

IMPLEMENTATION OF THE EAST AFRICAN COMMUNITY COMMON MARKET PROTOCOL IN KENYA: CASE OF FREE MOVEMENT OF ADVOCATES

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ABSTRACT

This study examined the application of the East African Community Common Market Protocol in Kenya with particular attention to the freedom of advocates. It looked at the broad principles and objectives of the East African Community with regard to the free movement of people and labor, as well as the domestication of the East African Community Common Market Protocol provisions with regard to the free movement of labor in Kenya and the current policy frameworks for the practice of law in Kenya by legal personnel from regional East African Community members. The theoretical framework described liberal institutionalism, protectionism, and realism in addition to how these concepts apply to Kenya's adoption and execution of the East African Community Common Market Protocol. Mixed data collection techniques were used in the study. As is clear from chapter 3, the researcher specifically recruited at least 10 respondents from each of the study's target regions who were closely concerned with the topic. In this study, a case study research design was used. The results showed that the EAC Partner States do, in fact, want to achieve further integration. It is however significant to note that, the free movement of foreign advocates into Kenya in particular is currently fraught with difficulties. States being egocentric in nature, the idea of liberal institutionalism becomes a concept that states are shy to fully embrace. Skilled labor migration fills in any gaps in the labor market, and second, labor migration increases cross-border synergies among Partner States and have a large positive ripple impact on reducing poverty in the region. Therefore, it's crucial to consider regional integration in East Africa as a need rather than a choice. Kenya should push to have a fully functioning East African Law Society. Noting that the institution is meant to unite the advocates under the East African Community, it should also be used to confirm the eligibility of any advocate from any East African Community member state. The Law Society of Kenya, not the Attorney General's office, should have the authority to grant foreign advocates permission to practice law in Kenya. This is due to the fact that all attorneys, including those working for the Office of the Attorney General, are members of the Law Society of Kenya, not the other way around. In this manner, the protocol's implementation will no longer be influenced by national politics. However, the Kenyan Law Society and the Attorney General should work together to hold each other accountable and should both hold seats in the East African Law Society.

Key Works: Implementation, Community Common Market, Protocol Free Movement of Advocates

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INTRODUCTION

One-way sovereign states demonstrate collaboration to resolve common issues they face in the international system is through the ratification of treaties. The field of international relations describes the world order as being inherently chaotic. This principle makes it clear that liberal tools, such as integration agreements, are necessary to harmonize state-to-state relations. Regional integration agreements have increased dramatically in recent years and have become a well-followed global trend (Marion Jansen, 2019). The majority of states ratify regional integration treaties to advance their development goals, with economics serving as the primary driver of the aforementioned integration endeavors (Zhu, 2019). Thus, regional integration seeks to promote trade and competitiveness to advance economic growth and development.

According to Kaur (2018), regional integration is the process through which two or more states choose to collaborate and work together to accomplish a specific objective or set of goals. Further, Aman (2020) argues that integration begins with economic integration before extending to political integration. To advance the economic, social, and political integration of the East African region, the East African Community (EAC) and, subsequently, the East African Community Common Market Protocol (EACOMP) were founded.

The European Union (EU), whose existence dates back to the 20th Century, has provided an example of how the concept of regional integration may aid the economy of a member state that is a part of such an organization over time (Ian Bache, 2020). One of the many freedoms afforded to EU members is the capacity of EU citizens who work in the EU to travel at will. Due to the importance of labor in all economies, the EU has ensured that employees' right to free movement within its borders is protected by Article 45 of the Treaty on the Functioning of the European Union (TFEU). Furthermore, advocates who are EU citizens and qualified to practice law in any EU state are free to do so in any EU state as stated in the Directive 98/5/EC of the European Parliament and Council (EPTC) of 1998. As a result, qualified advocates from any EU member state may freely practice law there without encountering any prejudice.

The African Continental Free Trade Area Agreement (AfCFTA), which was adopted in 2012 by the African Union Assembly, the entity responsible for making decisions, serves as proof that the African continent has not been overlooked in the history of regional integration. A crucial component of the AfCFTA is the Tripartite Free Trade Area Agreement (TFTA). The EAC, Southern African Development Community (SADC), and Common Market for Eastern and Southern Africa (COMESA) came together to form the Trans-Facial Trade Area (TFTA) (UNCTAD, 2016). To maximize Africa's potential economically; the AfCFTA's primary goal is to abolish all internal boundaries, including those that prevent the free movement of persons as outlined in article 3 thereof. It has been pushed throughout time to build an EAC without boundaries through the EAC treaty regarding the EAC, which had a founding history reaching back to 1967 before disintegrating and renewing itself in 1999. Kenya, Uganda, Tanzania, Burundi, and Rwanda are signatories to the EAC Treaty (Njenga L. N., 2018). The EAC treaty went into effect in 2000, and ten years later, on November 30, 2009, the EACOMP was signed and ratified by the treaty's signatory nations. The EACOMP then took effect on July 7, 2010, ten years after the EAC treaty. (EAC, 2000).

The main goal of the EAC as a tool for regional integration, as stated in Article 76 of the EAC Treaty, is to increase and deepen cooperation among member nations in the economic and social spheres for the benefit of EAC inhabitants. This demonstrates that economic growth is the main objective of all efforts for regional integration. The EAC agreement guarantees the free movement of labor, just like the TFEU and the AfCFTA do.

In the EAC, the idea of free movement of labor dates back to precolonial periods. Strong links between societies at the time allowed for unrestricted mobility of both people and material (Badewa, 2020). Strong tribal and cultural ties within the EAC permitted this environment. Taking note of the aforementioned, the EAC formalized these close relations by approving the 1967 EAC treaty, which later fell apart in 1977. (Masinde, 2017). The aforementioned treaty was renegotiated in 1999 by the EAC member nations, and it

became effective in 2000. The member countries pledged to act in line with article 104 of the treaty that created the EAC in 2000 to ensure the free movement of people, goods, and services as well as the exercise of their citizens' rights of establishment and residency inside the EAC (EAC, 2000).

Due to this, the EACCMP was adopted by the EAC member states in 2009, and it became effective in 2010. The member states of the EACCMP are obligated by Article 5 (2) (c) of the EACCMP to eliminate any restrictions on people's ability to travel around and find employment inside the EAC. Employees from other EACCMP member nations are free to move throughout their respective borders under the terms of Article 10 of the EACCMP. Article 11(1)(a) states that academic and professional degrees will be standardized and mutually recognized within the EAC. The EAC and the EACCMP were incorporated into Kenyan law after being ratified under the provisions of article 2(6) of the 2010 Kenyan Constitution. The responsibility to conform Kenya's domestic law to the provisions of the aforementioned regional treaties was subsequently placed upon Kenya.

In light of the foregoing, the definition of a foreign advocate in The Advocates Act, Cap. 16 of the Kenyan laws do not follow the letter of articles 5(2)(c), 10, and 11(1)(a) of the EACCMP. A foreign advocate, by this definition, is a citizen of a Commonwealth State who did not acquire a professional license in Kenya. The Law Society of Kenya does not currently issue licenses to practice law to members of the legal profession who are not Kenyan citizens and have not attended the advocates training program in Kenya. Its actual design radiates discriminatory ideas against those individuals; as their academic qualifications are not recognized. In this case, according to the provisions of the Act, advocates who are nationals of other EAC member countries shall be deemed, foreign advocates. Section 11 of the Advocates Act goes further to address the conduct requirements for foreign advocates while they are in Kenya, and the section's legal implications confirm that any advocate who is not a Kenyan and does not hold a valid practicing license from the Law Society of Kenya may only practice after satisfying the conditions outlined in section 11 of the Advocates Act.

The Advocates Act's Section 11 applies to EACCMP member nations. In actuality, section 11's use of the term "may" grants the Attorney General's (AG) office complete discretion over whether to accept or reject a foreign advocate's request for authorization to practice. As a result, as stated above, the provisions of articles 5(2)(c), 10, and 11(1)(a) of the EACCMP are essentially repealed by the section above. Advocates from other EAC states who are qualified to practice law in their native countries face obstacles and restrictions that qualify as discrimination under Section 11. This is against what the EACCMP says.

This idea recognizes that domesticating laws within a state is a monumental task given the chaotic structure of the global economy. Before fully integrating and domesticating a treaty into their domestic legal system, the majority of governments will always put their national interests first (Maher, 2021). In 2009, the COMESA member states formed a customs union that was intended to complement the goals of the free trade area under it. This event serves as an illustration of this ideology in international relations, noting that only fifteen of the twenty-one COMESA member states participate in the free trade region.

By implementing the measures outlined in the COMESA treaty's articles 45 and 47 domestically, a fully functional customs union could be gradually realized. The COMESA Free Trade Area's member states were supposed to domesticate the gradual steps described above by 2012. The same has not happened to date. This delay has prevented the full operationalization and realization of the customs union (Africa U. N., 2017). For an area to be competitive and for the integration process to be effective, the free labor movement is essential (Camagni, 2017). The EACCMP is intended to ensure that the EAC region's goal of having a competitive regional common market is realized, and if it is executed properly, this goal could be attained (Wanjiru, 2017). Kenya is in charge of making sure that the requirements of the EACCMP are adhered to by its current laws and regulations. It is against this background that this study sought to establish the degree to which Kenya has domesticated the EACCMP's movement of labor provisions, with a focus on the legal practice of advocates who have not obtained practicing licenses from the Law Society of Kenya (LSK).

Statement of the Problem

Free movement of persons and labor benefits the economies of a receiving and a sending state. The main benefit is the rapid expansion of the local economy as a result of the easy accessibility of factors of production. Despite the aforementioned, foreign advocates who did not obtain their licenses from Kenya are not allowed to practice law in Kenya. Although the Advocates Act disavows international commitments, nonetheless, lawyers are recognized as the guardians of the law. After Kenya ratified the EACCMP in 2010, the Kenyan Constitution's Article 2(6) established a duty to complete the domestication of the treaty. The Advocates Act was last updated in 2012, two years after Kenya ratified the EACCMP, although the EACCMP's 5(2)(c), 10(a), and 11(1)(a) provisions were never incorporated into that law. The Act's definition of a foreign advocate continues to impose limitations and impediments on advocates who are EAC residents but did not obtain their licenses from Kenya.

The goal of the EAC's establishment was to promote political, social, and economic integration. According to the treaty's article 104, the signatories are committed to ensuring the freedom of people, goods, and services as well as the enjoyment of their citizens' right to establish and reside in the EAC. The EACCMP was adopted by the EAC member countries to carry out article 104 of the EAC treaty. At the time the EACCMP was ratified, each member of the EAC reaffirmed their intention and commitment to do everything within their power to eliminate all obstacles and constraints on the movement of persons and products, investments, and capital payments. The EACCMP member states also agreed to abolish all forms of discrimination against nationals of either of the treaty's signatory countries. The EACCMP member states then opted to effectively construct a common market, including creating shared institutions and harmonizing partner state law to permit free movement of labor.

In spite of the fact that all professions are governed by the foregoing regional framework that, in this case, allows advocates who are citizens of either of the EAC member states to practice law without restriction in the community, Kenyan domestic law has made it difficult for legal professionals who have been admitted as advocates in other EAC member states to practice in Kenya. According to section 11 of the Advocates Act, a foreign advocate is a person who is not a citizen of Kenya, did not receive their practicing license in Kenya, and is a citizen of a Commonwealth state. Taking into account the aforementioned, citizens of the other EAC member nations who practice law are considered foreign advocates under the Advocates Act, making them subject to the restrictions and obstacles that section 11 of the Act imposes on foreign advocates. Section 11 of the Advocates Act emanates discriminatory principles because EAC citizens are not excluded. According to the aforementioned, when protectionist objectives predominate, a state's laws find it difficult to uphold the spirit of the integration accords to which they are parties.

Purpose of the Study

The implementation of the East African Community Common Market Protocol in Kenya: Case of Free Movement of Advocates

Research Objective

Analyze the existing policy frameworks for the practice of law in Kenya by legal personnel from EAC regional members.

Research Questions

What are the existing policy frameworks for the practice of law in Kenya by legal practitioners from EAC regional members?

LITERATURE REVIEW

The Existing Policy Frameworks for the Practice of Law in Kenya by Legal Personnel from EAC Regional Members

Kenya ratified the EAC and the EACCMP and incorporated them into Kenyan law by virtue of article 2(6) of the Kenyan Constitution of 2010. Kenya was then required to align its domestic legislation with the clauses of the aforementioned regional treaties. However, Section 34 of the Kenya Citizenship and Immigration Act, which states that anyone who is not a Kenyan citizen must have a valid permit or pass in order to enter or remain in the Country, is at odds with Annex III, Regulation 5(3) of the EACCMP, which states that the worker's right to live in the Country while waiting for the work permit is unaffected by the delay in issuing the permit. Additionally, as can be seen in this definition of a foreign advocate, the Advocates Act does not adhere to the spirit of articles 5(2) (c), 10 and 11(1) (a) of the EACCMP. Articles 76(1) and 104(2) of the EAC Treaty guarantees free movement of labour. However, Section 34 of the Kenya Citizenship and Immigration Act, which states that anyone who is not a Kenyan citizen must have a valid permit or pass in order to enter or remain in the country; continues to be at odds with Annex III, Regulation 5(3) of the EACCMP, which states that the worker's right to live in the country while waiting for the work permit is unaffected by the delay in issuing the permit.

When defining a foreign advocate, the Advocates Act departs from the spirit of EACCMP provisions 5(2)(c), 10 and 11(1)(a). A foreign advocate is one who is not Kenyan and/or is from a Commonwealth State, according to the definition in the statute. The Advocates Act's Section 11 further specifies how foreign attorneys in Kenya are to conduct themselves. Any advocate who is a citizen of a Commonwealth State and did not obtain their practicing license in Kenya is confirmed by the legal inference of the provision to be able to practice only after meeting the requirements outlined in section 11 of the Advocates Act. The last amendment of the Advocates Act was made in 2012, two years after the EACCMP came into effect, and however the Act has not yet embraced its spirit. According to Section 11 of the Act, the foreign advocate cannot even sign pleadings and must work under a Kenyan citizen who is licensed to practice as an advocate.

Additionally, the Advocates Act does not adhere to the spirit of articles 5(2) (c), 10 and 11(1) (a) of the EACCMP. Foreign lawyers must first be admitted as advocates in Kenya before they are permitted to practice in the Country. The Attorney-General may, in his sole discretion, admit a foreign advocate to practice. The key phrase is "may be admitted," a term which negates the EACCMP's call for unrestricted freedom. Foreign law firms are also not allowed to establish offices in Kenya. They can only do business there by collaborating with a Kenyan law firm.

The second Kenyan Act of Parliament that supplements the Advocates Act but does not entirely adopt its recommendations is the Kenya Citizenship and Immigration Act, No. 12 of 2011. Everyone who is not a citizen of Kenya is required to have a valid permission or pass in order to enter or remain in the nation, per Section 34 of the Kenya Citizenship and Immigration Act. The sentence continues by saying that until a legitimate work visa is issued, the subject will be staying in Kenya illegally. East Africans are not excluded from the provisions of section 34 of the Kenya Citizenship and Immigration Act. The EACCMP's Annex III, Regulation 5(3), which states that a worker's right to remain unaffected while waiting for a work permit is in conflict with Section 34. The notion of free movement of labor is certainly not included in the aforementioned sections of Kenyan legislation. The Advocates Act shows discord and does not uphold the spirit of the EACCMP. The Kenya Citizenship and Immigration Act, is also manifestly at odds with the EACCMP. These considerations call into question Kenya's commitment and good faith in ensuring that the EACCMP is fully implemented. Despite the obligation placed on the EAC member states to fully implement the EACCMP, Kenya has in some sectors and in this case the legal sector, been careful with allowing the full application of the provisions on free movement of labour within its territory. Even though national interests have taken center stage for the non-implementation, the Country continues to pledge its commitment to ensure

that the EACCMP is fully implemented progressively.

Theoretical Framework

International relations and diplomacy research are generally theoretical-based, according to Knutsen (2020). The idea that states in the international arena are egotistical, logical beings who believe they may monopolize economic activities in order to maximize profits and obtain an advantage over their competitors is a popular one (Gallacs, 2017). The EACCMP was created, however, within the liberal institutionalism school of thought.

Robert Keohane and Joseph Nye, the two primary proponents of liberal institutionalism, strongly emphasize the idea of multilayered interconnectedness (Devitt, 2011). This idea derives from the liberal approach, whose prominent proponents are Jeremy Bentham, Emmanuel Kant, and Adam Smith. They contend that liberalism is a highly delicate approach that focuses on international relations between countries rather than power and interests (Rosenblatt, 2018). As a result, through integrating states through legal systems and institutions, liberal institutionalism seeks to ensure international peace (Mingst K. , 2018). In light of the previous chapters' contents, it is clear that the Kenya Citizenship and Immigration Act and the Advocates Act do not adhere to the EACCMP's principles regarding the free movement of labor, displaying protectionist traits. The Acts at hand, in Kim's opinion (2018), fit the aggressive realism model, which is a theory that encourages nations to exercise dominance and hegemony in order to gain political advantage.

Realism, according to Bell (2017), is a radical approach that is typically viewed as selfish and unyielding. Realists believe that states are the only significant players in the global arena, according to Rossi (2017). Rumelili (2020) predicts that governments would always prioritize their own interests (2020). There are three main varieties of realism; the first is classical realism, which Thomas Hobbes, Niccolo Machiavelli, and Hans Morgenthau all supported (Paul R. Viotti, 2019). They believe that international disputes are a natural byproduct of being human.

This idea addresses the obvious protectionist issues raised by Kim (2018), which are also reflected in the design of the Advocates Act and the Kenya Citizenship and Immigration Act, as mentioned above. East African advocates are no different from other foreign advocates in that they must go through additional criteria before being allowed to operate in the country. The state level of analysis in international politics is elaborated in this method (Joseph M. Grieco, 2018).

Kenneth Waltz and John Mearsheimer are the two main proponents of the second kind, known as the neo realist approach. They are described as structural realists by Lundborg (2018), and they contend that states engage in wars because of the anarchic nature of the international system. States in East Africa are considered to be underdeveloped, according to Petkova's (2014) thesis. The levels of underdevelopment are distinct, though, according to Fengler (2012). More than others, some people are underdeveloped. The EACCMP may be reluctant to do so for fear of having its resources strained, which makes it difficult to standardize and align Kenyan municipal laws with it (Atsiaya, 2014). Such considerations, in White's (2020) opinion, drive states to develop salient restrictions in their municipal laws. In turn, this safeguards their interests by delaying the implementation of treaties. To clarify its position, this strategy employs a global level of study (Richard Jackson, 2019). Neo-classical realism, which combines classical and neo-realism, is the third strategy. Neoclassical realism, according to Rose (1998), one of its most well-known proponents, attempts to make states' foreign affairs more understandable by making reference to both the international and national levels. Neoclassical realists, according to Dawood (2016), believe that their method fills in the gaps that other realist schools have neglected. This is true because it incorporates both the state and international levels of analysis in global politics.

Finally, this research project recognized that since achieving independence, African states have drafted and ratified a number of treaties. Some of them, like the Tripartite Free Trade Area Agreement (TFTA) and the

COMESA Treaty, are designed to encourage trade inside Africa. In order to fulfill the objectives of the FTA, the COMESA member countries established a customs union in 2009. It is crucial to keep in mind that only fifteen of COMESA's twenty-one member states participate in free trade. However, a fully functional customs union may be gradually achieved at the domestic level by adhering to the gradual steps described in Articles 45 and 47 of the COMESA treaty (COMESA, 2020). Although the incremental steps were supposed to be domesticated by 2012, this process has been delayed, making it difficult to fully operationalize the customs union. The customs union has not materialized as a result (Africa U. N., 2017). This caused repercussions across COMESA, which led to the establishment of a functional free trade zone.

Another continental agreement that is battling for support is the TFTA, which is connected to the first (Africa U. N., 2018). The dates set for ratification have hardly ever been met. This is a result of a number of variables, including domestication and the harmonization of international law with local legislation (Center, 2015); as well as the varying governance arrangements among the member nations that are participants to the agreement. The EACCMP's is a treaty that, if properly implemented, according to liberal institutionalists, would turn East Africa into a major economic force in the world. The Advocates Act and the Kenya Citizenship and Immigration Act were written and interpreted in a way that makes it clear that the principles of realism cannot be disregarded.

METHODS

This study employed descriptive research design. According to Orodho (2016), descriptive research design is a type of research design that aims to systematically obtain information to describe a phenomenon, situation, or population. Therefore, the design was appropriate for this study because it aided the researcher to accurately answer the research questions. Further, the design allowed the use of a range of qualitative and quantitative research methods to collect data, which helped obtain detailed information that provided a comprehensive understanding and a deeper grasp of the subject at hand because its goals are to study, describe, and reveal. Therefore, the present EACCMP regulations controlling the free movement of workers were thoroughly studied. The rules of the Kenya Citizenship and Immigration Act and the Advocates Act controlling the conduct requirements for foreign advocates were also studied. The analysis of professional viewpoints and the experiences of EAC citizens working in Kenya were also combined with the other forms of data that were acquired. This was done in an effort to respond to the concern posed in the problem statement.

The study was carried out in Kenya at the Law Society of Kenya (LSK), Attorney General's (AG) office, the Ministry of East African Community and Regional Development (MEACRD) and at the Ministry of Interior and Coordination of National Government (MICNG). The study had a target population of 25, 441 individuals. These comprised of employees of the MEACRD, the AG's office, the MICNG, and the LSK. The total employee population of the MEACRD is estimated at 500 people. The number of public servants employed by the AG's office is 941, according to estimates (NCIC, 2018). An estimated 14,000 advocates who are LSK members also formed part of the working population (Law Society of Kenya, 2021). Last but not least, there are the staff members at the MICNG's Directorate of Immigration Service. The granting of work permits is under the direct control of these civil servants. 10,000 individuals are thought to be MICNG's total number of employees (Glassdoor, 2021). This was illustrated in the table below;

Table 1: Target Population

Category	Target Population
Ministry of East African Community and Regional Development	500
Attorney General's office	941
Law Society of Kenya	14,000
Ministry of Interior and Coordination of National Government	10,000
Total	25, 441

From the target population, the researcher sampled 140 respondents. This involved those who were continually and actively engaged in implementing the EACCMP within Kenya's own legislative framework; specifically, with regard to the practicing of law by foreigners in Kenya. They comprised of 40 members from the MEACRD's State Department of the East African Community, 30 members from the AG's office's International Division, 30 members from the LSK, and 40 members from the Ministry of Interior and Coordination of National Government. This was illustrated in the table 2 below.

Table 2: Sample Size Representation

Target Locations	Target Population	Sample size	Percentage
Ministry of East African Community and Regional Development	500	40	8%
Attorney General's office	941	30	100%
Law Society of Kenya	14,000	30	0.21%
Ministry of Interior and Coordination of National Government	10,000	40	100%

Sampling Techniques

The study employed purposive sampling technique to sample the respondents. The sampling was purely based on the convenience and availability of the respondents. The after effects of the ongoing COVID-19 pandemic that made it difficult to have full and free access to the respondents influenced this. Respondents from the International Division in the AG's office, the Directorate of Immigration Services under the MICNG, and the Department of East African Community in the MEACRD were chosen for through convenience sample technique. The purposive sampling technique was primarily employed to gather information from LSK participants. This was done noting that a local attorney who has been admitted must supervise any foreign attorneys that the AG authorized to operate in Kenya. Consequently, the Kenyan lawyers introduced the researcher to the foreign lawyers who were working for them so that I could document their experiences.

Pilot Study

The research instruments were pre-tested before the actual data collection exercise. This exercise was crucial because it aided in ensuring that the research instruments were reliable and valid. The researcher involved 2 persons from the MEACRD's State Department of the East African Community, 2 individuals from the AG's office's International Division, 2 members from the LSK, and 2 members from the Ministry of Interior and Coordination of National Government. The total number of individuals who participated in the exercise were 8, and save for those under the LSK, this group of individuals did not participate in the actual data collection exercise.

Reliability and Validity

Reliability is defined by Creswell (2017), as the consistency of results over time. Reliability of the research instruments was ascertained through test-retest method. This was done during the pilot study. The tools were administered twice to the same respondents after a period of one week. The results from the two tests were analyzed separately using Crobach alpha, and compared. The researcher obtained an alpha coefficient of 0.824, which indicated that the tools were reliable because the obtained coefficient was higher than the marked threshold of 0.7. To ensure validity, the researcher carefully constructed the instruments based on the research objectives and ensured that the questions in the tools were relevant and adequate. Further, the researcher sought expert judgment from two faculty members who are experts in the area. The two experts went through the research instruments and ensured that all the items were clear, relevant and adequate. During the engagement with the experts, ambiguous questions were reworded; irrelevant items were deleted while more questions were added to adequately cover all the study variables.

Data Collection Methods

Data and information were gathered using both primary and secondary sources. This study used interview

guides to collect primary data from the sampled respondents. The tools were appropriate for this study because they enabled the researcher to collect detailed information on the subject matter. Books, journal articles, conference materials, and online sources were selected as secondary sources. In addition, the AfCFTA, TFEU, EACCMP, Kenyan Constitution of 2010, Advocates Act, and Kenya Citizenship and Immigration Act were also included. The EAC website let users to access the EACCMP. Accessed at the Kenya National Library were the Kenya Constitution, the Advocates Act, and the Kenya Citizenship and Immigration Act. By visiting their respective websites for the EU and AU, the researcher accessed the TFEU and the AfCFTA.

Data Analysis

The study utilized both quantitative and qualitative data analysis methods. To analyze quantitative data, the data was coded and entered into the Statistical Package for Social Sciences version 23. After which the researcher employed descriptive statistics, which involved frequencies and percentages to analyze the data, the results were presented in tables and graphs.

In the analysis of qualitative data, content analysis method was applied. This enabled the researcher to evaluate the current rules governing the free movement of labor under the EACCMP, the practice guidelines for foreign attorneys under the Advocates Act, and the precedent-setting requirements that apply to foreigners entering Kenya to work under the Kenya Citizenship and Immigration Act. In order to respond to the query posed in the problem statement, an examination of expert viewpoints as well as the experiences of legal staff from the EAC working in Kenya were also combined with the other types of evidence that had been gathered.

Ethical Considerations

Every research effort needs to have an ethical component. The researcher obtained a approval and authorization letter from the Graduate School Kenyatta University. Further, a research permit was sought from NACOSTI, and prior to collecting primary data from the respondents; permission was obtained from the MEACRD, AG, LSK, and MICNG. Before collecting data from the participants, they were issued with consent forms, which they read and signed as a confirmation of participating willingly. To protect participants' confidentiality, the instruments did not capture their personal information, which could reveal their identity. The information, which was obtained from respondents, was handled with a lot of confidentiality.

Additionally, data from books, academic journals, legislation, regulations, and treaties, as well as content from the Internet, were utilized in this study. The researcher cited the sources from which the information was derived. By citing sources, a researcher respects the intellectual property rights (Perry, 2017).

RESULTS AND DISCUSSIONS

Interview Guides Response Rate

As per table herein above, the study's sample size constituted of a total of 140 respondents. The researcher managed to conduct 104 interviews, which constitutes of 74% of the sample size of this study. Out of the 104 respondents, which were distributed amongst the staff members of the MEACRD, AG, LSK and the MICNG, 72 respondents completed the interviews. That sums to 69% of the total respondents who received the interview guides. This study adopted the non-probabilistic data sampling approach, which is reliant on the respondents' convenience and availability. With the issue of Covid-19 in mind, working from home and in shifts in other places, to some extent affected the data collection processes. The pandemic made it difficult for the researcher to attain 100% respondent turnover. It is also worth noting that with the available respondents, the purposive sampling technique was also used since the respondents are a specific target and have knowledge on the subject hereto. In the foregoing, the response rate and the data analyzed was presented in table 3 below;

Table 3: A Representation of the Response Rate of the Data Analyzed

Department	Completed Interviews	Interview Guides Distributed	Response Rate Percentage as Per Interview Guides Distributed
State Department of the East African Community under the MEACRD	13	32	41%
International Division at the AG's office	15	15	100%
Law Society of Kenya	30	30	100%
Directorate of Immigration Services under the MICNG	14	27	52%

Respondents' Demographic Information

This section presents demographic information of the respondents. The respondents were asked about their roles in the organizations they work for, their level of education, their experience in their relevant fields and their gender.

Respondents' Gender

The Constitution of Kenya advocates for gender parity. It is in the same light that respondents were asked to indicate their gender. This was meant to determine gender distribution of the respective respondents. Figure 1 confirms that there was a balance in the general gender matrix. 50% of the respondents were female and 50% were male even though the gender parity varied with different target locations as seen in figure 1 below;

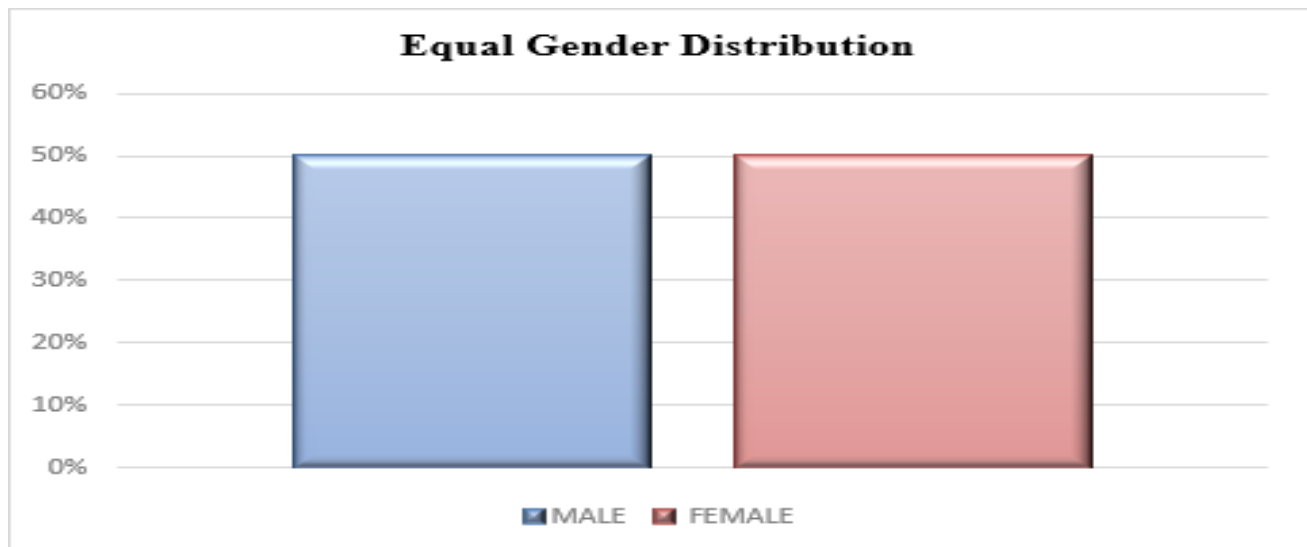


Figure 1: General Gender Representation Matrix

Policy Frameworks for the Practice of Law in Kenya by Advocates from other EAC Members

It is significant to ask if there are specific provisions which govern the practice of law by advocates from other EAC members. The foregoing analysis has demonstrated that, generally speaking, foreign lawyers must first be admitted as advocates in Kenya before they are permitted to practice there without restrictions. The Attorney-General may, in his sole discretion, admit a foreign advocate to practice. The key phrase is "may be admitted," a term which negates the EACCMP's call for unrestricted freedom. Foreign law firms are also not allowed to establish offices in Kenya. They can only do business there by collaborating with a Kenyan law

firm.

A few international legal firms have used this tactic, including Asafo & Co., Dentons, and DLA Piper. Asafo & Co. amalgamated with MMC, Dentons with Hamilton, Harrison & Mathews, and then DLA Piper with Iseme Kamau & Maema Advocates. With the above in mind, the researcher carried out interviews with members of the LSK and the staff members of MICNG to with the goal of addressing this study. Several issues were raised and the data is as expounded below. What emerged was that, according to a respondent, *'there is opening and closing at the door at the same time. The outer door is opened for you. And once you are inside an inner door is closed. So you cannot fully go through, you are forced to go back through the earlier door, mission unaccomplished. That is contradiction'*

The Position of the Law Society of Kenya on the EACCMP

This research revolved around advocates of the high court. As evidenced herein above, advocates emerge from a sector specific profession that is generally regulated within the jurisdiction it exists. However, under this research the focus was on advocates who engaged in cross-border practice within the EAC. Specifically, those who hail from the EAC member states. Kenya, a member of the EAC and the EACCMP, has placed several road blocks towards the free flow of labor in this sector within its borders. It is in light of the above that the researcher interacted with respondents who practice law in Kenya, with an aim to address the third objective of the study. The total number of respondents under this subject summed to 30 people. When a foreign advocate is allowed to practice in Kenya by the AG, they must practice under an advocate who is admitted in Kenya. Therefore, advocates admitted in Kenya led the researcher to the foreign advocates who were EAC citizens and have been allowed to practice under them. Nothing that this study revolves around movement of advocates, the researcher sought to have the following topics addressed;

The Restrictions on the Practice of Foreign Advocates in Kenya

Ideally, Articles 76(1) and 104(2) of the EAC Treaty guarantees free movement of labour. However, Section 34 of the Kenya Citizenship and Immigration Act, which states that anyone who is not a Kenyan citizen must have a valid permit or pass in order to enter or remain in the country; continues to be at odds with Annex III, Regulation 5(3) of the EACCMP, which states that the worker's right to live in the country while waiting for the work permit is unaffected by the delay in issuing the permit. Additionally, as can be seen in this definition of a foreign advocate, The Advocates Act does not adhere to the spirit of articles 5(2)(c), 10 and 11(1)(a) of the EACCMP. The researcher therefore gathered the opinions of the advocates on the foregoing and the same is projected below.

Out of the 30 respondents interviewed, 17 respondents stated that; the practice of foreign advocates who are EAC citizens must be restricted. 9 respondents out of the 30 agreed to a great extent to the reduction or abolition of the restrictions and stated that there were more friendly ways to handle the issue. The remaining 4 respondents were foreigners who had their own line of questioning as will be seen herein under. This meant that 57% of the advocates were for the existence of the restrictions. Whereas, 30% of the respondents opined that, EAC Citizens should be allowed to practice in Kenya without any restrictions. See figure 2 below;

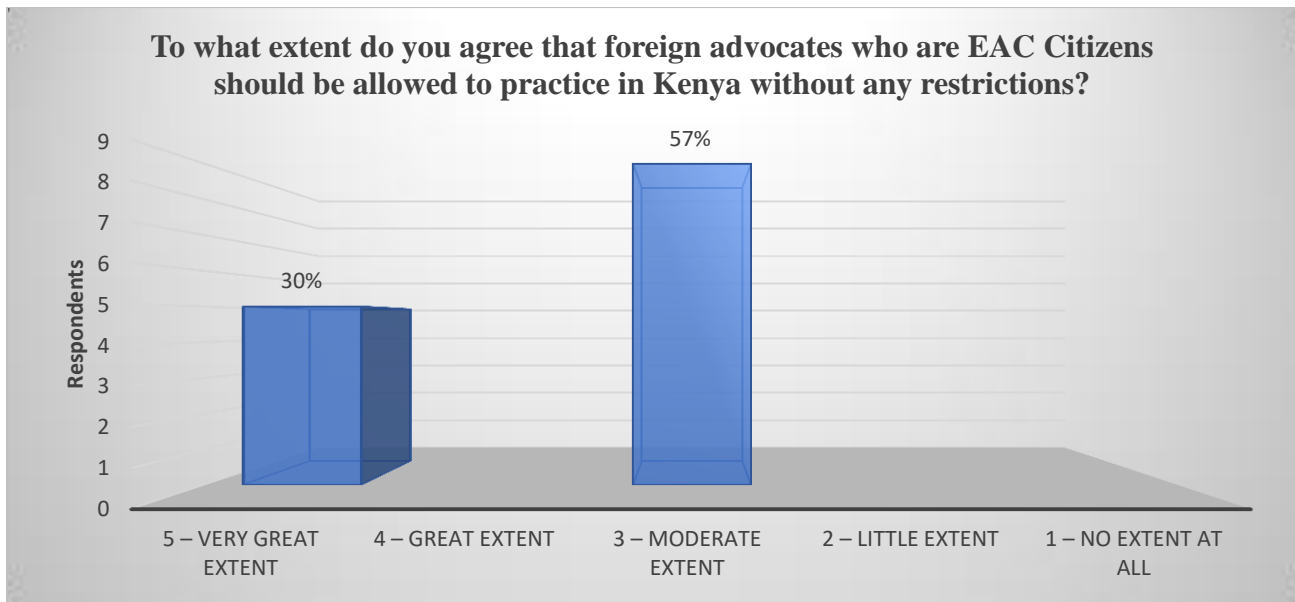


Figure 2: Response rate for question one – LSK

Some of the statement excerpts of the respondents who insisted that there must be restrictions are as follows;

“It will be so unfair, to subject advocates who are admitted to the Kenyan high Court, to a gruesome training process and just let other advocates who have not go through the same process by pass the system without restrictions”

“Foreign advocates do not have a Kenyan practicing certificates and you need one to practice.”

“There is an influx of the number of advocates in Kenya, we must regulate those who are coming to practice in Kenya.”

“The Advocates Act as is does not support the unrestricted practice of law by advocates who are EAC citizens. Therefore, as custodians of the law, we must adhere to the provisions of law.”

“Our laws amongst the EAC states are different, therefore unrestricted access to our legal system places at risk of being watered down.”

“The foreign advocates can use the merging strategy to assert themselves in the country just like Bowmans (Coulson Harney Advocates) and the likes have done. But they should not set up camp independently”.

The other group of advocates that agreed to a reduction or abolition of the restrictions stated as follows;

“Kenya should be first state to let the guard down and allow foreign advocates who are EAC citizens to practice in Kenya. We are among the strongest economies in the EAC, our decision can influence major choices amongst other EAC member states.”

“Competition is good and healthy for growth. EAC citizens should be allowed in Kenya. However, the LSK should be the ones mandated to decide who should be allowed to practice and not the AG.”

“The bigger the labour market the bigger the tax collection bracket. Allowing EAC citizens will work for the government.”

The Discretion Bestowed on the AG’s Office to Issue Practice Permits to Foreign Advocates

Noting that this sub topic builds up on the objective of the study the response rate did not differ from the former. Out of the 30 respondents, 17 advocates who form 57% of the respondents stated that; the AG’s

discretion was a form of protection and for the country and not an impediment. They proceeded to allude that; Kenya must be careful because other states are also every cautious with who they let into their country. Secondly, 9 advocates out of the 30 interviewed, who form 30% of the respondents, agreed to a great extent that the AGs discretion is an impediment to the full realization a functional EACCMP. The remaining 4 respondents were foreigners who had their own line of questioning as will be seen herein under.

Part of the statement excerpts of the respondents who agreed to a great extent that the AGs discretion is an impediment to the full realization a functional EACCMP, are as follows;

“The AGs office is a political office. If we let it run the law then we shall not make any headway with regard to the full implementation of the EACCMP.”

“You cannot consider another country as a sister state and treat it as an acquittance and not family. Consistency in reading and application of the law is key”

The Role of the LSK in Influencing Policy Changes

All the LSK members interviewed agreed to a great extent that they have a role to play when it comes to influencing policy changes. However, there was a rift when it came to changing the law, to allow foreign advocates who are EAC citizens to practice law in Kenya without restrictions. The 57% majority as consistently seen in figure 2 above, insisted that the law should not be changed as it is the only way we can protect the legal practice in Kenya. Kenya compared to the other EAC member states has the highest number of advocates. The legal resources in Kenya are not enough for the advocates admitted to the Kenyan High Court. Therefore, if foreign advocates are allowed to practice in Kenya without restrictions; the locals will suffer. The 30% constituent of respondents opined that; the fact that Kenya has more advocates compared to other EAC member states, they can push for policy changes using their numbers. Thus, they have a huge role to play when it comes the foregoing agenda.

As stated herein above, 4 foreign advocates who were EAC citizens were interviewed by the researcher. The Advocates of the High Court of Kenya pointed the researcher to their direction. In this regard, a number of issues emerged;

The practice of law by Foreign Advocates in Kenya

When it comes to the practice of law for foreign advocates, all the respondents agreed to a moderate extent that Kenya has tried to ensure the spirit of the EACCMP has been embraced. This position was supported by the following statements from the foreigners;

“Uganda have more stern requirements compared to Kenya when it comes to the practice of law by non-Ugandan EAC citizens. Therefore, this gives Kenya the leeway to play the diplomatic card that shows that they are better than Uganda”

“Kenya is a powerful economy and Ugandans yearn to live here since it considered as a land of opportunities. This is because Kenya is a strong and diverse economy. Therefore, it can easily persuade other EAC member states to be liberal as the EACCMP provides, if it does so first.”

The above statements confirm that we as a country we are sitting on the fence. We need to be more pronounced.

Restrictions for the Practice of Law in Kenya by Foreign Advocates

All 4 of the foreign advocates who the researcher interviewed are EAC citizens and they argued that; Even though there are restrictions in Kenya, their home countries are more rigid than Kenya. One of the respondents proceed to say, *“Kenya has tried to be more accommodative to EAC citizens despite the restrictions on foreign advocates. In Rwanda and Burundi, a Kenyan will not be allowed to practice without being enrolled onto their bar. These kinds of acts are making legal regional integration difficult”*.

Compared to other EAC states, the respondents agreed to a moderate extent that Kenya is putting in some effort in promoting cross-border legal practice. They confirmed that Kenyan laws are more lenient.

Work Permits by the Ministry of Interior and Coordination of National Government

The directorate of immigration services is responsible for issuance of work permits in Kenya. It plays the role of a watch dog for the state thus making it a very vital department for border control. Upon the researcher conducting interviews at the Ministry of Interior and Coordination of National Government, it was established that, the ministry’s officers’ responses were leaning towards guarding of national interests as their number one focus, then the integration agenda follows thereafter. The researcher fronted several discussion points as conversed below that confirm the above position.

Examining the effects of fully implementing the EACCMP in Kenya

In order to inform further our understanding of the issues that surround the implantation of EACCMP we sought to find out how, in the opinion, a full implementation of the provision would affect the country. Out of the 14 respondents who completed the interviews as seen in table 3 above, 5 agreed to a great extent that, the full implementation of the EACCMP provisions on free movement of labour provisions shall be beneficial to the Kenyan economy. 9 moderately agreed to the same as they had some reservations. See figure below representing the numbers thereto.

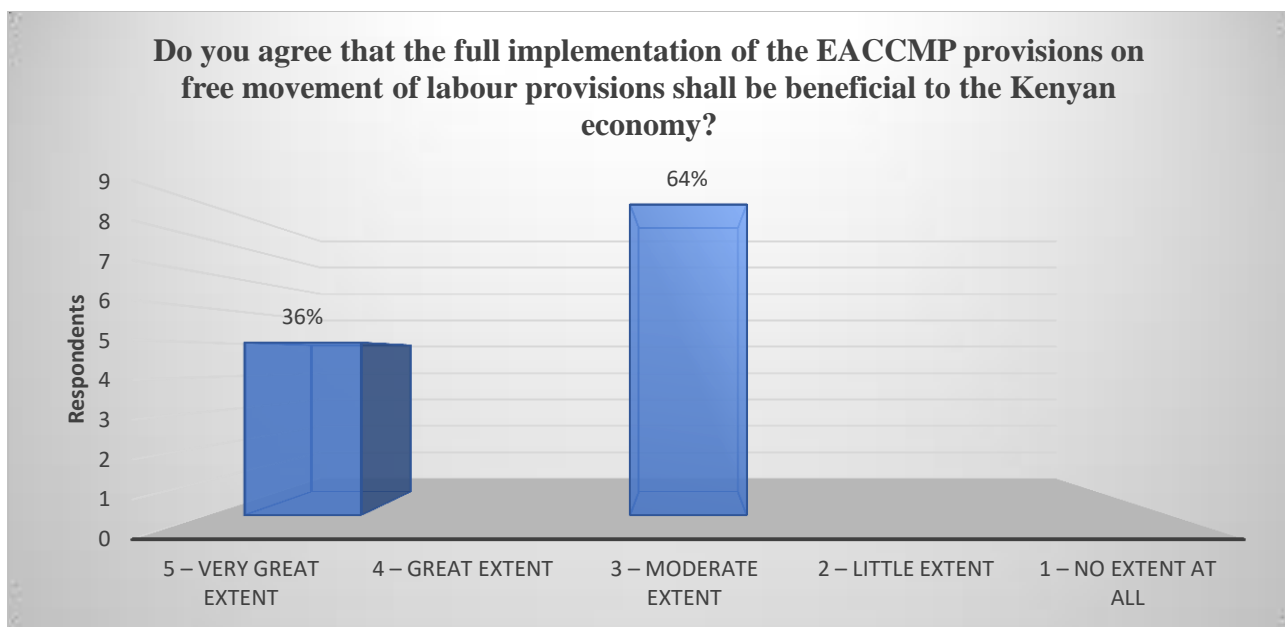


Figure 3: Response rate for question one – MICNG

The above response pattern was corroborated by respondents whom the author spoke. They agreed to a great extent that full implementation of the EACCMP provisions on free movement of labour provisions shall be beneficial to the Kenyan economy:

“The larger the labour market the bigger the tax collection. In fact, Kenya could create a special tax bracket for foreign advocates who are EAC citizens and in place of the work permits. Not to be oblivious to the fact that the EAC treaty calls for equal treatment, but the Kenyan citizens must have slight advantage over the foreign ones. It is just that this method is easier than taking up work permits as tax is paid after they earn and not before they start working as is the case with work permits.”

“Cultural diversity and sharing are strongly embraced and encouraged by the EAC treaty. Non-restrictive access to practicing law in Kenya by advocates who are EAC citizens curtails the foregoing.”

It also emerged that some of the respondents agreed moderately;

“The EAC treaty compels the EAC citizens to obey the law of every state that it governs. Therefore, Kenyan law not being an exception, it should not be subjected to talks of toning down its laws yet other EAC states have their guard up. It must apply across board. However, Kenya being the big brother in EAC, it could consider being the first to tone down on the restrictions. Perhaps just require the foreign advocates to get the AG’s permission and that’s it and watch how the other EAC states will respond.”

“The fear of the trajectory of the forces of demand and supply being severely affected if foreign advocates who are EAC citizens are allowed free entry, cannot be ignored. However, Kenya’s constitution is regarded as the supreme law of the land. It provides for application of international law in Kenya and the EACCMP is not an exception.”

“National interests come first”

The legal provisions on work permits in Kenya

All the respondents interviewed as per table 3 above under the MICNG strongly agreed that section 34 of the Kenya Citizenship and Immigration Act contradicts Annex III, Regulation 5(3) of the EACCMP which provides that; the delay to issue work permit does not prejudice right to reside as the worker awaits the permit. Their opinion was based on the ground that the foregoing is a matter of fact and law. Their opinion on the same can only be changed by another Act of parliament. They proceeded to confirm that guarding national interest takes center stage in regional integration conversations. Thus, by extension, they ended up answering the researcher’s concern as to whether *guarding of national interests is the main reason for the lack of full implementation of the EACCMP in relation to provisions of movement of foreign advocates who are EAC Citizens.*

In the final analysis, national interests become key factor in regional integration. According to a respondent the researcher interviewed,

National interest is paramount. The reason why countries decide to cooperate on issue is because they are seeking to enhance their national interests. If doing so undermines the very national interests, then that agreement beats its own purpose.

CONCLUSION

Taking integration to a deeper level is, in fact, the goal of the EAC Partner States. It is however significant to note that, the free movement of foreign advocates into Kenya in particular is currently fraught with difficulties. States being egocentric in nature, the idea of liberal institutionalism becomes a concept that states are shy to fully embrace. Kenya’s laws on the practice of law for advocates have not entirely embodied the provisions of the EACCMP. The Advocates Act and the Kenya Citizenship and Immigration Act have been rigid to adopt the tenets of the EACCMP, despite them having been revised after ratification of the EAC and EACCMP. This just confirms Kenya’s unreadiness to domesticate the EACCMP into the Advocates Act and the Kenya Citizenship and Immigration Act. Also confirming that, Kenya’s national interests take first priority before the EAC interests.

The lack of robust institutions in the EAC, which would be able to enforce the treaty's regulations and duties, is widely blamed for the implementation's slowness. To ensure that its decisions are successfully carried out and that its goals are achieved, EAC currently lacks sufficient authority. There are no checks and balances in place to prevent the EAC institutions from acting improperly, and they are not answerable to the residents of the area. While the EAC summit is answerable to the institutions, the people do not hold the EAC summit accountable. Despite being unaccountable to the public, the Summit has all of the EAC's authority.

The emergence of regionalism in this era of globalization has been a crucial component of the current international order. African states now have a greater ambition for regional integration (AU, 2019). In order to accomplish this, fresh ideas are developed, current ones are strengthened, and outmoded ones are given new life. In the contemporary era of globalization, where small economies may not be able to compete effectively and may easily be absorbed into the global economy if they go it alone, regional integration is one of the options for surviving in East Africa. Therefore, it's crucial to consider regional integration in East Africa as a need rather than a choice.

In finishing, promoting labor migration for development is a topic that the EAC should be particularly interested in for two key reasons. First, skilled labor migration will fill in any gaps in the labor market, and second, labor migration will increase cross-border synergies among Partner States and have a large positive ripple impact on reducing poverty in the region.

RECOMMENDATIONS

Assimilation of laws is an uphill task, however if it starts from institutional level, it will work. Below are some of the recommendations that this study suggests based on the findings hereto;

- Kenya should push to have a fully functioning East African Law Society. Noting that the institution is meant to unite the advocates under the EAC, it should also be used to confirm the eligibility of any advocate from any EAC member state. In Kenya, the LSK portal has worked well to ensure that non-fit advocates do not practice anywhere in Kenya. The portal shows the status and record of all advocates in Kenya since they started practicing. If the same is applied under the East African Law Society, then the current restrictions will not be necessary.
- The government might argue that they would lose some revenue in terms of application fees for permits if it adopts recommendation (i) above. However, competition stirs innovation and as a result growth of an industry. As a result, more tax options become available for the government as the quantity theory of money comes into play. Further, the government could introduce a special tax bracket for the earnings made (if any) by a foreign advocate. This way the foreign advocates who are EAC citizens end up paying after they work and not before working. Thus, nothing will be stopping them from working in Kenya. Consequently, Kenya becomes complaint with Annex III, Regulation 5(3) of the EACCMP and in fact makes more revenue.
- The discretion to allow foreign advocates to practice in Kenya should not be exercised by the AG's office but with the LSK. This is because all the advocates including those at the AG's office are members of the LSK and not the other way round. This way implementation of the EACCMP stops being dependent on the politics of the state. The AG and the LSK should however be accountability partners and both of them should have a sit in the East African Law Society. The AG's office has abused this discretion before and due to its political nature, it has led to a miscarriage of justice. Therefore, it shall be important the AG has an accountability partner.

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