

Prof. John O. Oucho
Dr. Linda A. Oucho
Antony O. Ong'ayo

THE BIGGEST FISH IN THE SEA? *Dynamic Kenyan labour migration in the East African Community*

Regional integration has been increasing in recent years in East African Community (EAC) countries. Re-founded from the first version established between 1967 and 1977 by the Treaty on the Establishment of the EAC II, the EAC II Treaty was signed in 1999 by only the original three Member States, the Republics of Kenya, Uganda and Tanzania. The Treaty entered into force in the year 2000 following the conclusion of its ratification process and the deposit of the Instruments of Ratification with the Secretary General by all the three Partner States. The EAC was inaugurated in January 2001. Six years later, in 2007, the Republic of Burundi and the Republic of Rwanda also became full members of the EAC, bringing the number of Member States to five.

A decade after the EAC II Treaty was signed, the **Protocol on the Establishment of the East African Community Common Market (hereafter PEACCM)** was signed in 2009. This Common Market framework entered into force in the subsequent year upon ratification by the five EAC countries. This region-wide policy aims at incorporating and superseding country-specific policies.

The EAC Common Market is based on the Treaty that established the EAC, which is built on **four pillars or 'freedoms': the free movement of goods, labour, services and capital. The freedom of movement of persons, workers, the right of establishment, the right of residence and the commitment to the progressive liberalisation of services are already specified in annexes to the PEACCM.**

With this Common Market framework, the EAC reached the second level of regional integration after the Customs Union fully entered into force in 2010. According to the EAC, the next stages will include the Monetary Union and the EAC Political Federation.

Kenya is an **important destination country for migrants coming from Central and Eastern Africa as well as other continents.** The overall majority of the migrants (or 79% of the total), come from sub-Saharan Africa countries, with the top twelve countries of origin being Nigeria (7.9%), the Republic of the Congo (7.61%), Eritrea (7.5%),

Burundi (6.31%), the Democratic Republic of the Congo (DRC, 5.76%), Mozambique (4.25%), Somalia (4.3%), Chad (4.3%), Sudan (3.81%), Rwanda (3.59%), Senegal (2.78%) and Mali (1.72%); only two of these – Burundi and Rwanda – are EAC countries (Migration DRC, 2007, based on census data for the period 2000-2002).

Kenya has become a major sending country of labour migrants to Eastern and Southern Africa and to various parts of the developed world, notably Europe, North America and both Australia and New Zealand in Oceania (Migration DRC, 2007).

Finally, Kenya is a source, transit and destination country of irregular migration, the first one to the Middle East and the last two to Southern Africa and ultimately via Latin America to the developed world. These patterns of international migration generate diverse configurations of labour migration that call for different policy frameworks.

The study reveals **important perspectives into labour policy frameworks pertaining to Kenya in relation to other EAC Partner States.** Clearly, it is a case study of South-South migration among countries that, apart from sharing historical and socio-cultural affinity, have been brought together by regional integration. The main conclusion drawn from the study is Kenya's dominance in this Regional Economic Community (REC) and labour supply, given the country's stable economic development modelled along a capitalist ethos, heightened training of highly trained and skilled human resources and relative peace and tranquillity over its 48 years of independence.

Kenya is a classic case of a dominant regional economy reflected in diverse ways including labour migration and with reformed policies and legislation on labour, diaspora and dual citizenship likely to affect both emigrant and immigrant labour regimes. The five freedoms and two rights of the PEACCM touch on the socio-economic fabric of society and should, of necessity, be incorporated in national development frameworks, such as national Vision 2000s.

Kenya's and other EAC Partner States' employment and labour policies and legislation predate the PEACCM and therefore require revision and harmonisation to conform to the changing circumstances. The EAC Partner States have not incorporated the PEACCM which puts its implementation in abeyance thereby rendering the protocol a mere piece of paper if not put in practice.

Kenya and Uganda permit free movement of the same type of workers, with Kenya seeking technicians and associated professionals of lower cadres (for example, technicians, accounts assistants, etc.) which Uganda requires. This is attributable to Kenyan and Ugandan having extremely similar educational and training systems at the time when *Ujamaa* (Tanzanian socialism) ruled in Tanzania and both Burundi and Rwanda were embroiled in serious civil wars. Burundi permits by far the lowest cadres in the sciences, engineering, mathematics and statistics. Tanzania and Rwanda highlight the free movement of professionals as well as technicians and associated professionals. **This distribution of worker categories targeted for free movement underlines where employment is expected to be readily available and how national development frameworks**, expressed in terms of Visions, are aligned to the needed highly educated and skilled labour. This is because the labour markets are potentially saturated with the lower skilled (which usually represent the

majority of populations), rendering mobility the only logical option for the skilled and highly skilled workers. Silence on the fate of semi-skilled workers might imply their lukewarm reception in the labour market.

Rwanda has the most comprehensive and versatile law regulating both citizen and foreign labour in the country, which other EAC Partner States should try to adopt or adapt. The Rwandese open-door policy, which has permitted the sustained immigration of Kenyans, has helped the Rwandese to learn from the Kenyans' professionalism, their skills in establishing institutions, in developing viable business plans as well as syllabi for various types of training, training the locals and providing leadership. In addition, Kenyans create awareness among the youth and women for future investment and giving priority to gender mainstreaming in all aspects.

Except for Uganda and Rwanda which have signed the UN International Convention on the Protection of All Migrant Workers and Members of Their Families (ICMW) of 1990, **Kenya does not have any legitimate claim to call for the protection of its emigrant workers and to protect immigrant workers in the country.** The *laissez faire* situation that exists is not helpful to Kenya, as well as to the countries in the South with which it exchanges labour.