poor linkages between migration and development processes; inadequate administrative and institutional capacity for effective migration policies and migration management; and lack of protection of migrant workers. In addition, there are barriers to free movement of labour while on the external front the three countries suffer from loss of human capital through emigration of skilled workers.

Inter-state Cooperation

The East African Community (EAC) composed of Kenya, Tanzania and Uganda came into existence in July 2000 upon ratification of the EAC Treaty by the three partner states. The basic objective of the community is to move towards full integration. The first step of the integration process was achieved with the establishment of the Customs Union in January 2005. The recommended road map envisages a political federation by 2013.

Ratification of Conventions on Migrant Labour

Kenya has ratified the two ILO Conventions (97 and 143) but not the UN Convention on the Protection of the Rights of Migrant Workers and the Members of Their Family. Uganda has ratified Convention 143 of the ILO and the UN Convention. Tanzania has a long way to go because neither the ILO nor the UN Conventions have been ratified. Zanzibar which is part of Tanzania has ratified Convention 97. In countries where some conventions have been ratified domestication is still a problem due to national laws not having been reformed to allow enforcement.

Achieving Effective Migration Regulation

It is envisaged that the East African Parliamentarians will be more involved in the preparation of the EAC Protocol on Free Mobility, Labour, Services, Right of Establishment and Residence, especially in addressing common people concerns in the issues of migration.

Addressing the existing legislative gaps will therefore involve:

- Incorporating the elements of ILO Conventions into national laws;
- Reviewing employment and migration policies with focus on getting the comprehensive picture of migration and the necessary strategies for the countries;
- Build capacities of the governments of East African countries to provide protection to their citizen working abroad;
- Establish common labour standards in the East African community.

Facilitating Labour Circulation

In the agenda for labour market integration it is proposed that:

- Cross-border investment and foreign direct investment in Africa require harmonizing investment and labour laws among regional economic communities;
- To improve labour mobility, all East African partner states should gradually relax visa and permits requirements, starting with categories of people but with the main goal of including all community citizens;

- Trade unions should be strengthened and be more independent so that they are at the forefront in defending the rights of migrants and in promoting decent migration policies and practices.

Recommendations and way forward

Effective Migration requires a number of actions:

- Legislations need to be harmonized, improved and even new ones enacted;
- There is need of looking at aspect other than legislation for labour migration such as skills development;
- The efforts of the regional economic communities such as EAC to develop human resources should be enhanced;
- the private sector should have a larger presence in education and training;
- the gradual, targeted introduction of labour mobility is the best way to move towards a regional policy in general together with other purposeful programmes;
- Common employment policies and standards should be encouraged to allow greater opportunities for skills, entrepreneurial know-how, technology, and professional services to move freely across borders;
- The East African Community (EAC) adopt a general policy to facilitate regional integration: relevant municipal laws must be harmonized in all areas in which EAC has made decisions;
- Reviewing and updating relevant municipal laws in light of related international labour conventions as a first step towards harmonizing the laws;
- Identifying core regional labour issues that need harmonization;
- So far the most significant results in human development and labour mobility have come from efforts to harmonize education policies in the regional programmes and measures to promote the free movement of people other areas should therefore be addressed.

Obstacles that may impede actions towards effective migration include:

- Political commitment to implementing agreed objectives is often insufficient;
- Inadequate resources for meeting what often appears to be overly optimistic objectives;
- Lack of expertise, uneven compliance with international obligations, persistent economic crises and high unemployment in East African countries;
- Rapid population growth and lack of effective population control exacerbate these problems by further straining resources for educational development and social assistance, especially in health and education.

1. Introduction

1.1 Background

Labour migration across nations has been in existence for a long time. It is a process that occurs due to pull and push factors including voluntary and involuntary; or forced migration due to wars and political instabilities. While in the past this process took place virtually unnoticed, it is only in the last three decades that migration has become an issue of growing concern to the international community. This is attributed to the increased volume of flows of migration. The increased migration is a result of several factors; wars, social instabilities, economic reasons such as hardships and increased unemployment and education reasons, among others. Of recent the surge in labour migration is a result of globalization and regional integration processes, easy communication due to ICT revolution and liberal migration policies pursued in some of the developed world (this category of migration however affects mainly skilled and semi skilled labour), and foreign investment incentives offered in developing countries.

Explaining international migration as well as its social and economic relevance has become more complex at present as compared to the past. Currently it may no longer be possible to make a simple categorization of countries between those that are essentially of origin, transit and destinations of labour migration. Poor and richer countries generate and admit large numbers of international migrants. Thus, different from other researched phenomenon there is no single, well-developed theory to explain and predict the volume and direction of these labour movements. Economic, political and social factors play roles in the interpretation of empirical evidence about migration, and there is growing attention to environmental linkages as well.

The opinion of different countries on issues of migration is also complex. Overall, in many countries, labour migration, especially from poor countries, is regarded as an unnecessary burden, although many countries are increasingly realizing that the migrants can play a positive role in the development process if they are better utilized, especially in cases of labour shortages.

Migration practice and legislation existing in the East African countries are de-linked. In East Africa there are many gaps existing such as the legislation framework failing to regulate certain situations; many regulations failing to provide for clear distribution of tasks among various enforcement agencies; legal provision being ambiguous; unrealistic legislations; discrimination in legislation among others.

1.2 Objectives of the study

The objectives of this study are to:

- Carry out a comprehensive review of the relevant legislation and legal practice pertaining to migration and labour migration in particular in each country;

- Review the degree of consistency of migration legislation between countries of the sub-region with a view to identifying gaps and assessing the potential for harmonization;
- Assess the status of ratification and/or de facto incorporation of relevant international standards into national law and practice
- Recommend policy initiatives and future priorities for the adoption of international norms and legislative adjustments to enhance consistency between national legislation, regional treaties and international standards.

1.3 Structure of the report

The introductory section has given the background, objective of the study and structure of the report. Section two offers a brief historical trend of labour migration in East Africa. Section three gives labour migration policy, Legislation in East Africa while section four analyze the protection of human and labour rights and decent work conditions. Section five gives access to entitlements and social security provision while section six offers description of issues of inter-state cooperation and the involvement of social partners. Section seven gives the ratification of the fundamental ILO Conventions while section eight offers obstacles towards effective migration regulations. Section nine analyze the specific gaps in existing legislation in relation to international standards and regional comments to facilitate labour circulation and section ten offers conclusion and recommendations.

2. Significance of labour migration in East Africa

2.1 The Historical Perspective

East African countries like many other countries have a long history of labour migration within East Africa and also externally with other countries outside the region. Penetration of foreigners to East African countries has been long and this sparked movement of labour within East African countries. Cooperation within the East African countries has been quite long and extensive.

In East Africa, people have moved within and without the region for various reasons but the paramount reason is for labour purpose. Labour movement has been prompted in many East African areas, recorded for work in plantations such as in (cotton and coffee areas in Uganda), mines (DRC and Uganda) and with the seasons (pastoralist communities in Uganda, Tanzania and Kenya). In the colonial era, labour migration originated mainly from Rwanda, Burundi and Zaire to Uganda, Kenya and Tanzania. These movements have been supplemented by substantial forced displacement-- Kenya for railway building and Tanzania to work in sisal estates and plantations. There is also increased rural-urban migration within countries for employment or to earn a livelihood. However, both urbanization rates and levels of international migration remain generally low compared to other parts of Africa.

Table 1: Selected Development and Migration Indicators for East African Countries

Country	Population (millions) 2000	GDP per capita (US\$ PPP) 2000	Human Development Index (HDI) 2000	Migrant stocks (%) 2000	Average annual net migration rate (per 1000) 1995 - 2000
Kenya	30.7	1022	0.513	1.1	-0.1
Tanzania	35.1	522	0.440	2.5	-1.4
Uganda	23.3	1208	0.444	2.3	-0.6

Notes: Purchasing Power Parity (PPP) is an adjustment of the gross Domestic Product to account for price differences across countries and allow comparison of real incomes.

The Human Development Index is calculated on the basis of statistics on life expectancy at birth, adult literacy rate gross educational enrolment ratio and GDP per capita (PPP, \$US). Migrant Stock refers to the percentage of the population born outside the country.

Source: UNDP and UN Population Division.

Nevertheless, even with the long history of labour movement in the region, there is quite a prevalent xenophobia about labour movement in East Africa. Evidence of this xenophobia is that at intermittent periods and in all the countries migrant labour has been removed with very scanty excuses and in many cases they are accused of many of the ills of the countries such as increased criminalities.¹

2.2 Recent Developments on migration within East Africa

The three Partner States have concrete plans in place and these are there to deal with East African Migration issues. Chapter seventeen of the Treaty for East African Community deals with Free Movement of Persons, Labour, Services, Right of Establishment and Residence. Article 104 deals with the scope of cooperation and section (1) states that partner states agree to adopt measures to achieve the free movement of persons, labour and services and ensure the enjoyment of the right of establishment and residence of their citizens within the Community. Section (2) states that the Partner States agree to conclude a protocol on the free movement of persons, labour, services and right of Establishment and Residence at a time to be determined by the Council. Section (3) indicates that the Partner States shall as may be determined by the Council (a) ease border crossing by citizens of the Partner States; (b) maintain common standard travel documents for their citizens; (c) effect reciprocal opening of border posts and keep the posts opening and manned for twenty four hours; (d) maintain common employment policies; (e) harmonise their labour policies, programmes and legislation including those on occupational health and safety; establish a regional centre for productivity and employment promotion and exchange information on the availability of employment; (g) make their training facilities available to persons from other partner States; and (h) enhance the activities of the employers' and workers' organizations with a view to strengthening them. Under Section (4) The Partner states undertake to co-operate in the enhancement of the social partnership between the governments, employers and employees so as to increase the productivity of labour through efficient production.

¹ Popular East African News papers

The negotiations on the Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Residence started in early 2006 and might take approximately two to three years to be concluded. The East African integration process will also assist in migration issues as the chiefs of immigration in East Africa meet regularly to discuss important issues related to immigration. Further the Chiefs of defense also meet to discuss security matters in East Africa. The

The East African Legislative Assembly (EALA) is the independent legislative arm of the East African Community. In addition to providing a democratic forum for debate the EALA also has a watchdog function.

3. Labour migration policy and legislation

3.1 Migration Policies

Migration policies can be defined as those government interventions that regulate the arrival or departure of foreigners according to their nationality, purpose of their arrival and duration of their stay. The migration policies include those governing emigration, migration, seasonal migration and refugees. Reading through many policies available that relates to migration, the conclusion that is evident is that in all the three countries of East African (Tanzania, Kenya and Uganda), migration policies can be translated into more or less restrictive regulatory frameworks comprising of immigration laws for the entry, residence and employment of foreigners. In all the three countries policies governing emigration are less clear. The migration policies mainly seek to limit access of employment to foreigners while promoting employment of nationals. This makes it hard for non-nationals to access the labour market within the territories or even change jobs once the contract has expired since the re-employment of foreigners will be dependant on permits they are in possession of.

The principle objective of the strict attitude towards foreign labour in East Africa is the protection of the local labour market. The country has experienced an increased number of job seekers in the labour market. To address this problem, policies, particularly National Employment Promotion Policies, have been developed to promote employment opportunities of East Africans as well as increase productivity of the labour force to ensure full utilization of available human resources capacity. Thus, in a situation where domestic job opportunities are extremely limited, attraction of foreign labour to the country has been extremely discouraged. Foreign workers may be admitted into the country only when it is proven that there are no nationals with similar qualifications. Labour immigration in this situation remains, indeed, the least alternative in the labour market in East Africa. The policies on emigration have been changing over time, at times pushing people to migrate and at times encouraging people (Diaspora) to come back. Currently there is a move to negotiate for international policies that support labour emigration for employment purposes and encouraging remittances.

Tanzania

In Tanzania there is no comprehensive policy on (labour) migration although the new labour and employment law combines labour issues and those of employment into one Act (Employment and Labour Relation Act, 2004). In addition, there are fragmented policies which touch upon issues of labour migration. These fragmented policies include, among

others, the National Employment Policy of 2000, The National Employment Promotion Policy of 1997 and the Public Policy on the Employment of Non-Citizens (1999). From these policies one can deduce that the government policy leans more towards controlling labour migration. Policies on migration have thus been developed in several uncoordinated areas in Tanzania. The evidence that policies are uncoordinated is found because many ministries deal with some aspect of migration. Home affairs deals with immigration, ministry of labour deals with immigrant labour as far as employment is concerned, Tanzania Investment Centre deals with investment so for those who are employed as part of foreign investment they are dealt with here. There are other departments that also deal with migration policies, and these departments are not coordinated.

One of the reasons for strict labour migration in Tanzania is that the country has an estimated 750,000 jobless youths annually. To address this problem, policies, particularly National Employment Promotion Policy of 1997, and the National Employment Policy 2000 have been developed to promote employment opportunities of Tanzanians as well as increase productivity of the labour force to ensure full utilization of available human resources capacity. Thus, in a situation where domestic job opportunities are extremely limited, attraction of foreign labour to the country has been extremely discouraged. Foreign workers may be admitted into the country only when it is proven that there are no nationals with similar qualifications. Labour immigration in this situation remains, indeed, the least alternative in the labour market in Tanzania.

An exception to strict policies on labour migration is in the reason for encouraging foreign investment in the country. Here the practice of Tanzanian government suggests facilitation rather than regulation of flows of foreign workers into the country. This practice is envisaged in a number of national policies such as the National Investment Promotion Policy, the Education and Training Policy (1995), the National Higher Education Policy (1999) and the Mining Policy of 1998. In situations where labour migration may help the country realize her development goals and objectives, such as promotion of FDI, the government's practice has been to facilitate rather than regulate immigration of foreign nationals for employment purpose.

In Tanzania, for instance the government has not taken any steps that would either promote or restrict emigration of skilled and unskilled Tanzanians. However, it is a known fact that with economic hardships of early 1980's, many professionals were forced to move to other countries to look for "greener pastures".

In Tanzania there is little attempt in public policy-making to address the issue of voluntary or economic migration; the Tanzania PRSP fails to mention migration at all. In relation to forced migration (to include refugees, trafficking, expulsion), a contrast can be drawn between policies on 'trafficking' and on refugees. In relation to 'trafficking', the US reports that Tanzania does not fully comply with minimum standards for the elimination of trafficking, although it is making significant efforts to do so (USDOS 2003).

There is a multi-agency government task force working on child labour, including public awareness campaigns, whilst a section of the penal code was enacted in 2001 that criminalizes trafficking within or outside of Tanzania, although the penalty is seen as relatively light by those who comment in the news media such as television.

Tanzania's refugee policy was for many years hailed as a model of progressive legislation by refugee lawyers, even if some parallels can be found between the country's openness to refugees, and its historic recruitment of labour from neighbouring countries to work in the plantation sector. However, following the crises in Rwanda and Burundi in the mid-1990s, there has been a significant change of government policy. The 1998 Refugee Act tightened the decision-making process to make it harder for asylum seekers to get refugee status, and reduced refugees' right to freedom of movement (Kamanga 2002). After large scale and largely forced repatriation of Rwandans in 1996, the government stated in May 2001 that all Burundian refugees should be repatriated at all costs, blaming the refugees for insecurity and the lack of development in western areas of Tanzania.

Kenya

In Kenya employment relations are regulated by a number of sources: constitutional rights, statutory rights, as set out in statutes and regulations; rights set by collective agreements and extension orders of collective agreements; and individual labour contracts. Reviewing migration policies for Kenya shows that in general, policies that have been developed in relation to migration view it rather negatively. Kenya's PRSP, although it is light on actual policy prescriptions, clearly has a negative view, stating that 'traditional systems (of social protection) are disappearing due to the break-down of the extended family system, migration, economic hardships and poverty' (Government of Kenya 2000). Efforts have been made to stem the brain drain.

There have also been some attempts to reverse emigration of the highly-skilled labour. The RQAN scheme in Kenya run by International Organisation for Migration (IOM) is reported to have returned over 300 professionals to Kenya by the end of 2002 (Shinn 2002). A worrying development that runs somewhat counter to previous policy to reverse emigration is the decision by the government not to renew the visas of many expatriate workers where it is judged that a Kenyan could do the job as well.

In relation to trafficking there are also problems. The US State Department reports that Kenya does not fully comply with the minimum standards for the elimination of human trafficking, even though it is making significant efforts to do so despite severe resource constraints (USDOS 2003). For example, the Children's Act of 2001 prohibits involving children in work that might prevent them from going to school or that is exploitative and hazardous. It also prohibits child sexual exploitation.

Community-based District Advisory Committees, set up to monitor child labour issues at district and local levels, have assisted 2,803 children, including 1,252 found working in hazardous conditions and 297 found working in forced labour conditions. The government supports international organizations and NGOs to assist children in domestic service and includes education, skills training, counselling, legal advice, and a shelter for girls abused by their employers. A Human Trafficking Unit within the police was established in 2002, but its focus so far has been on immigration fraud. For instance government officials were implicated in fraud facilitating illegal smuggling and six foreign nationals were deported for suspected smuggling of citizens to the Middle East.

Zanzibar

In the case of Zanzibar migration is a union matter with mainland Tanzania although the two have separate labour policies. Even before the union with Tanzania of 1964, Zanzibar had

already ratified the convention on labour mobility, which guarantees the chance to migrant workers to be treated accordingly. Also, the Investment Policy Act of 1986 provides for open liberal policy to migrant to invest in Zanzibar. However, there are conditions that are attached to the general policy for investment in Zanzibar. The procedure for employment of foreigners include that the investor has to communicate with Zanzibar Investment Promotion Agency, Export Processing Zones, Free Port Authority or Tourism Commission or other government institutions on the question of investment. The investor also under the Labour Act No. 3 of 1997 shall submit an application in writing to the Commissioner or the Labour officer stating reason for the intended employment, number of registered vacant posts, qualifications and number of recruits required. The investor has to communicate with the above institutions when he/she needs to employ a foreigner before approval of the Labour Commission and Immigration Office. The employee who is a foreigner must get permission granted by the Commissioner of Labour and the Labour Officer should attest the employment contract for the foreigner employee.

Uganda

Uganda has several policies dealing with labour migration and some are in process of being formulated. Some of the important policies include National Economic Policy which is under review and a new one is being formulated. Policy on migration in Uganda is generally orientated towards international migration. Historically, this has involved measures to limit both emigration and immigration. In the late 1980s, Uganda instituted measures to restrict emigration of professionals and civil servants through the imposition of foreign exchange restrictions and obligatory clearance for travel abroad (Russell et al. 1990, Adepoju 1991). In 1990, the Government reported that it considered emigration levels to be too high and resolved that it would take measures to reduce emigration. However, by 2000, the Government described emigration levels as ‘satisfactory’ and had moved to a policy of ‘no intervention’ (UNDESA 2002b). Uganda has participated in the IOM’s Return of African Qualified Nationals Programme (RAQN), which has successfully returned Ugandans from the UK, India, Canada and US. Like other countries in SSA, it has more recently turned its attention to mobilising the diaspora without necessarily promoting return (e.g. government speakers have attended meetings of the Uganda North American Association to raise awareness of development objectives in Uganda).

Uganda has signed and ratified the 1951 Convention on Refugees, the 1967 Protocol and ILO Convention No. 182 on Elimination of the Worst Forms of Child labour. Uganda was also one of the first signatories of the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families and acceded in 1995. It has not signed ILO Convention 97 on migration for Employment, but it has launched a programme with the ILO to combat the worst forms of child labour including participating in the ILO regional programme to combat child labour in the commercial agricultural sector. However, the legislative framework on child labour is quite weak and prosecution low, whilst overall; there remains limited institutional capacity on migration.

Sections of the government involved in migration policy include the Immigration Department in the Ministry of Internal Affairs (immigration ‘facilitation’, monitoring and control), the Population Secretariat in the Ministry of Finance, Planning and Economic Planning (population policy, programmes and research), and the Uganda Bureau of Statistics (national migration statistics). The 1995 Constitution also stipulates the establishment of a

National Citizenship and Immigration Board, although we have found no evidence of its existence or work.

Uganda's refugee policy is still guided by the outdated 1960 Control of Aliens Act, which has been criticised for its inconsistency with international refugee law especially as regards the rights of refugees to own property, have access to courts and enjoy freedom of movement. However, Uganda has been discussing a new refugee law for some years and in December 2003; it was approved by the Cabinet and was to pass to Parliament in 2004. The aim was to integrate refugee services within district development plans recognising that refugees and local communities share services.

The Uganda PRSP (or PEAP) does not mention migration or refugee issues, nor do the 2001 and 2002 APRs. However, the 2003 APR does mention the issue of refugees in Uganda, commenting on the high numbers of poor rural refugees and their impacts on the social and economic development of local/host populations. These are mainly expressed in negative terms such as potential environmental damage (depletion, degradation of natural resources, scarcity of water), stretching of social amenities and food shortages. However, the APR also mentions possible positive effects of refugee presence including that international assistance to refugees may bring new services and infrastructures if properly planned and thus help development of the host region. The presence of refugees may also spark economic development if it brings additional market outlets, economic opportunities and innovative skills and practices.

The PRSP, Uganda's Participatory Poverty Assessment (PPA) in 2000 does have a short discussion of migration as an economic or coping strategy, noting that people migrate because of insecurity, to search for livelihood opportunities or seasonal water for animals, or to seek better services, it suggests that migrants find life hard but may succeed. Migrant men are described as often living in sub-standard accommodation and eating modestly, but being respected in their communities of origin where they are seen as better off.

In addition Uganda has a Draft National Employment Policy, which contains policies in all aspects of employment including conditions of work, migration and occupational safety and health. This policy is at the highest level of governmental process of approval. In its section containing migration, the policy has the following objective stated as "to promote the placement of human resources into jobs of high performance and earnings outside the country". The guiding principles are; enhancing competitiveness and productive capacity of Ugandans on a global scale; expansion of scope for exploitation of economies of scale; promoting efficiency in the labour market and the quality of labour and establishment of common standards for acceptability in host countries.

The strategies are geared towards:

- Establishing labour related linkages and cooperation with Governments of receiving countries and in particular with the Ministries responsible for labour and employment, with a view to establishing appropriate bilateral legal framework agreements for the management of labour migration with the recipient country;
- Establishing and equip a Labour Migration Unit to provide information and other services to those seeking employment abroad;
- Creating an integrated labour market information system within the ministry responsible for labour;

- Establishing a multi-sectoral technical committee consisting of stake holders to monitor and make recommendations and guide government on matters pertaining to labour emigration;
- Reactivating and developing capacity of public employment services in all districts as an institutional framework to gather and forward applicants and to deliver the necessary information to the job seekers as well as to the prospective employers;
- Monitoring activities of private employment and any other intermediary agencies and develop guidelines for their operations;
- Participating in the review of the educational system to ensure high quality manpower that can compete with the rest of the world on external labour market;
- Reviewing of education system should bear in mind the new generation of technology, especially information and communications technologies, which have changed productivity and created demand for workers with higher level skills who attract higher wages.

The above mentioned strategy is seen as the first attempt in Uganda to put in place a mechanism for managing migration issues that take into account the existing binding constraints and thus compel people to be averse of migrants.

From the description in these sections one can conclude that labour policies in all East African countries have the objective therefore of encouraging national employment except where the need for foreign direct inflow of investment is paramount. However, even in these occasions a case has to be made that there are no equivalent skilled nationals. In all the countries there are no consistent policies that encourage or discourage emigration. However as part of WTO negotiations East African countries are requesting that they are given more market access using mode 4 of General Agreement on Trade and Services (GATS) but the developed countries are reluctant to do so en masse as they are afraid of exacerbated emigration problems.

3.2 Migration legislations

Major labour migration legislations in East Africa

Policies on migration are supported by legislations and other legal regulations. In all East African countries substantive legislations exist dealing with migration but more on immigration and less on emigration. These legislations include the Constitution (freedom of movement); Immigration Acts; Employment and Labour Laws and Investment Acts.

Subsidiary legislations

Subsidiary legislation that impacts on migration include Factory Acts, Workers compensation Acts, Trade Unions Act, Trade Disputes Acts and Social Security Acts.

Review of the Legislations

In all the three East African countries there are detailed pieces of legislations in regard to labour migration. As can be expected all the East African countries have numerous laws for migration of labour dating as far back as the colonial era for migration of labour. In colonial times labour was basically migrating to the economies to be used as casual and hard labour in colonial plantations and building infrastructure such as in railway construction in Kenya. Other laws were instituted to restrict labour movement in the East African economies. After independence of the three countries, new laws were instituted but reading through the several

documents one observes that there were no major efforts exerted towards encouraging or discouraging labour migration.

Uganda

In Uganda the 1995 Constitution of the Republic of Uganda Article 16 (3) prescribes the functions of the National Citizenship and Immigration Board. The Immigration Act Cap 63 of the Laws of Uganda establishes the Immigration Board and empowers the Immigration Department to execute its decisions including registering and issuing National Identity Cards (NICs) to nationals and registering and issuing identity cards to aliens. The Immigration Board is the principle agency of government with the core responsibilities for managing the movement of persons into or out of Uganda. It grants work permits to persons with valid travel documents.

There are different classes of entry permits:

- (i) Class A (Government and diplomat service) – A person in the service of the Government, Makerere University, United Nations or other institutions approved by the minister
- (ii) Class B (Agriculturalists) – A person intending to engage on his account in the business of agriculture or animal husbandry
- (iii) Class C (Miners) – A person intending to engage in his account in prospecting for minerals or Mining
- (iv) Class D (Business and trade) – A person intending to carry on trade, business or profession other than a prescribed profession, on his account or as a partner in a firm
- (v) Class E (Manufacturers) – A person intending to engage in manufacture on his own account
- (vi) Class F (Professional) – A member of a prescribed profession who intends to practice such profession
- (vii) Class G (Employees) – A person who satisfies the board that he has been offered and accepted employment

Entry permit will not be issued unless it is satisfied that the engagement in the employment by that person, or the granting of the entry shall be of beneficial to Uganda and not to prejudice the inhabitants. (Investment Code 1991). There is development of an Investment and Free Zones Bill to repeal the 1991 Investment Code. Any issued entry permit shall be valid for five years, thereafter, for three years whenever it expires.

The restrictions for non-citizens are provided by the Act. It is applied to person with no citizenship, valid entry permit, certificate of residence or pass that shall be restricted to; be issued with a trade or industrial license; be employed in a parastatal or private body; be employed in the public service; be employed by a private person; or enter into a private enterprise. Any person who does the above, and is a non-citizen, commits an offence and is liable on conviction to a fine of two hundred thousand shillings (approx. US\$ 200) or term of imprisonment not exceeding two years or to both of the above.

For Uganda, a Prohibited Immigrant is defined as a destitute person; a person suffering mental disorder; a person refusing to submit to a medical examination after being required to do so; a person suffering from a contagious or infectious disease; prostitute or any person who at present is or who, prior to entering Uganda, was living on the earnings of prostitution; any person

without a valid passport, valid entry permit, pass or certificate of residence. This is provided in the Immigration Act.

The 1995 Constitution of the Republic of Uganda Article 16 (3) prescribes the functions of the National Citizenship and Immigration Board. The Immigration Act Cap 63 Laws of Uganda establishes the Immigration Board and empowers the Immigration Department to execute its decisions including:

- (i) Issuing National Identity Cards (NICs)
- (ii) Identity cards to aliens
- (iii) Restrictions for person with no citizenship, valid entry permit, certificate of residence or pass
- (iv) Uganda supplements the existing laws by observing the international labour standards
- (v) Freedom of association and the effective recognition of the right to collective bargaining,
- (vi) The elimination of all forms of forced or compulsory labour,
- (vii) The effective abolition of child labour
- (viii) The elimination of discrimination in respect of employment and occupation

National Policy Review Mechanisms

Uganda has a draft National Employment Policy, which contains policies in all aspects of employment including conditions of work, migration and occupational safety and health. The objective of this review is to promote the placement of human resource into jobs of high performance and earnings outside the country. The guiding principles being enhancing competitiveness and productive capacity of Ugandans on a global scale, the methods to be used include:

- Expansion of scope for exploitation of economies of scale;
- Promoting efficiency in the labour market and the quality of labour;
- Establishment of common standards for acceptability in host countries
- Establish labour related linkages and cooperation with Governments of receiving countries
- Establish and equip a Labour Migration Unit to provide information and other services to those seeking employment abroad
- Create an integrated labour market information system within the ministry responsible for labour
- Establish a multi-sectoral technical committee consisting of stake holders to monitor and make recommendations and guide government on matters pertaining to emigration labour
- Reactivate and develop capacity of public employment services in all districts as an institutional framework to gather and forward applicants and to deliver the necessary information to the job seekers as well as to the prospective employers
- An institutional framework to gather and forward applicants and to deliver the necessary information to the job seekers as well as to the prospective employers is set by reactivating and developing capacity of public employment services at all districts. In addition it also monitors activities of private employment and any other intermediary agencies and develop guidelines for their operations

Tanzania

In Tanzania the Immigration Act, 1995 (No. 5) is the main legal instrument which is administering the movement and documentation of people entering the United Republic of Tanzania. In addition, there is a number of legislation which touches upon issues of labour immigration that is Tanzania Investment Act, No 26 of 1997 and the Mining Act, 1998.

Employment is regulated by section 16 (1) of the Immigration Act which prohibits non-nationals once they are in the country to engage in any paid employment under an employer resident in Tanzania except under a permit issued in accordance with the provisions of the Act. The Act also prohibits foreigners to engage, for gain or reward, in any prescribed trade, business profession, or other occupation except in accordance with terms of an appropriate permit issued in accordance with the Act. The limitation on employment of foreigners in the country seems to be strengthened by non-operative Employment Promotion Services Act, 1999.

There are always exceptions to the general rule i.e. the Tanzania Investment centre Act allows investors who qualify for Tanzania Investment Centre (TIC) Certificate of Incentives to employ up to 5 foreign experts. Section 10 of the Mining Act No. 5 of 1998 allows the Minister of Minerals to enter into agreement with the mining Investors for unlimited number of foreign workers to be engaged in mining.

There are Permit Regulations and Procedures whereby Foreigners wishing to work in Tanzania must obtain official permission to do so before they enter the country. Work permits only apply to employment with the employer mentioned in the work permit, for certain kinds of jobs and in certain specified location. Permits are also issued to foreign nationals for the purposes of running economic business or activities. Class A permits are issued to non-nationals who intend to enter or remain in Tanzania and engage in trade, business, profession, agriculture, animal husbandry, prospecting of minerals or manufacture

Temporary Immigration is provided under provisions of the Immigration Act, residence permit are issued for a period not exceeding three years and may be renewed for any period not exceeding two years. Under this procedure the total period of validity of the permit (original and of its renewals) shall not in any case exceed five years. This position provides to ensure that all immigrants remain migrants and never settle in Tanzania.

Legal Rights of Foreign Labour Immigrants are ensured under The Employment Ordinance Act, Cap 366, which regulates conditions of employment and employees such as contracts, wages and recruitment is applicable to all other legal aspects of foreign labour migration in Tanzania. Other legislations and guidelines to be followed by foreigners are included in the Regulations of Wages and Terms of Employment Ordinance, Chapter 300, Social Security laws (National Social Security Fund Act No: 28 of 1997) and Security of Employment Act, 1964. Employment and Labour Relations Act was passed in 2004 which combine employment and labour issues and have taken aboard the ILO convention on Migration. It is an act to declare and define the fundamental rights of employees, to provide basic conditions of employment of employees and to regulate employment of children. The implementation of this Act took long awaiting some preparations including creating necessary regulations and Boards.

Problem areas with respect to labour migration are lack of Consultation and Coordination among the Actors. There is little intra-governmental consultation among government

ministries or department concerned with labour migration. There is also lack of coordination between the government agencies in terms of labour migration.

Kenya

In Kenya, labour rights are enshrined in the Kenyan constitution. The Constitution provides for principles, such as the prohibition of inhuman treatment (Article. 74) and the protection from slavery and forced labour (Article. 73). Freedom of Association is guaranteed in the Constitution under (Article. 80). Related to an employee's freedom are also the protection of right to personal liberty (Article. 72), his or her freedom of movement (Article. 81), and the protection from discrimination (Article. 82).

The legal provision of Labour Regulation in Kenya is the Kenyan law of contract (Cap. 23) section 2(1). Employment relations in are regulated by a number of sources: namely constitutional rights, as mentioned above; statutory rights, as set out in statutes and regulations; rights set by collective agreements and extension orders of collective agreements; and individual labour contracts. Acts of Parliament in the realm of civil and criminal law, which have provisions that may have impact on individual and collective labour relations include the Contract Act, Local Government Act, Public Service Commission Act, the Children Act, laws concerning the Armed Forces, and legislation dealing with the establishment of parastatals.

Contract of Employment

Four Acts of Parliament regulate. These are The Employment Act (Cap. 226), and the Regulation of Wages and Conditions of Employment Act (Cap. 229); The Factories Act (Cap. 514); The Workmen's Compensation Act (Cap. 236); and Regulations of Wages and Conditions of Employment Act.

For the East African countries, the laws as quoted and expounded above are fragmented and at times contradictory. These laws are more for restricting migration rather than facilitating. In addition they do not protect the welfare of the immigrant except for the favoured ones such as those with very unique and specific skills or those attached to very important foreign investments. The laws also do not govern the intra East Africa movement of people. One can thus deduce from the laws that migration is not that much encouraged in East Africa.

3.3 Migration Practice in East Africa

Labour emigration

All the East African States (Kenya, Tanzania and Uganda) do not have emigration laws. The movement of nationals from these countries is uncoordinated and not synchronized. Historically, there was little emigration of East African but in comparative terms compared to Tanzanians, Kenyans and Ugandans emigrated due to reasons such as wars and economic hardship and unemployment. Today, there are some indications that there is a sharp increase in the number of East African migrant workers, both women and men working abroad. The movements are composed of legal and illegal as well as skilled and unskilled. Most of skilled East Africans migrate to more developed economies particularly in North America and Western Europe. A significant number of East Africans also have in the past emigrated to Southern Africa Development Community (SADC) countries mainly Botswana, South Africa and Swaziland. Most of the unskilled East Africans migrate to South Africa.

For the East African countries the key actors for labour migration purposes are correspondingly similar. The main ones include the Department of Immigration (Ministry of Home Affairs), Labour Department in the Ministry of Labour and Youth Development, the Investments Centre, Private sectors and employers. It follows from analysis in East Africa that labour migration affects the concerns of most branches of government and non-state actors. However, it seems clearly that, the elaboration of migration policy has been dominant in the Ministry of Home Affairs.

Tanzania

In Tanzania the volume and importance of labour movements especially those across international boundaries became substantially reduced in the post-independence Tanzania. At one level, the entry of foreign workers during 1960s-1970s was based on the planned economy system and on provisions of international aid to the country particularly from other former socialist block. Currently however, Tanzania has seen a marked rise in the flow of labour migrants due to increase in foreign inflow of investment. The contemporary labour migration in the country involves people far from African continent. In comparison with other African countries, South Africa is emerging as a main source of labour immigrants in Tanzania. Apart from changing sources of labour immigrants, there has also been a tendency for the foreign labour population in Tanzania to come from higher-income countries. This trend can be explained by the structure shift in the economy, combined with the rising capital-labour ratios have meant a preference for skilled over unskilled labour in the country. The skills required includes high engineering skills, specialised technical skills, very specialised managers among others.

The Immigration Department: The department under the Ministry of Home Affairs has a final say on who should stay and who should not in the country. While applications for permits Class A are made directly to this department, application for class B are to be channelled through Department of Labour and the TIC. The two departments recommend for the grant of the permit or no. However, the final decision to grant the permit is vested with the Immigration department. The department also has a role of formulating and implements policy on migration matters.

The Labour Department: Generally, this organ is responsible for employment issues in the country. As far as labour migration is concerned, the department envisaged with power to determine the need for foreign personnel in Tanzania. For many years however the department has no reliable information on the actual availability of skills in the local labour market and hence difficulties in processing work permits for foreigners.² However, in 2001, the Labour Exchange Centre, as a unit of the Employment Section of the Ministry of Labour was opened. The Centre's functions among others, is to register applicants for employment and obtaining precise information from employers on available vacancies. In other words, the centre is supposed to be a useful database of the country's human resource capacities. The centre is expected to generate information that will be used by the government at national, regional, district and local levels to formulate employment policies.

The Tanzania Investment Centre (TIC): is a primary agency of government which coordinates, encourages, promotes and facilitates investment in Tanzania. It also advises the

² Ms Regina Rweyemamu, Commissioner for Labour as quoted in the *East African News* paper, September 10, 2001.

Government on investment related matters. All the Government departments and agencies are required by law to cooperate fully with TIC in facilitating investors. As far as labour migration is concerned, the TIC, as established by the Tanzania Investment Act No. 26 of 1997, is responsible for, among others, to obtain necessary residence/working permits and visas to foreigners wishing to establish business in Tanzania. Thus since May 2002, application for work permits class B related to investment are processed through this organ.

The Civil Service Department: This department is mainly responsible for employment of foreign experts in public organs. The framework guidelines and procedures of recruitment of expertise are provided in the Public Policy on the Employment of non-citizens of 1999. This law provides exemptions for work permits of expatriates in the government projects.

Association of Tanzania Employers (ATE) and Workers Organisations: Enforcement of labour migration policy cannot be complete if we don't mention the employer and employees. In fact, since July 2002, application for Class B permits are now being processed through a tripartite committee comprised of government, workers and employers' representatives.

Kenya

Throughout the 1950s, 1960s, and 1970s Kenyans were engaged predominantly in circular migration in search of higher education and advanced training abroad, which was then later applied to nation-building through employment in Kenya. In the 1980s and 1990s, this trend shifted to a one-way mass exodus to the political, physical, and economic stability of foreign lands.

The economic desperation of the late 1980s and 1990s, as well as violent politically motivated ethnic conflicts around the 1992 and 1997 general elections, catalyzed the massive departure of doctors, lawyers, university lecturers, and other highly skilled professionals to Western Europe and countries such as South Africa, Botswana, Uganda, Australia, Canada, and the United States. For instance, the number of Kenyan citizens in Germany was only 576 in 1980, but had doubled to 1,222 by 1990 and distended to more than 5,200 by the end of 2001.

Many Kenyans also began pursuing opportunities in low-skilled positions as bus drivers, domestic servants, cruise ship attendants, and security guards in Gulf countries such as Saudi Arabia, Qatar, and Bahrain. Kenyan high school and elementary school teachers were recruited throughout the 1990s to fulfil shortages in places such as the Comoros Islands, Seychelles, Rwanda, Burundi, and the Congo. The Kenyan government has not yet established standards to ensure the adequate training and protection of these workers before their departures and during their stints abroad or at sea.

Kenya follows a rather out-dated approach to granting work-permits that create uncertainty for applicants. This was reflected in interviews with foreign investors. Some reported no difficulties in obtaining work permits, while in other instances investment was frustrated by such problems as obtaining work permits, particularly in the services sector. There are essentially two types of permits that can be granted under the Immigration Act (1967, with subsequent amendments), which consolidate work permits and entry permit into a single pass: Class A or D permits can be granted to an individual who is offered specific employment by a specific employer Class F to J permits are essentially "investor's permits"

for individuals who propose to invest in different types of activities, from agriculture to manufacturing or professional services.

The Immigration Act does not prescribe any minimum amount of investment for such permits, although it specifies that the individual must have "in his own right and at his full and free disposition sufficient capital and other resources for the purpose." Applications for work permits are examined on a case by case basis by a Committee chaired by the Department of Immigration, and which includes representatives from the Ministries of Foreign Affairs, Labour, Tourism, Trade and Industry and the Investment Promotion Centre. While the Immigration Act specifies that work permits can be granted to foreigners on the condition that "employment will be of benefit to Kenya", the concept is not clearly defined by law. There are also no publicised guidelines as to how "benefit to Kenya" is to be understood. This increases the degree of discretion granted to the Committee and the level of uncertainty to investors.

A single application is filed that justifies the merit of hiring an expatriate for the position and the merit of the individual proposed for the position. The petitioner must justify the steps that have been attempted to fill the position with a Kenyan citizen and why this has not been possible. This involves, in most cases, an extensive labour market test and requires advertising the position domestically, collecting curriculum vitae and interviewing citizens. In some instances, e.g. high technologies, where local skills are in obvious shortage, this requirement may be bypassed.

The granting of work permits to non-citizens is also conditional to a rigid understudy programme. Petitioners are required to recruit or designate a Kenyan employee as an understudy to the expatriate worker, with the aim of replacing the latter in a specified period of time. This setup has proved very rigid and is susceptible to many problems. The problems includes; the understudy leaving the company before being trained; difficulties to replace the expatriate employee; lack of competence of the individuals; and manoeuvring by the firms to avoid replacing the expatriate with the understudy.

Work permits are typically issued for a 2-year period that can be extended to a maximum of 5 years. They are also renewable. Circumstantial evidence from investors' experience tends to show that work permits are easier to secure when the capital investment is significant or when the investment is likely to generate significant export earnings. The Immigration authorities also indicated that they tend to be more liberal in granting work permits for companies operating in export processing zones, as they tend to generate both a high level of employment for citizens and foreign currency earnings. Investments in services sectors that require a smaller injection of capital are scrutinised more carefully as the authorities fear an inflow of illegitimate workers. This seems to have also generated problems for legitimate investors in the skill-intensive but low-capital services sector in securing work permits, however.

Although the procedure to allocate work permits is rather cumbersome and discretionary, data show that the immigration authorities have issued a relatively significant number of work permits in relation to the total workforce in employment in the past few years. The number of employee permits granted has hovered around 6,500 a year, with about 2,500 investor permits allocated every year. These figures include renewals, which mean that the pool of expatriate workers has decreased slightly over the past few years. This situation could

thus be the source of frustrations for new investors, who are likely to face greater problems in securing new permits than established investors face in obtaining renewals. The estimated number of expatriates working in Kenya relative to the total labour force in private sector formal employment is about 1.2 percent for expatriates under A or D permits, and about 0.5 percent for expatriates under "investor's permits".

The new Investment Promotion Act entitles holders of Investment Certificates (whether foreign or domestic investors) to three class A (employee) permits for management or technical staff and three class H, I or J (investors) permits for owners, shareholders or partners. The permits are to be issued for an initial period of two years, and holders of certificates are entitled to have the permits renewed or transferred to another employee or investor if necessary, without time limit. Security, credentials and health checks on nominated individuals will obviously still be conducted following regular procedures.

The entitlement to six permits is a step in the right direction. It will greatly facilitate the key foreign personnel requirements of foreign investors. This "key position" approach is increasingly used in other countries. The unusual feature of the Kenyan law is that this *incentive* mechanism has been extended into an outright ban on all foreign investment below the prescribed limit of US\$500,000. Elsewhere in this report it is recommended that the outright ban be reconsidered. If this occurs, a lower threshold for eligibility for key positions should also be considered. In other countries the thresholds are lower and key position entitlements increase with the size of the investment. Such a "sliding-scale" approach to entitlements to foreigners work permits is recommended for Kenya. Conditioning the entitlements to screening by KIA and the Investment Certificate would ensure that the system is not abused to illegitimately bring in foreign workers.

Apart from the innovation of the "key position" system, other features of work and residence policies would benefit from a more modern approach: the labour-market testing procedure should be replaced, at least for high-skill positions and jobs with a pre-determined list of skills shortages drawn up. Investors seeking foreign employees of such kinds would not be required to demonstrate by an exhaustive local recruitment campaign that suitably qualified citizens were unavailable. With appropriate safeguards, approved employers would be entitled to hire such foreign workers, subject only to verification of the credentials and character of the individuals proposed for employment by the Immigration Department.

Kenya has the same format like the other two East African countries. Applications for work permits are examined on a case by case basis by a Committee chaired by the Department of Immigration, and which includes representatives from the Ministries of Foreign Affairs, Labour, Tourism, Trade and Industry and the Investment Promotion Centre. Others include wages Councils, which are currently in charge of setting minimum wages.

Uganda

The country has a non-quantified migration problems arising from a variety of past and present factors. The search for better economic prospects is one reason persons migrate. Since 1987 the Government of Uganda has implemented economic reforms aimed at achieving economic growth of at least 5.0% per annum and subsequently reducing mass poverty currently standing at 39%. The implementation of these economic reforms reversed the negative economic growth trends that characterised the economy in the 1970s and early 1980s. In spite of the renewed economic growth, unemployment and poverty remain to be

major challenges that continue to confront Ugandans into the 21st century. Many Ugandans have taken it upon themselves to address this situation by migrating to areas with better economies.

It is mentioned that unemployment is a reason why Ugandans are emigrating although in the past they were compelled by the political unrest. The unemployment situation in Uganda is not a recent phenomenon. It is partly a result of previous poor political and economic policies that led to prolonged economic decline, rising capital-intensive production methods, and partly due to decline in national savings and investment. With the relative political stability ushered in since 1986, the unemployment problem has become more visible. Unemployment stands at 3.2% at the rural environment and 32% in the urban centres. Under employment is 65%. The youth unemployment is 16% (Labour Force Survey 2003 UBOS). Response to unemployment requires concerted interventions and being actively and purposely designed and implemented. While this is being done, many individual persons have taken it upon themselves and moved out of the country in search of employment.

Globalisation has also emerged as a major factor causing migration. Coupled with the liberalization agenda that has been followed, this has opened Uganda to the mechanism of globalisation. In globalisation, the macro process determines the greater part of social life and consequently national cultures, national economies and national borders are virtually non existence. Domestic strategies of national economic management have thus become increasingly irrelevant.

Free market forces accordingly tend to dominate national economic cultures with the principle actors of change being transitional corporations that owe allegiance to no nation and locate wherever on our planet earth the market advantage dictates. They are able to move their capital and top management and skilled labour across borders following market advantage signals. With increased trans-national capital movements and trade in goods and services, people move and stay across national boundaries with a greater frequency than ever before. The migration status in Uganda using the data from the population censuses of 1980 and 1990 indicates that international migration registered a very sharp increase. Recorded international migrants in Uganda, the 1980 population census recorded 21,542 people in the category of immigrants. This doubled to 49,909 in 1990.

The lead agencies on migration issues in Uganda include:

- Ministry of Gender, Labour and Social Development which is the overseer of all labour matters. The ministry's mandate is to empower communities to harness their potential through cultural growth, skills development and labour productivity for sustainable and gender responsive development;
- Ministry of internal Affairs, which is responsible for issuing out work permits to foreign national workers. The mandate of the ministry of internal affairs is to maintain peace and stability through enforcement of law and order. The ministry is also responsible for controlling and facilitating the movement of people into and out of the country;
- Uganda investment authority which is responsible for assisting foreign investors and their core staff members;
- Office of the Prime Minister. The function of this institution is coordination of government activities;
- Ministry of foreign affairs. This ministry relates with other sovereign states on all matters of interest to Uganda;

- Ministry of Justice and Constitutional Affairs.

Uganda has put in place within its Employment Policy measures regarding the recruitment of Ugandans. The country has had a turnaround in policy on emigration and the government has the new goal to develop the potential contribution of the Diaspora, rather than encouraging them not to leave. The other East African countries are thinking on similar moves as they have recognised that remittances contribute heavily to the country's wealth creation.

4. Human and labour rights and decent work

4.1 Laws

East African countries have similar laws and practices that are for protecting human and labour rights including decent work conditions.

In Tanzania, foreign nationals in possession of work permits are entitled to some legal rights enjoyed by Tanzanian citizens in respect of living and working conditions. The Employment Ordinance Act, cap 366, which regulates conditions of employment and employees such as contracts, wages and recruitment, is applicable to all other legal aspects of foreign labour migration in Tanzania. The Ordinance also makes provision for remedies, jurisdiction and procedure of court. Other legislations and guidelines to be followed by foreigners are included in the Regulations of Wages and Terms of Employment Ordinance, Chapter 300, Social Security laws (National Social Security Fund Act No: 28 of 1997) and Security of Employment Act, 1964. With regard to Social Security Act, foreign employees can only be exempted if they can prove to be involved in another pension programme in their countries. In addition, professionals such as doctors, accountants, auditors, engineers, advocates and notaries are required by other laws to be registered and licensed to practice in the country. The emphasis is placed on sound professional qualifications and practical experience of alien immigrants.

In contrast to labour rights of citizens, foreign labour migrants are not permitted to change their employer, activity or occupations. Moreover both permits may be cancelled in the event of interruption of the employer and employee. In this case, the foreign worker is required to leave the country.

A new Act namely Employment and Labour Relations Act which was passed in 2004 have had some of deficiencies of the old Acts have been addressed and it has also combined employment and labour issues. For instance, the Act provides for basic conditions of employment of employees and regulates employment of children. This Act also contains provisions on freedom from discrimination and from sexual harassment. Also included are the provisions on freedom from forced labour expressly domesticated ILO Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), both ratified by the country.

Labour rights are enshrined in the Kenyan constitution. Articles 70 to 86 of the current Constitution deal with fundamental rights. The Constitution guarantees fundamental rights and freedoms of the individuals and among these rights, a range of general principles underpinning labour rights are anchored in the Constitution itself. The Constitution provides

for principles, such as the prohibition of inhuman treatment (Article. 74) and the protection from slavery and forced labour (Article. 73).

Freedom of Association is guaranteed in the Constitution under Article. 80. This constitutional provision under Article 80 (2)(d) regulates in detail procedures for the registration of trade unions and associations of trade unions. Under this provision, reasonable conditions relating to the requirements for entry on a register of trade unions include conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration, or members necessary to constitute an association of trade unions qualified for registration. The right to strike is not mentioned explicitly, but Article. 80 (1) protects not only the right to organize, but also protects explicitly activities serving the purpose of the union, such as all activities designed to protect the individuals' interests.

For Kenya an employee's freedom is also the protection of right to personal liberty (Article. 72), his or her freedom of movement (Article. 81), and the protection from discrimination (Article. 82). Article. 82 (3) specifies the anti-discriminatory provision prohibiting different treatment on the enumerative grounds of race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex.

The Draft Constitution contains a Bill of Rights in its Chapter Six. This Bill lays down the principle of equality (Section 35, 37), the freedom from discrimination (Section 36), the freedom from slavery and forced labour (Section 46) and the freedom of association (Section 52). Section 59 on labour relations determines the rights of workers, employers and trade unions, in particular the right to fair remuneration, the right to reasonable working conditions, the right to join a trade union or employer's organization, the right to strike and the right to engage in collective bargaining.

In Zanzibar, the role of labour Ministry is to make sure that, immigrant labour are treated equal to the local employees according to the ILO standards No. 97 of 1949 revised 143 of 1975 and tripartite co-ordination of migration policies. The Ministry enacted a non discriminatory law in respect of nationality, race, religion or sex to immigrants. According to the law the migrants are to be accorded treatment as favourable as that which applies to its own nationals in respect of the matters regulated by law or regulations, which are;

- Remuneration including family allowance, hours of work, overtime etc,
- Membership of trade unions and enjoyment of the benefits of bargaining
- Social Security e.g., employment, injury, maternity leave, sickness, invalidity, old age, death, family responsibility and unemployment
- Employment taxes
- Legal proceedings relating to the matters referred to in the convention

In Uganda, the employment Act and Employment Regulations cover the following aspects of employment: contract of services, termination of contract, termination notices, and protection of wages, hours of work, rest and holidays, employment of women, employment of young persons and care of employees.

Uganda supplements the existing laws by observing the international labour standards. In June 1998 the International Labour Conference reaffirmed its commitment to the founding

ideals of the ILO when it adopted the *Declaration of Fundamental Principles and Rights at Work* and its Follow-up.

Practice

The ILO emphasis is on labour relations and rights at the workplace with the right to organize, collective bargaining, rights of indigenous workers, freedom of association for workers and child labour issues taking centre stage. In this respect the main ILO conventions that must constitute a reference point for East Africa are Conventions 87; 98; 169; 138 and 182.

4.2 Provisions on industrial actions

In East Africa strikes and other forms of industrial action are allowed by different laws although restricted in practice. In East Africa there are difficulties encountered in taking strike action which are in a violation of the internationally recognized right to take collective action in order to improve conditions of work as enshrined in international conventions. ILO Convention 87 provides that public authorities shall refrain from any interference, which would restrict the right to organize or impede the exercise of that right. Thus, the Kenyan and Tanzanian legislations governing trade disputes are inconsistent with international law. The 'right to strike' is not considered to be a fully-fledged human right within the realm of labour rights.

In Kenya, strikes and other forms of industrial action are governed by the Trade Disputes Act Chapter 234 of the Laws of Kenya. Under this legislation there is an established procedure that must be followed before a strike is initiated. Failure to observe the procedure renders the strike illegal. The procedure is highly bureaucratic and tedious. The Minister for Labour has the right to declare any strike unlawful under the Act. The machinery and procedure preceding strike action is also at the behest of the Minister. The Act also requires that before any strike is called the dispute must be reported to the Minister by the relevant trade union after which the Minister initiates an investigation and begins a process of conciliation.

In Tanzania the procedures are so complicated that strike action is rendered almost impossible. Under the Trade Disputes (Settlement) Act of 1962, strikes are prohibited unless the established procedure is exhausted. However, the procedures are themselves prohibitive. The Industrial Court of Tanzania Act of 1967 amended in 1990 provides that the employer is the one who must set the date for the strike vote thus leaving employers with the option of delaying the vote, effectively preventing it. In many cases the police can declare the strike unlawful.

In Uganda despite the labour laws appearing as being liberal on paper the country has no history of industrial action to test the freedoms enshrined in the country's legislation. Critics say that the lack of industrial action is a product of state intimidation of trade unions such that they are incapable of being vociferous in defending the rights of workers.

4.3 The right to organize

This is the right of workers to belong to trade unions or other workers organizations and take part in the activities of such organizations. The right to organize protects workers from being prejudiced or discriminated against for being involved in trade union activities. This right

also protects trade unions from state interference and encourages functional machinery for collective bargaining. Article 1 of the Right to Organize and Collective Bargaining Convention states that “...workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment” and “such protection shall apply more particularly in respect of acts calculated to “Make the employment of a worker subject to the condition that s/he shall not join a union or shall relinquish trade union membership and Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours”.

In Kenya, trade union activities are governed by the Trade Unions Act. According to the Act all trade unions must be registered. An application for registration must be made in a prescribed form and the set procedure must be followed. This procedure is again tedious and bureaucratic as it is manned by the executive arm of government. Failure to register as per the laid down procedure is an offence punishable by a fine. The Registrar has the power to defer registration of a trade union and to render it a mere probationary trade union without the full rights of a trade union.

Delays in registration of unions render workers helpless and unable to bargain collectively where there is a dispute in an unrepresented industry while the government delays registration procedures. Workers are therefore at the mercy of employers until such registration is complete. This problem is encountered more often in emerging industries, which do not have ‘traditional’ and established trade unions.

The Trade Unions Act of Kenya has attempted to protect the right to organize and collective bargaining. This has been achieved by allowing the merger of trade unions, opening membership of trade unions to all workers employed in the particular industry represented by the union. There is no restriction on the number of unions. The unions are responsible for running their own affairs and finances subject to moderate rules of financial management, like any other society.

In Tanzania trade unions are governed by the Organization of Tanzania Trade Union Act No. 1998. The main problem with trade unionism in Tanzania is government interference and the quasi-governmental role that trade unions have taken in labour relations issues, thus depriving the unions of their independence. For instance, the Tanzania Federation of Free Trade Unions takes part in the retrenchment and privatization processes in the capacity of government advisor instead of purely representing the interests of the worker.

The efforts of the ILO in Uganda have resulted in the publication of a draft bill (The Labour Unions Bill of 2001) to repeal the Trade Unions Decree No. 20 of 1976 and to replace it with a modern law incorporating modern concepts of the labour movement and in particular to ensure freedom of association of workers in accordance with the constitution and ILO standards. Ugandan workers and the international labour movement continue to apply pressure on the Uganda legislature to enact the provisions of this bill into law.

4.4 The right to bargain collectively

This right suffers the same restrictions on the right to organize in East Africa as discussed above. The right also benefits from the provisions of international covenants that protect the

right to organize as evidenced by ILO Convention 98. The Trade Disputes Act of Kenya recognizes collective agreements, which are the product of negotiations between trade unions (representing workers) and employers. Collective agreements must be registered and the Act, in Section 11(2), states that, “A collective agreement shall not take effect until it has been accepted for registration by the industrial court”. The Minister has powers in relation to the acceptance of collective agreements by the Industrial Court. The Public Service Commission also has powers to appoint or remove members of the Industrial Court. The exercise of these powers amounts to executive interference in judicial process even though the industrial court is quasi judicial in nature. Nevertheless, the industrial court needs to maintain a sense of independence, which cannot be maintained with such executive interference. Critics have suggested that there is need to remove the industrial court from the realm of the Public Service Commission to that of the Judicial Service Commission.

The Industrial Court of Tanzania on the other hand runs well. It is recognized as giving good access to justice to members of trade unions. The major challenge facing the court is the enforcement of Industrial Court decisions. Hence the Industrial Court of Tanzania Act needs to be re-examined with the view of giving the court more teeth in terms of enforcement. The Act sets out the procedure for settling trade disputes. The first step is reconciliation followed by a negotiated collective agreement, which is register-able. Failure to reach a settlement results in referral of disputes to the court, which determines the disputes and makes an award. In real terms however, without the final option to strike, the process takes the negotiating leverage away from the workers.

4.5 Rights of indigenous workers

There is little or no legislation in East Africa governing the rights of indigenous and tribal peoples. Article 1 of Convention 169 defines indigenous persons under three main areas:

- (a) (i) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (ii) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
- (b) Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
- (c) The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

This definition includes for instance El Molo people of Kenya and the Maasai of Kenya and Tanzania as well as the Karamajong’ in Uganda. It also brings to mind the growing numbers of Maasai people in Kenya and Tanzania employed as security guards due to society’s perception of the Maasai as fearless and warrior-like. The rights of these people need to be protected under national labour laws. It is common that members of these communities are employed for less than their counterparts from different communities in the same kind of work. Under the Convention, national governments have a responsibility to ensure that

people from these communities benefit from opportunities on an equal footing to that of other peoples and to assist them in closing socio-economic gaps that exist between indigenous and non-indigenous peoples.

4.6 Child labour issues

The ILO's overall goal in child labour issues is 'a world free from child labour' as advocated by the International Programme on the Elimination of Child Labour. In East Africa poverty is the main contributor to the proliferation of the number of child labourers. The HIV/AIDS pandemic is one of the main contributors to the poverty that leaves young, orphaned citizens with little option but to work in order to support their siblings. In Uganda child labour is common and has been worsened by rebel insurgency. The statistics shows that in Uganda 45.3% of all children aged between 5 and 14 are engaged in labour in one form or another. In Kenya the figure is 41.3% while in Tanzania it is approximately 30%. Commentators have observed that laws protecting children from exploitation in farming, industry and illegal trade are obsolete and are in urgent need of review.

East Africa lacks the appropriate legal infrastructure on child labour. In Kenya the relevant legislation is not updated and does not explicitly recognize child labour as a legal issue the practice of which should be expressly prohibited. The Employment Act of Kenya recognizes that under age persons should only be employed as apprentices as per the terms of the Industrial Training Act. The Employment Act provides that a parent or guardian who causes a child to be employed is guilty of an offence. Penalties for breach are however very low. For example, the offence of unlawfully employing a juvenile attracts a fine of Ksh 2000 (approximately US\$ 25).

Although most countries in the East African region have ratified treaties to combat child labour, few have implemented them. Tanzania has ratified the Elimination of the Worst Forms of Child Labour Convention. The worst forms of child labour are those that put the child's education, health, social development and life at risk. The government appears to be making a serious effort to work with the ILO towards eliminating child labour. Again, the human rights community has to lobby for the enactment of child labour legislation in conformity with international labour rights instruments. The issue of child labour is a complex one and rooted in very old age practices and will require considerable efforts to change people's perceptions. Programmes intended at economic development, particularly in the rural and semi-urban areas can assist and so are legal reforms.

4.7 HIV/ AIDS at the workplace

The HIV/AIDS scourge has had a significant impact on productivity across Africa as it has globally. According to ILO statistics at least 26 million of the 42 million people around the world infected with HIV are workers aged between 15 and 49 and in the prime of their working lives. As such it has developed into a labour relations issue. The ILO has realized the impact of the scourge on the international labour force and has as such developed a Code of Practice for HIV/AIDS in the workplace.

In East Africa the prevalence of HIV infection is on the rise with the exception of Uganda where it has come down to 6.4% as at 2001 as compared with 21% in 1991. An audit of measures and policies implemented to deal with HIV as a workplace issue in East Africa

reveals poor results or no results at all. Few firms in the region have a formal HIV/AIDS policy. There are little or no official policies, practices or legislations on the issue in Kenya, Uganda and Tanzania.

A draft bill in Uganda (The Employment Bill of 2001) makes an attempt to proscribe discrimination in the workplace on grounds of HIV status. According to the proposed Section 8(3): “Discrimination in employment shall be unlawful and for the purposes of this Act, discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, or HIV Status or disability which has the effect of nullifying or impairing ones treatments in employment or occupation, or of preventing an employee from obtaining any benefit under any contract of service.” Other efforts have been made in the other East African countries in terms of policy and strategies but these efforts are quite recent.

Some large businesses have already taken efforts to develop official HIV/AIDS policies at the work places and assistance such as free medicines is offered. Further promotion work is needed to sensitize businesses, organizations of employers, trade unions and other industry stakeholders on the need to develop official HIV/AIDS policy and view the scourge as a workplace issue embedded in the internal environment of every corporation or small business. The best way would be the adoption of the ILO Code of Practice for HIV/ AIDS in the workplace as part of labour and employment policy. Legal reforms are necessary particularly to address the issue of discrimination against workers infected with HIV.

The central challenge that East African governments face is the lack of specific international human rights instruments governing the HIV/AIDS issue thus making it difficult to classify or define the ‘rights of persons living with HIV/AIDS’ as human rights. These ‘rights’ normally fall under the right not to be discriminated against on grounds of health, but do not exist independently as ‘rights of persons with HIV’ as many would argue that they ought to exist.

5. Access to entitlements and social security

5.1 Overview

Social security is a human right and the principles of social security are based on solidarity, collective financial, tripartism and guarantees from the state. Existing social security schemes that cover migrant workers are limited. There are some instruments such as bilateral and multilateral social security agreements as well as relevant ILO Conventions (Nos 19, 48, 118, and 157). There is need for observance of the two basic principles. That of treatment between nationals and non nationals and maintenance of acquired social security rights including portability of benefits. Additional national policy measures and informal initiatives would extend social protection to migrant workers. The main challenges in East Africa are how to cover the informal sector, weaknesses in the existing national schemes in terms of governance and coverage. Wide spread use of provident fund schemes that provide low benefits due to high administrative costs and low or negative rates of return has made social security agreements in East Africa absent.

In the East African countries there are several provisions for social provisions and entitlements. However these are at most more relevant to people who are in formal employments. Those informally employed the majority in East Africa are left without any securities.

In Tanzania for example, the formal social security schemes are usually tied to formal employment. The contribution to any mechanism is divided between employer and employee, whereby the benefit is accessible for the employee and their immediate family.

The rate of people covered by formal social security schemes is less than 4 per cent, provided that yearly 600,000 people seek new jobs primarily in the informal labour market (UNDP 1999). Since the NSSF has not yet started to operate its health insurance component, the number of people covered for health care is even less than 4 per cent of the labour force.

In general, women tend to have less coverage than men in formal schemes since their rate of employment is lower (Kasente 2000). They might have indirect coverage secured through arrangements for their husbands, but this does not take into account those women who are unmarried or those who live in a family structure that precludes eligibility to these schemes (Wanitzek 1988). Women who live in polygamy are additionally disadvantaged since usually each woman is regarded as having a separate household and therefore obliged to contribute to its respective security system. The increasing number of households headed by a single female (unmarried, divorced, or widowed), do not have the possibility of social security if they are not in formal employment, which is rare in the case of women. In this situation, the distribution of resources and entitlements within one productive entity becomes vital.

5.2 The National Social Security Fund - NSSF

The NSSF is a social security scheme, which covers compulsorily every non-pensionable employee in mainland Tanzania. The programme includes pensions after retirement, survivors and invalidity pensions, maternity benefits, funeral grants and a lump sum paid on emigration. A health insurance scheme is being prepared.

The scheme was formerly a national provident fund – a compulsory savings scheme. Every member has his/her own account where the monthly contributions accumulate until they can be withdrawn at a time of benefit entitlement which includes unemployment. Half the membership contribution (20 per cent of the gross income) is paid by the employee. If self-employed workers wish to enter the NSSF they must pay the whole amount themselves, which would be a large percentage of their income. Since the employment rate in the formal sector is declining, membership of formal social security schemes is also decreasing. One consequence is that members of the NSSF, who paid their contributions for many years expecting retirement benefits, are now unemployed and withdrawing their contributions. This development is destabilizing to the NSSF. In 1998/99 out of the total sum of 9.9 billion Tanzanian shillings paid out in benefits (age, survivor, marriage, funeral, etc.), 8 billion was caused by withdrawal and 1.2 billion by the payment of pensions for old age. More importantly, these people who have ceased to be members of the NSSF by withdrawal of funds have lost their entitlements to the benefit payments, which again causes insecurity.

By starting health insurance the principle of risk sharing would be introduced whereby the benefits in the case of health care would be paid even beyond the contributed amount.

Retirees, who receive benefits in the form of a lump sum and a monthly payment, discover that it is not sufficient to create and sustain decent life conditions. In addition to these benefits they need support from family networks and other alternative security arrangements like savings. As a consequence elderly people are not sufficiently secured through the formal system and therefore tend to strain conventional security arrangements even more.

5.3 The National Health Insurance Scheme (NHIS)

The introduction of the NHIS was planned to take place at the same time as that of cost-sharing (1993). However, its implementation was delayed (Mapunda 2001). At present it covers only central government employees including spouses and up to four children or legal dependants. It is obligatory for these employees to contribute to the NHIS. The contribution, which is 6 per cent of the salary, is divided equally between the employee and the government. By 1998 about 263.629 people were employed in the civil services (International Monetary Fund 1999). After retirement members receive benefits for up to three months following which they are dependent on alternative solidarity mechanisms, similar to members of the NSSF.

The Community Health Fund Act, 2001 was released in April 2001, accompanied by the CHF Model By-laws (May 2001) and the Council Health Service Board establishment *Instrument* (May 2001). It stipulates that the CHF should be established as a voluntary pre- payment scheme at urban or district council level. The Act was put into effect in order to give councils the opportunity to start a CHF, which up to this time had only been possible for some pilot districts. (GoT 2001, p.3).

In terms of laws on conditions of working in Uganda there are several statutes. The relevant labour statutes under Title 38 of the Revised Laws of Uganda, Vol. IX: The Factories Act, Cap.220; Workers Compensation Act, Cap.225; The Employment Act, Cap. 219; Minimum Wages Advisory Boards and Wages Councils Act, Cap. 221; National Social Security Fund Act, Cap. 222; Trade Unions Act, Cap. 223; and Trades Disputes (Arbitration and Settlement) Act, Cap. 224.

5.4 Occupational Safety and Health

The Factories Act Cap 220, LOU (2000)) formerly known as the Factories Act Cap 198 and Subsidiary Legislation (The Gas Rules, The Fire Rules, The Electricity Special Rules, etc.) is the principle law for occupational safety and health.

The aim of the Factories Act is to make provisions for the health, safety and welfare of persons employed in factories and other related places. Among others, it deals with the steps to be taken before operating a factory, the guarding of dangerous machines, the emissions to the working environment, the handling of dangerous materials, the use of appropriate protective clothing, the training of persons to work at any machine, which may cause injury and the obligations of both employers and the employees to ensure safety at work places.

5.5 The Workers Compensation

Closely related to the factories act is the Workers Compensation Act, Cap 225 formerly known as the Workers Compensation Act No 8 of 2000. This is a fairly new law and replaces

the old Workman's Compensation Act of 1964. The main aim of this law is to provide for compensation to workers for injuries suffered in course of their employment. It deals with matters like persons entitled to compensation, notice of accident and insurance.

Generally, an employee is entitled to compensation for any personal injury from an accident or disease arising out of and in the course of his or her employment even if the injury or disease resulted from the negligence of the employee. Under this act, compensation is automatic. The compensation is to be paid by the employer whether the worker was injured as a result of his or her own mistake or not. For an injury leading to death the formula is $\text{compensation} = \text{earning per month} \times 60 \text{ months}$. The definition of earnings includes wages and allowances paid by the employer to the worker. For injury leading to permanent incapacity but not death, the formula is $\text{compensation} = \text{earnings per month} \times 60 \text{ months} \times \% \text{ incapacity}$. The law applies to both migrant workers and national.

5.6 Regulation of Employment and other Labour Issues

The Employment Act Cap 219 and Employment Regulations of 1977 is the basic laws that regulate employment and other matters connected with labour. They replace the old Uganda Employment Act, the Employment of Children Act and the Employment of Women Act.

The employment Act and Employment Regulations, 1977 cover the following aspects of employment: contract of services, termination of contract, termination notices, and protection of wages, hours of work, rest and holidays, employment of women, employment of young persons and care of employees. Section 38 sets out an 8 hour working day, normal working hours will not exceed 48 hours in a week.

Section 46, women workers are entitled to a paid maternity leave of 6 weeks and an extension of one month in case of complications, many employees have adopted the 45 days given to civil servants while others give as many days as they can agree on through collective bargaining. The employer is not allowed to dismiss a woman during her maternity leave.

Child labour is a phenomenon that requires to be dealt with firmly. Part IV section 49 to 56 contains provisions controlling employment of young persons.

Section 15 requires the employer to give medical care for the workers at no cost to the worker. Rule 35 requires the employer to establish a medical service at the workplace where the employment is more than 40 persons and less than 500. Employment in the range 500 to 2000 requires a correspondingly competent service. Employment beyond 2000 workers requires a hospital. Employment in dangerous type of work and activities requires a pre employment medical examination.

On employment of foreigners, section 12 and 13 require employment of non-Ugandan to be attested by the Commissioner for Labour before engagement. Where a company intends to bring in highly specialized workers not available in Uganda, it is under obligation to advertise those vacancies in the local press for a specific period to ascertain that there is no local response. In event that the required personnel are not available then work permits for the foreign workers can be applied from the Immigration Control Board for a specific period time.

This provision has a controlling element in the employment of foreigners. While attestation may grant licences for work to persons and companies considered safe, particular occupations, professions, vocations or qualifications may not be granted in public interest.

5.7 Operation of Trade Unions

The Trade Unions Act Cap 233 is the law that permits trade union organisations to operate at the establishment. The employees have the right to organise themselves in any trade union of their choice and may assist in its running and may bargain collectively through a representative of their choice. Freedom of association is also provided for under article no 29 (e) of the Constitution of the Republic of Uganda of 1995. Generally, the trade unions act does not allow employers to interfere with the above freedom of association.

This law does not allow a foreign worker to hold any position of leadership in trade union organisations.

5.8 Handling of Trade Disputes

The Trade Disputes (Arbitration and Settlement) Act Cap 224 law outlines the mechanism for handling trade disputes and permits strike action to take place where this mechanism has been followed. It provides for the establishment of arbitration of tribunals, boards of enquiry to control and regulate strikes and lockouts. It sets out the industrial court as the apex of trade disputes settlements.

This law is neutral and allows the court to handle all work related disputes reported by trade unions whether the complainant is foreign or national.

5.9 Social Security

The National Social Security Fund Act Cap 222 establishes a national social security fund, provide for its membership, the payment of contributions to and payment of benefit out of the fund. The fund is a worker's saving scheme sponsored by the government for the benefit of members.

The National Social Security Fund Act Cap 222 of Uganda, establishes a national social security fund, provide for its membership, the payment of contributions to and payment of benefit out of the fund. The fund is a worker's saving scheme sponsored by the government for the benefit of members.

This law compels a foreign worker to contribute to the social security scheme in the country and allows him or her to take away his or her accumulated benefits at the end of the contract. The Ministry provides work permit for the foreign employment contract according to the international standards and the laws of the land.

The Zanzibar Social security Fund No. 2 of 1998 gives the equal chance to be a member and also to receive the benefits such as old age benefit comprising of pension and gratuity, survivors benefit for dependents, maternity benefit, invalidity benefit, medical care benefit and other benefit that the board may approve.

For Kenya the Regulatory Framework include the First and current law: 1965 (social security fund), with 1966, 1971, 1975, 1978, 1987, and 1997 amendments.

The programs are many and include provident fund system which covers Employed persons, traders, the self-employed, and some workers in the informal sector, including farmers. Voluntary coverage is also possible with exclusions of some types of casual workers. Another one is special pension system for public-sector employees. Old age benefit is a lump sum equal to total employee and employer contributions, plus interest. In addition there is a permanent disability benefits which is a lump sum equal to total employee and employer contributions, plus interest.

The administrative organization includes the Ministry of Labour and Human Resource Development that provides general supervision through a board of trustees. The National Social Security Fund administers the program while the ministry of labour and human resource development enforces the law, approves settlements, and pays benefits from money deposited with it by employers. Employers may insure against liability with private insurance companies.

Foreign nationals in possession of work permits are entitled to some legal rights enjoyed by Tanzanian citizens in respect of living and working conditions. The Employment Ordinance Act, cap 366, which regulates conditions of employment and employees such as contracts, wages and recruitment, is applicable to all other legal aspects of foreign labour migration in Tanzania. The ordinance also makes provision for remedies, jurisdiction and procedure of court. Other legislations and guidelines to be followed by foreigners are included in the Regulations of Wages and Terms of Employment Ordinance, Chapter 300, Social Security laws (National Social Security Fund Act No: 28 of 1997) and Security of Employment Act, 1964. With regard to Social Security Act, foreign employees can only be exempted if they can prove to be involved in another pension programme in their countries. In addition, professionals such as doctors, accountants, auditors, engineers, advocates and notaries are required by other laws to be registered and licensed to practice in the country. The emphasis is placed on sound professional qualifications and practical experience of alien immigrants.

In summary therefore one can conclude that while all the East African countries protect their nationals especially those in employment, there are no definitive legislations or policies that protect immigrants per se. In fact some migrant labours are not protected at all while some categories are included in the social security systems so that the government can tap their contributions and not basically to protect them. But another problem is that many migrant labour are in the country illegally and these are the ones that are least protected.

In East Africa in many cases employers prefer to employ foreign workers especially in some special skills or because the foreigners can accept lower wages and as illegal employees they cannot easily strike. This, to some extent, is also a reaction against over complex bureaucratic procedures for obtaining residence and work permits. For example, there have been repeated complaints, particularly from construction firms of a need to continually applying for new work permits every time the location of work changes. In such cases, rules are often broken, when the employer omits to obtain the new permits. Informal admission of foreign labour "black market" is also compounded by lack of control of employment officers and by insufficient cooperation with the respective policy departments.

6. Inter-state cooperation and the role of social partners

6.1 Background

The East African Community (EAC) composed of Kenya, Tanzania and Uganda came into existence in July 2000 upon ratification of the EAC Treaty by the three partner states. The basis objective of the community is to move towards full integration. The first step of the integration process was achieved with the establishment of the Customs Union in January 2005. The recommended road map envisages a political federation by 2013.

East African countries have moved towards heightened economic regional integration. This form of international cooperation is covering a number of sectors in the national economy such as tourism, manufacturing and trade. As regional economic integration proceeds, the interests of East African countries as sovereign states become increasingly bound together. Migration is one of those areas which need to be harmonised in order to achieve objectives of regional economic integration especially as they are moving towards EAC Common Market.

East Africa faces a number of migration challenges including poor linkages between migration and development processes; inadequate administrative and institutional capacity for effective migration policies and migration management; and lack of protection of migrant workers. In addition, there are barriers to free movement of labour while on the external front the three countries suffer from loss of human capital through emigration of high skilled workers. The quality of migration statistics that would suffer policy is poor.

Concerning regional efforts, concrete plans are available at East African Community to deal with East African Migration issues. Chapter seventeen of the Treaty for East African Community deals with Free Movement of persons, labour, services, right of establishment and residence. Article 104 deals with the scope of cooperation and section (1) states that partner states agree to adopt measures to achieve the free movement of persons, labour and services and ensure the enjoyment of the right of establishment and residence of their citizens within the Community. Section (2) the partner states agree to conclude a protocol on the free movement of persons, labour, services and right of Establishment and Residence at a time to be determined by the Council. Section (3) the Partner States shall as may be determined by the Council (a) ease border crossing by citizens of the Partner States; (b) maintain common standard travel documents for their citizens; (c) effect reciprocal opening of border posts and keep the posts opening and manned for twenty four hours; (d) maintain common employment policies; (e) harmonise their labour policies, programmes and legislation including those on occupational health and safety; establish a regional centre for productivity and employment promotion and exchange information on the availability of employment; (g) make their training facilities available to persons from other partner States; and (h) enhance the activities of the employers' and workers' organizations with a view to strengthening them. Section (4) The Partner states undertake to co-operate in the enhancement of the social partnership between the governments, employers and employees so as to increase the productivity of labour through efficient production.

The negotiations on the protocol on free movement of persons, labour, services, right of establishment and residence has just started in early 2006 and might take approximately two to three years to be concluded. The East African integration process will also assist in

migration issues as the chiefs of immigration in East Africa meets regularly to discuss important issues related to immigration. Further the Chiefs of defence also meet to discuss security matters in East Africa.

The East African Legislative Assembly (EALA) is the independent legislative arm of the East African Community. In addition to providing a democratic forum for debate the EALA also has a watchdog function.

East African Parliamentarians are involved through the general purpose committee and also security committee although they do not participate directly in migration matters. It is envisaged that the East African Parliamentarians will be more involved in the preparation of the protocol especially in garnering common people concerns in the issues of migration.

The EAC has also recently introduced new 'East African passports' and temporary passes to speed up movement between countries in the region, as well as abolishing charges on the temporary importation of private vehicles across regional borders, and establishing special immigration counters for East African travellers at the region's airports. The passports cost US\$10 and have six months' multiple entry validity. New policies are also being considered on the application of national status treatment to East African nationals in any of the Partner States with respect to access to services in the fields of health, education and training, tourism and communications, among others.

6.2 Provision for Migration Policies in Regional Integration Treaties and Protocols

Despite limitation on foreign labour migration, it is predicated that the flow of migrants will continue to grow and be further strengthened in the future. One of the reasons is the growth of East African economies where multilateral industries open branches in the country. Another reason for labour migration to increase in the future is that strong restriction will not be placed on the entry of foreigners particularly those from eastern and southern African countries. The national laws are now taking cognizance of the regional integration Treaties which the East African countries are member to. This case is elaborated further by the case of the East African Community.

6.3 Regional Integration: the East African Community Case

The Treaty Establishing the East African Community (EAC) was signed on 30 November 1999 (and entered into force on July 7th 2000). The EAC aims at promoting and strengthening the balanced and sustainable integration of economic, social, cultural and political aspects of the three member states i.e., Tanzania, Kenya and Uganda. In achieving this objective, the treaty provides for the establishment or enhancement of co-operation in (i) Trade Liberalisation and development, (ii) Investment and Industrial development (iii) Monetary and Financial matters, (iv) Development of the Infrastructure and Services, (v) Development of Human Resources (vi) Development of Agriculture and Natural Resources; and (vii) Provisions of a Conducive Environment for Development.

The Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Residence

This is given in chapter seventeen of the Treaty under Article 104. Here it is shown the scope of Co-operation, the partner countries 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. For this purpose the Partner States agree to conclude a Protocol on the free movement of persons, labour, services and right of establishment and residence at a time to be determined by the Council. The Partner State shall:

- Ease border crossing by citizens
- Maintain common standard travel documents
- Effect reciprocal opening of border posts and keep posts opened and manned
- Harmonise their labour policies, programmes and legislation including those on occupational health and safety
- Establish a regional centre for productivity and employment promotion and exchange information on the availability of employment
- Make their training facilities available to persons from other Partner States
- Enhance the activities of the employer's and workers' organizations with a view to strengthening them

The Partner States undertake to co-operate in the enhancement of the social partnership between the productivity of labour through efficient production.

In order to develop human resources in the region, the Treaty provisions, among others, are geared towards "free movement of persons, labour, services, right of establishment and residence."³ However, realizing the partner states' different levels of socio-economic development, the Treaty provides for the conclusion of a Protocol on the Free Movement of Persons, Labour, Services and Rights of Establishment and Residence at a time to be determined by the Council.⁴ The Treaty goes on to provide that in order to facilitate free movement of labour, partner states will ease border crossing by its citizens, review and standardise labour laws and regulations related to labour standards.

Although, the Council has not yet decided on the exact date for the establishment of the Protocol, it adopted a decision to ease the existing impediments to ensure free movement of people within Kenya, Tanzania and Uganda.⁵ The Council consented that free movement of people, goods and services within East Africa, was critical towards attainment of major objectives of the Treaty. A new development in East Africa of Fast Tracking towards East African Federation puts the issues of labour migration into centre stage.

7. Convention ratification and international conventions

7.1 ILO Conventions

Two international conventions elaborated through ILO provide a basic essential framework for national legislation and practice on managing labour migration. The ILO Conventions on migration for employment and the 1990 International Convention on migrant workers

³ Chapter Seventeen of the Treaty

⁴ Article 104(2)

⁵ Fourth Extraordinary Meeting of EAC Council of Ministers, held in Arusha, April 8-9, 2003.

provide a broad legal framework for migration policies in nearly all main aspects, one of which is protecting basic rights of all migrants. It is increasingly evident that migration policy and practice can only be viable and effective when based on a firm foundation of legal norms, and thus operate under the rule of law

These instruments stipulate that States actively facilitate fair recruitment practices and transparent consultation with their social partners, reaffirm non-discrimination and establish a principle of equality of treatment between nationals and regular migrant workers in access to social security, conditions of work, remuneration and trade union membership. Accompanying Recommendations provide important policy guidelines, including a model for bilateral migration agreements.

The ILO Migration for Employment Convention, of 1949 (No. 97) provides the foundations for equal treatment between nationals and regular migrants in areas such as recruitment procedures, living and working conditions, access to justice, tax and social security regulations. It sets out details for contract conditions, the participation of migrants in job training or promotion and deals with provisions for family reunification and appeals against unjustified termination of employment or expulsion, and other measures to regulate the entire migration process.

The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) was elaborated at a time when concern about irregular migration was growing. It sets requirements for respect of rights of migrants with an irregular status, while providing for measures to end clandestine trafficking and to penalize employers of irregular migrants.

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which is expected to enter into force imminently, is based on concepts and language drawn from the two ILO Conventions. It extends considerably the legal framework for migration, treatment of migrants, and prevention of exploitation and irregular migration.

For the record, ILO experts participated actively in the drafting of the 1990 UN Convention. The content of ILO Conventions 97 on Migration for Employment and 143 (supplemental provisions) formed the basis for drafting the UN convention, which expanded and extended recognition of economic, social, cultural and civil rights of migrant workers rights.

These three Conventions together provide a comprehensive “values-based” definition and legal basis for national policy and practice regarding non-national migrant workers and their family members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards. They are not simply human rights instruments. Numerous provisions in each add up to a comprehensive agenda for national policy and for consultation and cooperation among States on labour migration policy formulation, exchange of information, providing information to migrants, orderly return and reintegration, etc.

Seven points indicate the importance of this complementary set of three Conventions:

- Firstly, they establish a comprehensive “values-based” definition and legal basis for national policy and practice regarding non-national migrant workers and their family

members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards.

- Second, They lay out a comprehensive agenda for national policy and for consultation and cooperation among States on labour migration policy formulation, exchange of information, providing information to migrants, orderly return and reintegration, etc. In particular, Section 5 of the 1990 International Convention provides in 8 articles a clear agenda for international inter-State consultation and cooperation on managing international migration.
- Third, the 1990 Convention establishes that migrant workers are more than labourers or economic entities; they are social entities with families and accordingly have rights. It thus reinforces the principles in ILO migrant worker Conventions on equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.
- Fourth, the three instruments include provisions intended to prevent and eliminate exploitation of migrants, thus reinforcing the agenda of ‘decent work’ for all, promoted by the ILO.
- Fifth, the 1990 Convention expands on the earlier ILO instruments to fully resolve the lacuna of protection for non-national migrant workers and members of their families in irregular status and in informal work by providing norms for national legislation of receiving states and their own states of origin, including minimum protections for undocumented or unauthorized migrant workers.
- Six, while these Conventions address migrant workers and family members, implementation of their provisions would provide a significant measure of protection for other migrants in vulnerable situations, such as victims of trafficking and
- Seven, the extensive, detailed and complementary texts of these three instruments provide specific normative language that can be incorporated directly into national legislation, reducing ambiguities in interpretation and implementation across diverse political, legal and cultural contexts.

a) Treaty Ratification and Compliance

In terms of the ratification of ILO instruments, Tanzania is the most proactive in East Africa having ratified all eight (8) of the ILO’s fundamental conventions on rights in the workplace. Kenya follows closely having ratified seven while Uganda has ratified only five.

Ratification is however not a sufficient measurement for the success of ILO objectives in the East Africa region. Ratification needs to be followed by a process of domestication, implementation and enforcement. There have been significant efforts to promote this process by civil society in addition to the efforts of governments and other stakeholders. The aim is to domesticate international human rights standards by applying the international instruments in litigation in national courts and in so doing contribute to the entrenchment of these

standards in national legal systems thus enabling citizens to seek protection from international legal human rights instruments. Above all, however, the emphasis needs to remain on legal reforms to bring national laws in East Africa into conformity with ILO Conventions such that they can be enforced using the machinery available to the relevant national law enforcement authorities. When this is achieved it will be much easier for East Africa national judiciaries to adjudicate upon labour disputes using the internationally refined labour laws.

b) Fundamental ILO Conventions

Eight ILO Conventions have been identified by the ILO's Governing Body as being fundamental to the rights of human beings at work, irrespective of levels of development of individual member States. These rights are a precondition for all the others in that they provide for the necessary implements to strive freely for the improvement of individual and collective conditions of work

7.4 State of ratification of the ILO Conventions on Labour Migration

In May 1995, following the ILO's 75th Anniversary and the discussions in the World Summit on Social Development, a campaign for the ratification of these Conventions was launched by the Director-General of the ILO. Since then the ILO has registered over 70 ratifications and confirmations of previous obligations concerning the fundamental Conventions. In addition, many countries are currently involved in formal ratification procedures or are in the process of examining or re-examining the appropriateness of ratifying the Organization's seven Fundamental Conventions.

Many international human rights instruments and Internal Labour Standards provide standards that apply to protection of all migrant workers. Some of these, including UN Human Rights Conventions and ILO Core Labour Standards are widely ratified in the Africa, but often poorly implemented. The rate of ratification in Africa of the specific international standards on migrant workers – ILO Conventions 97 and 143 and the 1990 UN International Convention on migrant workers and their families – are unsatisfactory. Only 23 African countries have ratified at least one of these instruments.

Table 2 Migrant Labour Conventions Ratification Status

Convention	Date Adopted	Date Coming into force	Ratification Satatus (World)	Ratification Status (East Africa)		
				Kenya	Tanzania	Uganda
ILO, Convention 97	01/07/1949	22/01/1952	42	30/11/1965	26/04/1964 (Zanzibar)	Not ratified
ILO Convention 143,	24/06/1975	09/12/1978	18	09/04/1979	Not ratified	31/03/1978
UN Convention, 1990	18/12/1990	01/07/2003	?	Not ratified	Not ratified	14/11/1994

Source: ILO and UN Web Sites

The above table shows the summary of the state of ratification of International Labour conventions for the three East African countries. Based on the details of the Employment and Labour Relations Act of 2004 of Tanzania we can conclude that the East African countries have incorporated the international norms into their laws and practice. In objective (g) of the Act it is stated that the act have two objectives among others, to generally to give effect to the core Conventions of the International Labour Organizations as well as other ratified conventions.

8. Towards effective migration regulation

8.1 Obstacles to Regulating Migration

The immigration Acts in Tanzania, Kenya and Uganda, there are Immigration Acts as mentioned above to regulate immigration into the countries whether it is for work or for business purposes. However, it can be concluded that these Immigration Acts, together with other mentioned regulations and policies, mainly seeks to limit access of employment to foreigners while promoting employment of nationals. The main concerns pertaining to the migrant workers are diversified and include:

- Lack of knowledge of employment opportunities;
- Difficulties in entry and exit,
- Unknown or unclear terms and conditions of work;
- Lack of freedom of association;
- Insufficient financial arrangements including mobility and portability of earnings;
- Unlimited or unrestricted movement of families;
- Lack of data collection mechanisms

These concerns are not comprehensively addressed in the laws and in most cases these problems arise in administration of migration issues. Other problems registered are that:

- The laws are compartmentalised and have no network integrated within them that can manage migration issues comprehensively
- While the East African countries have signed many of the ILO convention and other conventions on migration, their legislations do not take into account all the elements stipulate in the ILO convention
- Difficult in East Africa to ensure rights of migrant workers due to xenophobia, unemployment issues especially after the Structural Adjustment Programmes and redundancies and increased regional originated crimes
- Legislations are not widely known and not referred to
- Lack of involvement of East African governments, trade unions and the wider civil society has left African migrant workers at the mercy of receiving countries and employees

8.2 Gaps in legislation addressing international standards, regional facilitation of labour circulation

- a) General Concerns

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 in Article 8 states that migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, that which are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention. Also migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin. In article 9 it is stated that the right to life of migrant workers and members of their families shall be protected by law.

Contrary to the Conventions which the East African countries have signed, the national laws do not reflect the consideration of the wide-ranging concern of migrant workers. The main concerns pertaining to the migrant workers are diversified and include: knowledge of employment opportunities; entry and exit, terms and conditions of work; freedom of association including trade union rights; financial arrangements including mobility and portability of earnings; movement of families; and data collection. These concerns are not comprehensively addressed in the national laws.

The laws are too many and are for different departments and do not actually cover the need and concerns of migrants. The national laws are just patchy and ad hoc. They have thus gaps that need to be filled.

The East African laws are quite restrictive and not attracting migration except for those related to foreign investment. In nearly all the cases migrant labour is only permitted if there is no equivalent skills available in the local market and in many cases the jobs will be announced only at the domestic market so others might not access the information. Lack of laws that safeguard migrants implies that they can be removed from East Africa at a very slight reason.

It has been difficult in East Africa to ensure rights of migrant workers due to xenophobia, unemployment issues especially after the Structural Adjustment Programmes and redundancies and increased regional originated crimes. Many local citizenries regards the migrant labour as their enemies ready to grab their work and thus act in that manner. In many cases politicians are caught in the same line of thinking thus restrictive policies are enacted and implemented.

Many of the issues in ILO convention have not been incorporated into the national laws and Acts.

b) Gaps in Legislation

Many people in East Africa are not aware of the laws and legislations concerning migrants. For example the issue of child labour is quite difficult to implement given the poverty levels and customs of East African of using child labour.

Here we recommend that policy initiatives and future priorities for the adoption of international norms and legislative adjustments to enhance consistency between national legislation, regional treaties and international standards.

Regional Efforts

EAC and other relevant institutions should redouble their efforts to achieve cooperation and integration in education focusing on:

- Harmonizing education policy
- Developing curricula
- Jointly designing, producing, and distributing teaching materials and textbooks at all levels of education
- Establishing distance education at all levels

Existing Legislative Gaps

- In East African countries there is the need for reviewing employment and migration policies with a focus on getting the comprehensive picture of migration and the necessary strategies for the countries
- There is need to build capacities of the governments of East African countries to provide protection to their citizen working abroad
- There is urgent need to establish common labour standards in the East African community

Actions taken

The East African Community has a standing task force of experts from member states to promote harmonization of laws. Its functions include:

- Reviewing and updating relevant municipal laws in light of related international labour conventions
- Identifying core regional labour issues that need harmonization

Agenda for labour market integration

Interventions to enhance the integration of the labour market include:

- Cross-border investment and foreign direct investment in Africa require harmonizing investment and labour laws among regional economic communities
- To improve labour mobility all East African countries should gradually relax visa and permits requirements, starting with skilled categories and then include all community citizens
- Trade unions should be at the forefront in defending the rights of migrants and in promoting decent migration policies and practices

It is through regulation, protection, organising and social dialogue that trade unions could be instrumental in the promotion of workers' rights

9. Conclusions and recommendations

9.1 Conclusions

The purpose of this study was to carry out a comprehensive review of the relevant legislation and legal practice pertaining to migration and labour migration in East Africa and in each country; to review the degree of consistency of migration legislation between countries of the sub-region with a view to identifying gaps and assessing the potential for harmonization; to assess the status of ratification and/or de facto incorporation of relevant international standards into national law and practice; to recommend policy initiatives and

future priorities for the adoption of international norms and legislative adjustments to enhance consistency between national legislation, regional treaties and international standards.

The study has shown that all the East African States (Kenya, Tanzania and Uganda) have immigration laws basically with the objective of controlling people coming into the economies illegally. There are many legislations that deals with immigration issues although there of none dealing with emigration.

East Africa faces a number of migration challenges including poor linkages between migration and development processes; inadequate administrative and institutional capacity for effective migration policies and migration management; and lack of protection of migrant workers. In addition, there are barriers to free movement of labour while on the external front the three countries suffer from loss of human capital through emigration of high skilled workers. The quality of migration statistics that would inform policy is also poor.

The East African Community (EAC) composed of Kenya, Tanzania and Uganda came into existence in July 2000 upon ratification of the EAC Treaty by the three partner states. The basis objective of the community is to move towards full integration. The first step of the integration process was achieved with the establishment of the Customs Union in January 2005. The recommended road map envisages a political federation by 2013.

As regards regional efforts, concrete plans have been worked out within the East African Community to deal with East African Migration issues. Chapter seventeen of the Treaty for East African Community deals with Free Movement of Persons, Labour, Services, Right of Establishment and Residence. Article 104 spells out the scope of cooperation. The negotiations on the protocol on free movement of persons, labour, services, right of establishment and residence has just started in early 2006 and might take approximately two to three years to be concluded. The East African integration process will also assist in migration issues as the chiefs of immigration in East Africa meets regularly to discuss important issues related to immigration. Further the Chiefs of Defense also meet to discuss security matters in East Africa.

The East African Legislative Assembly (EALA) is the independent legislative arm of the East African Community. In addition to providing a democratic forum for debate the EALA also has a watchdog function.

East African Parliamentarians are involved through the general purpose committee and also security committee although they do not participate directly in migration matters. It is envisaged that the East African Parliamentarians will be more involved in the preparation of the protocol especially in garnering common people concerns in the issues of migration.

The study shows that in practice there is quite a lot of xenophobia of labour migration thus there is need to have many policies that improve the skills of labour and also sensitization of people to look at the East African as one especially given that East African Community is in existence. All East African countries have ratified some of the ILO convention on migration. There exist major legislation dealing with migration especially immigration and other minor laws and regulations that have also a bearing on labour migration.

However there is a glaring difference between the legislations and the practice while many attractive issues in relation to labour migration are enshrined in the legislation in East Africa. The practice is different making labour migration difficult and the practice unpredictable.

There is need to look at other aspects other than legislation for effective regulation of labour migration. To have effective migration regulation in East Africa legislation needs to be harmonized, improved and even new ones enacted. However, even with good legislation this will not guarantee movement of labour unless other conditions are fulfilled. One prerequisite is to cultivate a sense of belonging to East Africa and demand for labour movement must come from the stakeholders such as businesses, large and small. It should also come from such constituents as the youth who will expand their spectrum and area for job searching. Improving the efficacy of education systems and contributing to human capital development in the regional economic communities and in East Africa should broadly be perceived as the shared responsibility of national governments, regional economic communities, and the private sector.

The efforts of the regional economic communities such as EAC to develop human resources should be enhanced. There is a lot of work remaining to fulfill various treaty provisions. The most visible efforts have focused on harmonizing and coordinating education policies, including those on curricula, certificates, and accreditation. More can be done in the areas of improving standards of education systems. Close cooperation in the harmonization of higher education policies is evident among EAC members (Kenya, Tanzania, and Uganda) in the framework of the EAC-sponsored Inter-University Council of East Africa.

Accompanied with the above developments the adoption of free market principles in the East African countries has enabled the private sector to participate in all areas of economic activity—including education and training. As public monopolies recede, the private sector should have a larger presence in education and training.

One of the objectives of the free movement of people in regional economic communities is the free flow of labour. But here the EAC should move with caution. While supporting the idea of labour mobility within the EAC, Partner states do not want to put the limited employment opportunities available to local workers under undue stress. Instead, the gradual, targeted introduction of labour mobility is the best way to move towards a regional policy on general labour mobility.

Common employment and labour policies and standards are important as they allow for greater opportunities for skills, entrepreneurial know-how, technology, and professional services to move freely across borders. For most EAC achieving these objectives remains a distant goal and requires a redoubling of efforts, although EAC, provide a good model for other to emulate. The East African Community (EAC) adopted a general policy to facilitate regional integration: relevant municipal laws must be harmonized in all areas in which EAC has made decisions. The community has a standing task force of experts from member states to promote harmonization of laws.

Its functions include:

- Reviewing and updating relevant municipal laws in light of related international labour conventions as a first step towards harmonizing the laws.

- Identifying core regional labour issues that need harmonization.

The EAC member states have also been asked to carry out labour force surveys and establish national data and labour market information systems, which will form part of a general database system being developed by the EAC secretariat.

So far the most significant results in human development and labour mobility have come from efforts to harmonize education policies in the regional economic communities and measures to promote the free movement of people. Cooperation and integration in labour mobility and right of residence have not taken off. Free mobility of labour has been obstructed by security considerations, lack of employment opportunities, and competition for limited job openings.

Many other obstacles to cooperation on human capital issues remain. Political commitment to implementing agreed objectives is often insufficient. Resources are inadequate for meeting what often appear to be overly optimistic objectives. Other obstacles include linguistic barriers (in the case of education), lack of expertise in the regional economic communities, uneven compliance with international obligations, and persistent economic crises and high unemployment in many countries. Rapid population growth and lack of effective population control exacerbate these problems by further straining resources for educational development and social assistance, especially in health.

9.2 Recommendations

There are a number of challenges facing East African Partner States in the move to develop regulated and effective migration. These include:

- Legislations need to be harmonized, improved and even new ones enacted however
- There is need for looking at other aspect other than legislation for labour migration such as skills development
- The EAC has to develop human resources
- the private sector should have a larger presence in education and training
- the gradual, targeted introduction of labour mobility is the best way to move towards a regional policy in general supported by other purposeful national programmes
- Common employment policies and standards should be encouraged to allow greater opportunities for skills, entrepreneurial know-how, technology, and professional services to move freely across borders
- The East African Community (EAC) adopted a general policy to facilitate regional integration: relevant municipal laws must be harmonized in all areas in which EAC has made decisions and promotion and harmonization of laws has advanced
- Reviewing and updating relevant laws in light of related international labour conventions as a first step towards harmonizing the laws
- Identifying core regional labour issues that need harmonization
- So far the most significant results in human development and labour mobility have come from efforts to harmonize education policies in the regional programmes and measures to promote the free movement of people

The above challenges can not be faced easily if the following impeding factors are not tackled. These are:

- Lack of political commitment to implementing agreed objectives is often insufficient

- Inadequate resources for meeting what often appear to be overly optimistic objectives
- Lack of expertise, uneven compliance with international obligations, and persistent economic crises and high unemployment in East African countries
- Rapid population growth and lack of effective population control exacerbate these problems by further straining resources for educational development and social assistance, especially in health and education.

Appendix

Table 1: Selected EAC Basic Indicators (2004)

State/ Indicators	Total Area	Population				GDP Millio n USD	Real GDP Growth Rate (at constant prices)	Inflation Rates (Annual Average)	GDP Per Capit a [USD]	Exter nal Debt
		Sq. Kms (^{'000})	TOTAL (MILLION S)	RURAL (MILLION S)	URBAN (MILLIO NS)					
KENYA	592.9	32.8	26.6	6.2	56.7	16,08 7.6	4.3	11.6	484.9	5.08
TANZANIA	944.6	35.3	26.6	7.8	39.0	10,36 1	5.6	6.7	287.8	7.89
UGANDA	241.6	26.7	22.8	3.9	126.0	7,822. 4	5.9	4.1	292.2	4.47
EAC	1,779.1	94.8	76.0	17.9						

EAC STATISTICS DATABASE JUNE 2005

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