



ACP OBSERVATORY ON MIGRATION
OBSERVATOIRE ACP SUR LES MIGRATIONS
OBSERVATÓRIO ACP DAS MIGRAÇÕES

THE BIGGEST FISH IN THE SEA?

Dynamic Kenyan labour migration in the East African Community

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Research Report

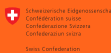
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However, the team absolves those acknowledged for any errors of commission or omission that may be contained in this report.

Abstract

This study assesses the Kenyan policy and institutional framework concerning South–South labour migration with particular focus on the East African Community (EAC) countries. It focuses mainly on one particular policy instrument, the East African Community Common Market framework. The research further looks at country-specific policies in relation to the common market framework. The study relied on desk research into the existing literature and public records; key informant interviews (KIIs) of policymakers in respective EAC Partner States' governments with the exception of Burundi; as well as with private labour recruitment agencies in each country. The study has found that the EAC framework is not sufficiently implemented at the national level and only inconsistently incorporates other country-specific policies dealing with labour migration in the region. The study underlines Kenya's dominance in the EAC, especially in terms of its best trained and skilled human resources working in all EAC Partner States. The main recommendation centres on the need for harmonizing national labour policy frameworks and legislation as well as the free movement of labour as enshrined in the Protocol on the East African Community Common Market (PEACCM).

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Abbreviations and acronyms

ACP	Africa, Caribbean and Pacific
ADB	African Development Bank
ATE	Association of Tanzania Employers
AU	African Union Ministry of Justice and Constitutional Affairs
COMESA	Common Market for Eastern and Southern Africa
DRC	Democratic Republic of Congo
EAC	East African Community
EU	European Union
FKE	Federation of Kenya Employers
GDP	Gross Domestic Product
HTP	Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children
ICT	Information and Communications Technology
IDPs	Internally Displaced Persons
IGAD	Inter-Governmental Authority on Development
ILO	International Labour Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
KANU	Kenya African National Union
KEPEA	Kenya Association of Private Employment Agencies
KEPSA	Kenya Private Sector Alliance
KIIs	Key Informant Interviews
KNBS	Kenya National Bureau of Statistics
MDGs	Millennium Development Goals
MEACA	Ministry of East African Community Affairs
MIRP	Ministry of State for Immigration and Registration of Persons
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice and Constitutional Affairs
MOL	Ministry of Labour
MOYAS	Ministry of Youth Affairs and Sports
MSP	Protocol against the Smuggling of Migrants by Land, Sea and Air
NCPD	National Council for Population and Development
NEPAD	New Partnership for Africa's Development

NMP	National Migration Policy
NRB	National Registration Bureau
OECD	Organization for Economic Co-operation and Development
OPM	Office of the Prime Minister
PEA	Private Employment Agency
PEACCM	Protocol on the East African Community Common Market
PRSPs	Poverty Reduction Strategy Papers
RCK	Refugee Consortium Kenya
RECs	Regional Economic Commissions
SADC	Southern African Development Community
SAGA	Semi-Autonomous Government Agency
TIC	Tanzania Investment Corporation
TIP	Trafficking In Persons
TRQAN	Temporary Return of Qualified African Nationals
TUCT	Trade Union Congress of Tanzania
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
URT	United Republic of Tanzania
WTO	World Trade Organization
YEDF	Youth Enterprise Development Fund
YESA	Youth Employment Scheme Abroad

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Executive summary

The National Consultative Committee (NCC) of the African, Caribbean and Pacific (ACP) Observatory on Migration (hereafter ACP Observatory) in Kenya has asked the ACP Observatory to commission a study on the functioning and coherence of the Kenyan labour migration policies in the wider region. Given this mandate, the study has drawn on documentary analysis and interviews. The research team undertook key informant interviews (KIIs) using questionnaires/check lists administered to key informants of the Government of Kenya ministries/agencies with labour/labour migration portfolios and private labour recruiting organizations in both Kenya and three of four EAC Partner States who were interviewed given their institutional knowledge of their set ups in relation to, and involvement in, the topic of the study.

The study's objective was twofold: to contribute to the identification of labour market needs that help to prepare evidence-based policy decisions regarding South–South labour mobility in both Kenya and the employment strategies of other countries in the region; and to improve and maximize the role of labour migration in the programmes and policy frameworks relating to South–South mobility through recommendations tailored to the Kenyan context.

The revived East African Community (EAC) Common Market framework dates back to 2010, 10 years after the EAC II¹ entered its current state. The Protocol on the Establishment of the East African Community Common Market (PEACCM) was signed in 2009 and entered into force in the subsequent year upon ratification of the EAC countries (Burundi, Kenya, Rwanda, Tanzania and Uganda). The EAC Common Market is based on the Treaty that established the EAC II, 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 commitments on the progressive liberalization of services are already specified in annexes to the PEACCM (EAC Secretariat, n.d.).

With this Common Market framework, the EAC has reached the second level of regional integration after the Customs Union fully entered into force in 2010. According to the EAC Secretariat (n.d.), the next stages will include the realization of the Monetary Union initiated in 2012 and thereafter the EAC Political Federation.

¹ To avoid confusion, the two editions of the East African Community (EAC) are referred to in this study as EAC I (1967–1977) and EAC II (since 2000). For details, see Oucho (1998, 2006 and 2009).

The main findings and recommendations

Challenges facing the agencies of the Government of Kenya include lack of evidence-backed policy formulation and bureaucratic procedures that hinder the smooth implementation of labour migration-related policies; lack of adequate human resources for some specific vocations; the absence of a cohesive migration policy that could help to resolve outstanding issues; and the marginalization of migration and labour migration among other developmental policy themes by the country's National Council for Population and Development (NCPD).

The results of this study underline its instructiveness for all other African Regional Economic Communities (RECs) and RECs in other world regions.

- The main conclusion drawn from the study is that Kenya's dominance within the EAC's RECs and in the labour supply, given the country's stable economic development modelled along a capitalist ethos, heightened the production of highly skilled human resources as well as the relative peace and tranquillity over its 48 years of independence. The study concludes that Kenya's labour supply dominance is vital to its EAC counterparts but is not without questions about why the dominance should be allowed to

persist in the interest of labour requirements expressed by the respective countries in the context of the PEACCM.

- A notable finding is that all national labour policy frameworks predate the recent free movement initiative enshrined in the PEACCM of 2010. Consequently, the policy frameworks require harmonization so that EAC countries can operate at the same wave length and fully implement the PEACCM. The *five freedoms* of movement and *two rights* to establishment and to residence of the PEACCM touch on the socioeconomic fabric of society and should, by necessity, be incorporated into national development frameworks, such as National Vision 2000s.
- 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 emulate.
- Only Uganda and Rwanda have accessed the UN International Convention on the Protection of All Migrant Workers and Members of Their Families (ICMW) of 1990. While all migrant workers are protected by international human rights norms, it is recommended that the other EAC countries ratify the ICMW to increase the

protection of its emigrant workers and to protect immigrant workers in their countries, including in Kenya.

- Generally, this study has shown that the EAC would benefit immensely from an EAC-wide study on policy frameworks and legislation concerning regional labour migration. In addition, the study acknowledges that Kenya has produced increasing numbers of highly educated and skilled emigrant workers in Southern Africa – notably Botswana, South Africa and Namibia – which future research on South–South labour migration frameworks should explore to provide broader perspectives of Eastern-Southern African migration, as well as inter-dependence.
- To redress the tendency of Kenyans to emigrate without the support of the Government of Kenya, the Ministry of Foreign Affairs, working through its diplomatic missions and home ministries of the destination countries, should institute registration of all emigrant Kenyans, updating the register periodically, wherever the citizens reside. This could inform the development of a comprehensive database from which critical decisions about labour migration could be derived.

The maximization of the developmental potential of the Kenyan diaspora would also be much more likely if the government could develop a comprehensive diaspora engagement policy and the necessary institutional frameworks to facilitate constructive engagement. Such measures ought to take into account the skills background of the Kenyan diaspora in order to verify the areas for possible participation in the various sectors of the national economy. The adverse impact of the emigration of Kenyan health personnel on the management of health services without a policy is an issue that calls for a carefully conceived policy direction.

Tapping into the diaspora's developmental potential also requires an adequate environment (political and economic stability, infrastructure and incentives), that encourages return, investment, innovation and the transfer of skills. Moreover, the Government of Kenya also needs to address the issues of institutional compatibility and policy coherence within and between the various government ministries, department and agencies working on the subject of migration for the purpose effectively managing the various dimensions of migration, including labour migration.

Résumé analytique

Le Comité consultatif national (NCC) au Kenya de l'Observatoire des États d'Afrique, Caraïbes et Pacifique (ACP) sur les migrations (ci-après, l'Observatoire ACP) a demandé à l'Observatoire ACP de commanditer une étude sur le fonctionnement et la cohérence des politiques kényanes en matière de migration de la main d'œuvre dans l'ensemble de la région. Dans le cadre de ce mandat, l'étude s'est appuyée sur une analyse documentaire et sur des entrevues. L'équipe de recherche a réalisé des entrevues avec des informateurs clés au moyen de questionnaires/ listes de contrôle administrés aux informateurs clés des ministères et organismes du gouvernement kényan en charge du travail et de la migration de main d'œuvre, ainsi qu'aux organisations de recrutement privées, tant au Kenya que dans trois des quatre autres États partenaires de la CAE ; en raison de leur connaissance des cadres institutionnels liés à l'objet de l'étude et de leur implication dans ce domaine.

L'objectif poursuivi par l'étude était double : 1) contribuer à l'identification des besoins du marché du travail et ainsi faciliter la prise de décisions stratégiques fondées sur des données probantes en matière de mobilité du travail et de stratégies pour l'emploi Sud-Sud, tant au Kenya que dans d'autres pays de la région ; 2) par le

biais de recommandations adaptées au contexte kényan, améliorer et optimiser le rôle de la migration de main d'œuvre au sein des programmes et cadres stratégiques en matière de mobilité Sud-Sud.

Le lancement du Marché commun de la Communauté d'Afrique de l'Est (CAE) remonte à 2010, dix ans après le rétablissement de la CAE (la CAE II²). Le Protocole relatif à la création du Marché commun de la Communauté d'Afrique de l'Est (CAE) a été signé en 2009 et est entré en vigueur l'année suivante, lors de sa ratification par les États membres de la CAE (Burundi, Kenya, Rwanda, Tanzanie et Ouganda). Le Marché commun de la CAE s'appuie sur le traité ayant institué la CAE II qui, lui-même, repose sur quatre piliers ou « libertés » : la libre circulation des biens, de la main d'œuvre, des services et des capitaux. La libre circulation des personnes, des travailleurs, les droits d'établissement et de résidence et les engagements pris concernant la libéralisation progressive des services figurent déjà aux annexes du Protocole sur le Marché commun de la CAE (Secrétariat CAE).

2 Pour éviter toute confusion, on fera référence aux deux éditions de la Communauté d'Afrique de l'Est (CAE) de la manière suivante : CAE I (1967–1977) et CAE II (depuis 2000). Pour de plus amples détails, veuillez consulter Oucho (1998, 2006, et 2009).

Avec le Marché commun, la CAE a réalisé la deuxième étape de son intégration régionale, après l'entrée en vigueur de l'union douanière, en 2010. Le Secrétariat de la CAE indique que la prochaine étape d'intégration est la réalisation de l'union monétaire initiée en 2012 et, ensuite, la création de la fédération politique de la CAE.

Principales conclusions et recommandations

Voici les défis auxquels sont confrontés les organismes gouvernementaux kényans : manque de politiques et de procédures bureaucratiques fondées sur des données probantes, ce qui a pour conséquence d'entraver la mise en œuvre harmonieuse des politiques en matière de migration de main d'œuvre ; manque de ressources humaines adéquates pour certaines professions spécifiques ; absence d'une politique migratoire cohérente pouvant contribuer à régler les questions en suspens et ; marginalisation, par le National Council for Population and Development (Conseil national pour la Population et le développement, NCPD), des problématiques autour de la migration et de la migration de main d'œuvre par rapport aux autres volets du développement.

Les résultats de cette étude pourront s'avérer utiles pour toutes les autres Communautés économiques régionales (CER) africaines, ainsi que pour les CER dans d'autres régions du monde.

- La principale conclusion tirée de l'étude est la position dominante du Kenya au sein de la Communauté économique régionale (CER) de la CAE, ainsi qu'au niveau de l'offre de main d'œuvre. En effet, le pays connaît un développement économique stable, basé sur une philosophie capitaliste, et une production croissante de ressources humaines hautement qualifiées, dans un contexte de paix et de tranquillité relatives depuis son indépendance, il y a 48 ans. L'étude en conclut que la position dominante du Kenya en matière d'offre de main d'œuvre est vitale pour ses homologues des pays de la CAE. Il convient toutefois de déterminer la raison pour laquelle on permet que cette position dominante persiste dans l'intérêt des besoins en main d'œuvre exprimés par différents pays, dans le contexte du Protocole sur le Marché commun de la CAE.
- Un autre résultat frappant est que tous les cadres nationaux liés à la politique du travail sont antérieurs à l'initiative récente de libre circulation garantie par le Protocole sur le Marché commun de la Communauté d'Afrique de l'Est (PEACCM) de 2010. Il convient donc d'harmoniser ces cadres stratégiques afin que les États membres de la CAE puissent fonctionner sur la même

longueur d'onde et ainsi appliquer pleinement le PEACCM. Les *cinq libertés* de circulation et les *deux droits* d'établissement et de résidence du PEACCM affectent le tissu socioéconomique de la société et devront nécessairement être intégrés aux cadres de développement nationaux, comme national Vision 2000s.

- Le Rwanda dispose de la loi régissant l'emploi des citoyens et des étrangers la plus complète et la plus polyvalente ; les autres États membres de la CAE pourraient s'en inspirer, voire l'adopter.
- Seuls l'Ouganda et le Rwanda ont ratifié la Convention internationale des Nations Unies sur la protection des droits de tous les travailleurs migrants et des membres de leur famille (ICMW) de 1990. Bien que tous les travailleurs migrants soient protégés par les normes internationales en matière de droits de l'homme, il est souhaitable que les autres États membres de la CAE ratifient eux aussi la convention ICMW pour assurer une meilleure protection de leurs travailleurs émigrés et des travailleurs immigrés dans leur pays, y compris au Kenya.
- De manière générale, l'étude a révélé que la CAE profiterait

énormément d'une étude menée dans tous ses États membres sur les cadres stratégiques et législatifs en matière de migration régionale de la main d'œuvre. En outre, l'étude souligne que le Kenya a généré un nombre croissant de travailleurs émigrés très instruits et hautement qualifiés en Afrique australe, notamment au Botswana, en Afrique du Sud et en Namibie. Les futurs travaux de recherche portant sur les cadres de migration de la main d'œuvre Sud-Sud pourraient exploiter ces données pour offrir une perspective plus large de la migration de l'Est vers le Sud de l'Afrique, ainsi que de l'interdépendance.

- Pour infléchir la tendance à émigrer des Kényans à l'insu du gouvernement, le Ministère des Affaires étrangères, par le biais de ses missions diplomatiques et ministères locaux dans les pays de destination, devrait rendre obligatoire l'enregistrement de tous les émigrés kényans. Ces registres seraient mis à jour régulièrement, en fonction du lieu de résidence des citoyens. On contribuerait ainsi à l'élaboration d'une base de données exhaustive permettant de prendre des décisions critiques en matière de migration de main d'œuvre.

L'optimisation des potentiels de développement de la diaspora kényane a plus de chances d'aboutir si le gouvernement était en mesure d'élaborer une politique globale relative à l'engagement des diasporas et les cadres institutionnels nécessaires pour faciliter un engagement constructif. De telles mesures devront prendre en compte les compétences et l'expérience de la diaspora kényane, afin de déterminer les éventuels domaines de participation aux différents secteurs de l'économie nationale. L'impact négatif de l'émigration du personnel de santé kényan sur la gestion des services de santé, sans toutefois disposer d'une politique, est un problème pour lequel il convient de prendre des mesures mûrement réfléchies.

L'utilisation des potentiels de développement des diasporas exige également un environnement adéquat (stabilité, infrastructure et incitations politiques et économiques) qui encourage le retour, les investissements, l'innovation et la transmission des compétences. En outre, le Gouvernement kényan doit également régler les problèmes de compatibilité institutionnelle et de cohérence politique au sein de et entre les différents ministères, départements et organismes gouvernementaux travaillant sur la migration, afin d'arriver à une gestion efficace des différentes dimensions de la migration, y compris de la migration de la main d'œuvre.

Resumo executivo

O Conselho nacional consultivo (National Consultative Committee, NCC) do Observatório da África, das Caraíbas e do Pacífico (ACP) das Migrações (doravante denominado Observatório ACP) no Quênia solicitou que o Observatório ACP organizasse um estudo relativo ao funcionamento e à coerência das políticas de migração laboral do Quênia em termos de região alargada. No âmbito desta solicitação, o estudo baseou-se em análises documentais e entrevistas. A equipa de investigação realizou entrevistas com informantes-chave (key informant interviews, KIIs) utilizando questionários/listas de verificação administrados a informantes de ministérios/agências do Governo do Quênia com portfolios laborais/de migração laboral e organizações de recrutamento laboral privadas no Quênia e em três dos quatro Estados Parceiros da Comunidade da África Oriental (CAO) que foram entrevistados tendo em conta os respectivos conhecimentos institucionais relativamente ao cenário em que se inserem e ao envolvimento no tema de estudo.

O objectivo do estudo foi dividido em dois: contribuir para a identificação das necessidades do mercado de trabalho que ajudam a preparar decisões políticas baseadas em provas relativamente à mobilidade laboral Sul-Sul no Quênia e estratégias de

emprego de outros países da região; e melhorar e maximizar o papel da migração laboral nos programas e estruturas de políticas relativamente à mobilidade Sul-Sul através de recomendações à medida do contexto Queniano.

A estrutura do Mercado Comum da Comunidade da África Oriental (CAO) revista data de 2010, 10 anos depois de a CAO II³ assumir o estado actual. O Protocolo de Estabelecimento do Mercado Comum da Comunidade da África Oriental (PEACCM em inglês) foi assinado em 2009 e entrou em vigor no ano seguinte mediante ratificação por parte dos países que compõem a CAO (Burundi, Quênia, Ruanda, Tanzânia e Uganda). O Mercado Comum da CAO baseia-se no Tratado que estabeleceu a CAO II, assente em quatro pilares ou “liberdades”: o livre movimento de mercadorias, trabalho, serviços e capital. O livre movimento de pessoas, trabalhadores, o direito de estabelecimento, o direito de residência e os compromissos para com a liberalização progressiva dos serviços já são especificados nos anexos do PEACCM (Secretariado da CAO, n.d.).

3 Para evitar confusão, as duas edições da Comunidade da África Oriental (EAC) são mencionadas neste estudo como CAO I (1967–1977) e CAO II (a partir de 2000). Para obter detalhes, consultar Oucho (1998, 2006 e 2009).

Com esta estrutura de Mercado Comum, a CAO alcançou o segundo nível de integração regional após a União Aduaneira ter entrado totalmente em vigor em 2010. De acordo com o Secretariado da CAO (n.d.), as fases seguintes incluirão a realização da União Monetária iniciada em 2012 e posteriormente a Federação Política da CAO.

Principais conclusões e recomendações

Os desafios enfrentados pelas agências do Governo do Quênia incluem a falta de formulação de políticas e procedimentos burocráticos apoiados por provas que ameaça a implementação prática das políticas relacionadas com a migração laboral; a falta de recursos humanos adequados para algumas vocações específicas; ausência de uma política de migração coesa capaz de ajudar a resolver questões pendentes; e marginalização da migração e da migração laboral entre outros temas de políticas de desenvolvimento pelo Conselho Nacional para a População e o Desenvolvimento (NCPD em inglês) do país.

Os resultados deste estudo realçam o seu carácter instrutivo para todas as outras Comunidades Económicas Regionais Africanas (RECs em inglês) e Comunidades Económicas Regionais noutras regiões do mundo.

▪ A principal conclusão obtida do estudo é a de que o domínio do Quênia na Comunidade Económica Regional da CAO e no fornecimento laboral, tendo em conta o desenvolvimento económico estável do país moldado com base num carácter capitalista, destacou a produção de recursos humanos altamente qualificados para além da relativa paz e tranquilidade ao longo dos seus 48 anos de independência. O estudo concluiu que o domínio do fornecimento laboral do Quênia é vital para os congéneres da CAO, no entanto existam questões sobre o motivo pelo qual deve permitir-se que o domínio persista no interesse dos requisitos laborais expressos pelos respectivos países no contexto do PEACCM.

▪ Uma conclusão notável é que todas as estruturas de políticas laborais nacionais são anteriores à recente iniciativa de livre movimento destacada no Protocolo de Estabelecimento do Mercado Comum da Comunidade da África Oriental (PEACCM) de 2010. Consequentemente, as estruturas de políticas requerem harmonização para os países da CAO operarem no mesmo comprimento de onda e implementarem o PEACCM na totalidade. *As cinco liberdades* de movimento e *os dois direitos*

de estabelecimento e residência do PEACCM tocam no tecido socioeconómico da sociedade e devem, caso seja necessário, ser incorporados nas estruturas de desenvolvimento nacionais, tais como a *National Vision 2000s*.

- O Ruanda tem a lei mais abrangente e versátil relativamente ao trabalho dos cidadãos nacionais e estrangeiros no país, sendo que os outros Estados Parceiros da CAO devem tentar adoptá-la ou reproduzi-la.
- Apenas o Uganda e o Ruanda acederam à Convenção Internacional sobre a Protecção dos Direitos de Todos os Trabalhadores Migrantes e dos Membros das suas Famílias (*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, ICMW em inglês) de 1990. Apesar de todos os trabalhadores migrantes estarem protegidos por normas de direitos humanos internacionais, recomenda-se que os outros países da CAO ratifiquem a ICMW para reforçar a protecção dos trabalhadores emigrantes e proteger os trabalhadores imigrantes nos respectivos países, incluindo no Quénia.
- De um modo geral, este estudo demonstrou que a CAO beneficiaria em grande medida de um estudo à

escala da CAO sobre as estruturas de políticas e a legislação relativa à migração laboral regional. Para além disso, o estudo reconhece que o Quénia produziu números cada vez mais elevados de trabalhadores emigrantes altamente qualificados e formados na região Sul de África, nomeadamente no Botsuana, África do Sul e Namíbia, sendo que a futura investigação sobre as estruturas de migração laboral Sul-Sul deve explorar este facto para oferecer perspectivas mais amplas da migração Africana Oriente-Sul, bem como interdependência.

- Para abordar a tendência de emigração dos Quenianos sem o apoio do Governo do Quénia, o Ministério dos Negócios Estrangeiros, a trabalhar através de missões diplomáticas e com os ministérios nacionais dos países de destino, deve instituir o registo de todos os emigrantes Quenianos, actualizando periodicamente o registo onde quer que os cidadãos residam. Esta acção poderia servir como base de informação para o desenvolvimento de uma base de dados abrangente a partir da qual poderiam derivar decisões críticas sobre a migração laboral.

A maximização do potencial de desenvolvimento da diáspora Queniana é também muito mais provável se o governo for capaz de

desenvolver uma política abrangente de envolvimento da diáspora e as estruturas institucionais necessárias para facilitar o envolvimento construtivo. Tais medidas devem ter em conta o histórico de competências da diáspora Queniana para verificar as áreas para a possível participação nos vários sectores da economia nacional. O impacto adverso da emigração de técnicos de saúde Quenianos sobre a administração dos serviços de saúde sem qualquer política é uma questão que exige uma orientação política cuidadosamente concebida.

Abordar o potencial de desenvolvimento das diásporas também exige um ambiente adequado (estabilidade política e económica, infra-estrutura e incentivos), que promova o retorno, investimento,

inovação e transferência de competências. Para além disso, o Governo do Quénia também necessita de abordar as questões da compatibilidade institucional e da coerência de políticas nos e entre os vários ministérios governamentais, departamentos e agências que se dedicam ao tema da migração para a gestão eficaz das diferentes dimensões da migração, incluindo a migração laboral.

I. Background and context of the study

I.1 Introduction

This study was commissioned by the African, Caribbean and Pacific (ACP) Migration Observatory for an 'Assessment of the Kenyan Policy Framework concerning South–South Labour Migration'. Its primary purpose is to provide reliable evidence on the dynamics and frameworks governing South–South⁴ labour migration in Kenya. The findings are intended to aid Kenya and other ACP countries in the region in integrating human mobility into national and regional development plans and poverty-reduction strategies. In view of Kenya's regional significance, the study, which was initially to concentrate only on Kenya, subsequently took on the East African Community (EAC) Partner States with the exception of Burundi.⁵

The term labour migration is referred to in this study as: *'the movement of persons from their home State to another State for the purpose of employment. Labour migration is addressed by most States in their migration laws. In addition, some States take an active role in regulating outward labour migration and seeking opportunities for their nationals abroad.'* (IOM, 2011 as recommended in ACP Observatory, 2011).

Regional integration has been increasing in recent years in East African Community (EAC) countries. Refounded from the first version established between 1967 and 1977 by the Treaty on the Establishment of the EAC II⁶, 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

4 Definition of South in this study: UNDP proposed the very high human development index (HDI) in 2009 to distinguish between developing and developed countries. In the 2010 report, the upper 42 countries are classified as having reached a very high HDI and are thus considered 'developed countries'. The remaining countries on the UNDP list are considered to belong to the South and the movements of population between these countries are known as South–South migration. (ACP Observatory Research Guide, 2011, adapted from Bakewell, O., 2009, South–South Migration and Human Development, reflections on African Experiences. Human Development Report Research Paper, 2009/07, http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_07.pdf).

5 Logistical shortcomings and time constraints inevitably rendered coverage

of Burundi impractical, hence its omission from the study. This does not affect the EAC perspective because Burundi has only recently shown interest in recruiting skilled Kenyan labour because of language limitations (Burundi is French speaking) constraining progress in this initiative.

6 To avoid confusion, the two editions of the East African Community (EAC) are referred to in this study as EAC I (1967–1977) and EAC II (since 2001). For details, see Ouchou (1998, 2006, and 2009).

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 liberalization 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.

Previous studies on Kenya have underlined the country's role in facilitating migration for employment from three main perspectives. Firstly, 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). Secondly, the country has become an important destination country, especially for immigrant labour from the ACP as well as other developing and even developed countries (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.⁷ These patterns of international migration generate diverse configurations of labour migration that call for different policy frameworks.

7 Ethiopians apprehended in Kenya, Tanzania and Malawi while being trafficked /smuggled often mention Portugal and Spain as their ultimate destinations via Brazil and other Latin American countries. (Irin Johannesburg, 2012; The Standard, 2012b).

1.2 Objectives of the Study

The objective of the study was twofold: to contribute to the identification of labour market needs to prepare evidence-based policy decisions regarding South–South labour mobility in both Kenya’s employment policy and those at the regional level and by other EAC countries; and to improve and maximize the role of labour migration in the programmatic and policy framework on South–South mobility in Kenya through policy recommendations tailored to the Kenyan context.

Specifically, the study aimed to undertake:

- An interrogation of the national policy framework on South–South labour migration.
- A proper capacity-needs assessment of the existing policy framework governing labour mobility between Kenya and other ACP countries, in particular within the EAC region.
- An assessment of the flow of ACP countries’ workers from and into Kenya, taking into consideration their potential in the national and regional development initiatives.

This study provides the basis for, and enhances, the capacity building of policymakers, civil society actors and research groups and individuals in

Kenya vis-à-vis other ACP countries through (a) improving knowledge of labour migration to and from other countries in the South, including the migrants’ situations and (b) strengthening the migration-development nexus in Kenya’s policymaking.

It is against these objectives that the study took on the EAC to provide perspectives on the South–South labour migration of countries that, by signing the PEACCM in November 2009, which came into force in 2010, are committed to systematizing labour migration for the benefit of individual Partner States and the EAC region as a whole.

Currently, labour emigration and immigration constitute the two sides of the international migration that is of special interest to the Government of Kenya. At the same time, international migration entails considerable potential for regional cooperation in the East African Community, given its adoption of the PEACCM, in which free movement of persons as well as the factors of production are pertinent.

Given the importance of regional labour migration and its opportunities in Kenya, this ‘needs assessment’ of South–South mobility examines how the capacities of the different national actors need to be enhanced to ensure an effective implementation of existing

processes through a comprehensive approach, taking into consideration a South–South perspective. Challenges such as financial constraints and limited human resource capacities can impede the development and implementation of comprehensive labour migration strategies and plans (Achacoso, 2004; 2010). Moreover, while intraregional labour mobility is an important phenomenon, a concrete strategy has not been developed so far. For Kenya, this policy assessment aims to yield information that could help to improve the existing structure and the implementation of the new Dual Citizenship provision allowed by the Kenya Constitution which was promulgated in August 2010. The Dual Citizenship Act, which has now been passed, as well as the Diaspora Policy in progress, will provide new opportunities for Kenyan labour residents in other parts of the world, including the South.

1.3 Methodology

This study employed several approaches to collect data. The approaches employed are consistent with the kind of study undertaken and stand the test of criticism among labour migration stakeholders.

The methods of data collection used were a literature review to contextualize the study in the South–South labour migration system of Kenya, desk research on published materials, websites, literature and

other information that enriched the study, and key informant interviews (KIIs).

Using a questionnaire/check list, key informants from certain Government of Kenya ministries/agencies and private labour recruiting organizations in the four EAC Partner States were interviewed based on their institutional knowledge of their set ups in relation to, and involvement in, the study topic.

- Government of Kenya interviewees:

It was noted that several Kenyan ministries/departments/agencies are concerned with South–South migration. In terms of generic functions, they include the Ministries of Labour, Immigration and Registration of Persons, Foreign Affairs (Diaspora Division); the Office of the Prime Minister (OPM); the Youth Enterprise Development Fund (YEDF); the Ministry of Planning and National Development and Vision 2030; and the Ministry of the East African Community.⁸ Key persons from these sectors were interviewed, some alone, others with colleagues.

⁸ These ministries reflect the nature of the coalition government formed in Kenya after the 2007 post-election violence (PEV). After the general election in March 2013, the ministries are likely to change in accordance with the Kenyan Constitution adopted in 2010, stipulating that the number of ministries will be decreased by nearly half.

- Interviews with Government Officials of EAC Partner States:

Interviews were held with Government officials from three EAC Partner States: Rwanda, Uganda and Tanzania. The primary purpose of these interviews was to investigate the respective countries' national labour migration frameworks that guide immigration from Kenya, and how the similar frameworks in EAC states in turn guide their nationals to emigrate to Kenya. This was imperative given that all national labour and employment acts predate the PEACCM, in particular the annex on the Free Movement of Labour (FMOL).

- Private Organizations in the EAC Partner States:

The private organizations interviewed were mainly affiliates of the Kenya Association of Private Employment Agencies (KAPEA). These included Inve-Track, Interlead, Elvale, Madina, Alsair, My job's eye.com – Local Only, Placement Africa and Price Waterhouse Coopers. The KAPEA secretariat was uncomfortable with interviews, but directed the research team to their affiliates who were extremely helpful.

Apart from consultations with KAPEA and its affiliates, consultations were made with private organizations in each of the three EAC Partner States.

In the latter, it was much easier to interview selected private labour recruiting organizations without recourse to the national body to which they are affiliated.

The method of analysis was based on a content analysis of interviews and available documents: notably relevant policy documents, publications, reports and national development strategies, including Vision 2030, Poverty Reduction Strategy Papers (PRSPs), National Action Plans (NAPs), Millennium Development Goals (MDGs) and national employment/labour acts or policies, as well as international instruments, bilateral agreements and protocols on labour migration that the country has signed and/or ratified.

I.4 Literature Review

Studies on labour migration in Kenya or involving Kenyan emigrant labour have been rather general. They have not relied on hard data, resulting in the recording of anecdotal evidence.

1.4.1 Immigration

Kenya is an important destination country for migrants coming from Central and Eastern Africa as well as other continents. The Development Research Centre on Migration, Globalisation and Poverty's database (Migration DRC, 2007,

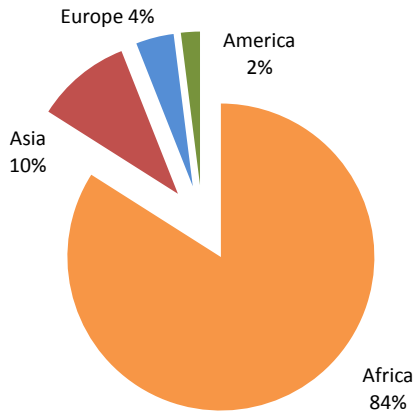
based on census data for the period 2000-2002) reports immigration from several African countries. The overall majority of the migrants (or 79% of the total), come from sub-Saharan Africa countries, with the top twelve countries of origin being Nigeria (7.9%), the Republic of the Congo (7.61%), Eritrea (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.

Figure 1 shows the composition of the immigrant population in Kenya as of the 2009 Population and Housing Census. Of the total number of immigrants (357,468), the vast majority were from Africa (84%), followed by Asia (10%), Europe (4%) and America (2%); with Australia and Caribbean with less than 1 per cent (Kenya, 2012: 24). This highlights the importance of South–South migration for Kenya as a destination country.

Eastern African immigrants accounted for 60.5 per cent of all African immigrants. This proportion includes migrants from Sudan, Ethiopia, Eritrea and Somalia. Immigrants from the four EAC Partner States comprised 31.9 per cent of the total immigrants from Africa, which is attributable to the EAC revival in 2009, which has

increased cross-border movements, trade and even marriage (Kenya, 2012: 24).

Figure 1: Immigrants by world regions of origin, 2009



Source: Migration Monograph, 2009 Kenya Population and Housing Census, figure 4.1, page 24.

On immigration, a senior official of the EAC, who spearheads migration matters, contends that Chinese immigration, for instance, will not affect the region adversely (Makoffu, 2010). Unfortunately, this stance might be at variance with reality given that it is not informed by research, not least even a cursory investigation of Chinese immigration in respective EAC Partner States.⁹ This

⁹ In Nairobi, Kenyan street vendors have mounted several demonstrations against Chinese street vendors, accusing them of interfering in work that should be carried out by Kenyan citizens. The demonstrators refer to it as a Chinese “invasion” of their commercial territory, highlighting increased xenophobia and fear of immigrants from other countries in the South.

study has not investigated this issue despite the media focus on perceived large-scale Chinese immigration into Kenya over the last few years, presumably associated with the Chinese involvement in infrastructural projects (Brautigam, 2009:280). This matter falls squarely within the mandate of the recently established Kenya Citizens and Foreign Nationals Management Service, which could explore it in the near future.

The country has also been hosting large numbers of refugees from neighbouring countries in a region that has witnessed a disproportionate share of instability in sub-Saharan Africa. According to the UNHCR report, by the end of 2011, Kenya was hosting around 566,500 refugees and about 35,271 asylum-seekers (UNHCR, 2011). The refugees are mainly from Ethiopia, Somalia and Southern Sudan, whereas the asylum-seekers are mainly from eastern areas of the Democratic Republic of the Congo (DRC). In 2010, about 403,000 refugees were residing in Kenyan territory, representing 49.3 per cent of international immigration stock and 3.8 per cent of the total of world refugees (UNHCR, 2010) This well-documented situation was not affected by the political and economic instability Kenya has witnessed in recent years (IOM, 2010; UNHCR, 2010).

UNHCR's Statistical Snapshot, on 12 October 2012, indicated that Kenya was hosting 566,487 refugees, 35,271 asylum-seekers and 20,000 stateless persons. This implies that the refugee population in the country has increased by more than 200,000 people, linked to the continuing drought in the Horn of Africa. Therefore Kenya is not just hosting purely economic migrants, but also those displaced by violence and lack of livelihood. The topic of labour migration for refugees is only beginning to surface as a topic at international level.¹⁰

1.4.2 Emigration

The Development Research Centre on Migration, Globalisation and Poverty's database (Migration DRC hereafter) (2007) estimated that in 2005 the United Kingdom, with about 14.5 per cent of Kenyan emigrants, was the main destination country, followed closely by intraregional mobility to Tanzania (13.5%), transatlantic migration to the United States of America (4.98%), neighbouring Uganda (3.67%) and Canada (2.2%). In 2010, one of the top 10 migration corridors was between Uganda and Kenya (World Bank, 2011: 45). Kenyan emigration to Tanzania and Uganda

¹⁰ See, for instance, the Global Forum on Migration and Development 2012 in Mauritius, Common Space.

implies the importance of the two countries in regional (EAC) migration. As most mobility is motivated by the search for employment, this intraregional dimension deserves more attention, contrasting with the predominant South–North focus in general migration studies (ACP Observatory on Migration, 2010).

The same source indicates that over the period 2000–2002, 41.5 per cent of Kenyan migrants were residing in Africa, 37.9 per cent in Europe, 14.4 per cent in North America, 4.2 per cent in Asia, and 0.2 per cent in Latin America and the Caribbean. From these data, it can be inferred that more than half of Kenyan emigrants live in Europe and North America, followed by South–South migration within Africa and to other developing countries. The Population Division of the United Nations Department of Economic and Social Affairs (UNDESA) estimated the stock of international migrants residing in Kenya in 2010 to be 817,747 persons, or 2 per cent of the total population (UNDESA, 2011). A striking fact is the difference between the UNDESA estimates and that of the Migration DRC which, in 2005, gave the total number of non-Kenyan residents as 327,444; the ACP Observatory on Migration (2010) attributes the substantial difference to differences with respect to the definitions of immigration and the methodologies (relying on country of

birth or citizenship) used by the two institutions. This aspect highlights the need for better data, in particular on labour migrants, which is rare, that requires joint investigation and action by the immigration and labour authorities in Kenya.

Women accounted for 415,688 migrants or 50.8 per cent of international migrant stock, a slightly higher than world average (49%) that required closer attention, for instance through a qualitative study to better understand the phenomenon (UNDESA, 2011). Macharia’s (2003) study outlined the historical migration patterns of women from rural to urban areas stating that during the colonial era, women were “‘pushed out” of their rural settings by a number of non-economic factors’ (Macharia, 2003: 8) which included marital unhappiness. Others migrated for the purposes of trading, without securing employment in urban areas. However, the migration policies of the colonial government at the time repatriated women to rural areas in order to discourage them from migrating and settling in urban areas (Macharia, 2003: 9). Macharia’s study revealed the difficulties that women faced in terms of migrating and settling in urban areas for both economic and non-economic reasons during colonialism. After the post-colonial era, migration blocks were dismantled and there was more

freedom of movement, thereby changing the migration patterns of both women and men. However, some cultural barriers still existed for women preventing some of them from migrating including the expectation to care for the household and its members (e.g. parents, children). Nonetheless, women have migrated to urban areas for employment and access to better facilities, such as water. Another relevant study is by Francis (1995) who gives a case study from western Kenya to explain the links between labour migration, rural economic decline and changes in relationship within households. It gives a good insight into the role of women when their husbands migrate to urban areas. It is noticeable that recent research on the migration patterns of female labour migrants is difficult to trace. This study aims to draw attention to the migration of female labour migrants linking them to the established the Government of Kenya's emigration and immigration policies.

However, there is limited data on the skill and occupational profiles of the majority of Kenyan migrants, it is largely comprised of persons with professional, technical and business skills including doctors, nurses, engineers, accountants, researchers, teachers, managers and business people (Ghai, 2004). About 198,100 Kenyans live in OECD countries,

mainly academics (36.9%), 32.7 per cent of those with secondary education and 26 per cent of those with primary education qualifications (OECD, 2009).

In 2010, Kenya was among the top 10 remittance recipients with (USD 1.8 billion), representing 5.4 per cent of GDP (World Bank, 2011: 34). The Central Bank of Kenya (2012) indicates that annual total remittances to the country more than doubled from USD 408 million in 2006 to USD 895.8 million in 2011.¹¹ Large volumes of internal remittances, in particular urban rural remittances, have been a common feature for Kenya, much of it sent through the mobile phone money transfer system.

The main drivers of emigration from Kenya in recent years include, but are not limited to, high rural unemployment, intercommunity inequality, environmental factors such as droughts and rainfall unpredictability, high population growth and political instability. Although it is acknowledged that many Kenyans have emigrated abroad, it is hard to find accurate quantitative data on the numbers and trends of Kenyan diasporas (Okoth, 2003 and Ghai, 2004, quoted in ACP, 2010).

¹¹ However, some of the increase can be accounted for due to better measurements, not actual increases.

The changing political environment and economic fortunes have triggered emigration from Kenya. In the decade 1980–1990, political repression and economic instability led to massive emigration of highly educated and highly skilled Kenyans (Migration Policy Institute, 2003). From a political and economic perspective some of these conditions changed after the introduction of multiparty politics in Kenya, as well as the improved economic growth since 2003 when the independence party (KANU) was voted out of power.

Several studies have covered topics related to labour migration in Kenya and East Africa at the onset of the third millennium, giving special attention to highly-skilled workers as a major concern for policymakers, researchers and civil society in Kenya (Munyae, n.d.; Macharia, 2003; Shitundu, 2006; Makoffu, 2010; Achacoso, 2010). However, the majority of migrant workers tend to be lower skilled and they also need adequate attention.

1.4.3 The political framework

Against these changes, the last decade has witnessed Kenya's recovery, in which the Kenyan emigrants and diaspora have made an increasingly significant financial contribution to the national economy, inducing the Government of Kenya to reorient its development policy to include the

positive dimensions of migration, including formulating a diaspora policy and dual citizenship as enshrined in the Immigration and Citizenship Act 2011. Diaspora remittances have had leverage on homeland investments, including boosting the growth of the real estate sector, transportation and ICT, for instance.

Thus, the prevailing political environment has been conducive to the engagement of Kenyan emigrants in activities emanating from the national development plans and policy frameworks, including the Kenyan Constitution, which was promulgated in August 2010. In addition, the improving political environment has encouraged the return of emigrants and the retention of skilled immigrants (IOM, 2004). The Government of Kenya has made policy initiatives to enhance the Kenyan diasporas' contribution to national development, mainly in Europe and North America. The initiative would similarly need to be applied to Kenyan emigrants in the EAC and southern Africa.

A recent analysis of international migration relating to Kenya provides extremely useful insights into the country's labour migration policies. Achoch (2007) draws attention to the Government of Kenya's policies regarding the free movement of people for employment, a dramatic shift from the previous restrictive policies. Kenya's current National

Development Plan promotes an ambitious employment programme that involves the free movement of capital and labour (considered as factors of production), and that permits the export of skilled labour migrants to other countries in the region. Strategies to realize this include strengthening the capabilities of the ministry responsible for labour and human resources.

The Kenya Vision 2030 aims to develop a diaspora and labour export policy (Kenya Vision 2030). Recent developments demonstrate the seriousness of the Government of Kenya to transform the migration situation for the better. The Ministry of State for Immigration and Registration of Persons (MIRP) has rolled out a Strategic Plan for the period 2008–2012, identifying migration as major policy for developing strategic objectives, programmes and projects to address migration issues. Such measures include the reorganization of the Ministry by establishing departments with crucial portfolios: the Immigration Department, the National Registration Bureau (NRB), the Civil Registration Department (CRD), the Department of Refugee Affairs (DRA) and the Integrated Population Registration Database System (IPRS). In addition, the Ministry of Foreign Affairs has established a strong Diaspora Division which, working with the Ministry of Labour, oversees emigrant Kenyan labour

and diaspora matters in general. The Ministry of Labour has the Department of Human Resource Management and Employment (DHRME) which houses the National Employment Bureau. Recently, there has been an aggressive development of migration and regional development policies through the International Job Office of the Ministry of Foreign Affairs, mainly to take advantage of globalization and international legal migration aimed at facilitating the employment of Kenyans abroad. In the Ministry of Youth and Sports, the Youth Enterprise Development Fund (YEDF), among other things, facilitates emigrant youth employment.

Efforts to mainstream migration policy in Kenya's development programme include transnational migration-related policy initiatives inherent in the Dual Citizenship Act 2011; the draft diaspora policy and bilateral agreements with the Southern African countries (Botswana, South Africa and Namibia) where huge numbers of Kenyan workers reside, as well as the Seychelles and the new African state of South Sudan. In the EAC, Kenya, alongside other Partner States, has acceded to the PEACCM which, among other things, provides for uninhibited labour migration. The wave of engaging the diaspora in Kenya's development and in investment opportunities led to a Diaspora Homecoming workshop in Nairobi on 13-14 December 2011.

Among the main drivers of internal and cross-border migration in the country is high youth unemployment in rural areas, as well as social and economic inequalities. Several positive developments have taken place in terms of policy and programmatic initiatives to promote youth employment in Kenya in recent years. The Ministry of Youth Affairs and Sports (MOYAS) is aiming at organized recruitment procedures of young people for employment abroad; the Youth Enterprise Development Fund (YEDF) facilitated entrepreneurship among the youth; and the Youth Employment Scheme Abroad (YESA) has become a vibrant programme in the country. The study has investigated how these initiatives are working in the country in relation to countries in the South, as will be discussed in the next section.

The country is an innovative example of how to link counter-trafficking and labour migration issues by addressing the issue of trafficking by fostering legal opportunities to work abroad. A notable development has been the Kenya Association of Private Employment Agencies (KAPEA), which has developed a Code of Conduct and a Constitution that the affiliate Private Employment Agencies (PEAs) adopted on 20 December 2006 to guide the process. This is the first initiative of its kind in the region. This study on the South–South

labour migration framework in Kenya explores the extent to which some of these initiatives are being embraced in Kenya and in its labour exchanges with other EAC countries.

With regard to international frameworks on labour migration in Kenya, the country has signed virtually all ILO Conventions on migrant labour, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (HTP) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (MSP) both of 2000. Unfortunately, it has not signed the UN International Convention on the Protection of All Migrant Workers and Members of Their Families (ICMW) of 1990 which is more binding with regards to protecting both emigrant and immigrant workers. That places Kenya's emigrant workers and foreigners working in the country in a difficult situation, as often protection is not extended to migrants despite international legal obligations.

As a keen member of the New Partnership for Africa's Development (NEPAD), the regional chapter of which it is hosting, Kenya is working towards developing Africa's human resources by reversing the 'brain drain'; building and retaining the region's human capacities; and developing strategies for properly utilizing African skills in the diaspora

for the development of the region. The country is also a party to the Inter-governmental Authority on Development, Regional Consultative Process on Migration (IGAD-RCP), which was established in 2008.

Based on several new initiatives underway and newly established in Kenya's labour migration framework, as well as the new Dual Citizenship entitlement granted by the 2010 Constitution, this study reviews the extent of the enhancement of labour

laws in Kenya pertaining to the rules, regulations and administration of labour migration with a South-South perspective; and the established government procedures for the review of foreign employment contracts, minimum overseas work standards, due registration of private recruitment agencies and recruitment procedures.

2. The Kenyan labour migration policy framework

With a view to studying the existing labour migration framework in Kenya, interviews were held with two categories of informants: Government of Kenya ministries/departments/agencies and the Kenya Association of Private Employment Agencies (KAPEA) which coordinates the work of a number of labour recruiting affiliates. This section of the report highlights the work of the two categories of institutions in Kenya and the implications that the findings have for the improvement of this labour mobility framework.

2.1 Government of Kenya agencies working on migration

Key informant interviews (KIIs) were held with eight agencies of the Government of Kenya involved in labour migration programmes: the National Employment Bureau in the

Ministry of Labour; the Ministry of East African Community; the Ministry of Foreign Affairs; the Ministry of Finance; the Ministry of Planning and National Development and Vision 2030; the Ministry of Immigration and Registration of Persons; the Ministry of Youth Affairs and Sports (MOYAS); and the Office of the Prime Minister (OPM). During the research, it emerged that three ministries – Labour, East African Community, Foreign Affairs and Immigration and Registration of Persons – played major roles in matters of labour emigration and immigration. Table 1 highlights their mandates, which cover the respective portfolios of each and are described in more detail in the following subsections.

Table 1: Ministries and their mandates in labour migration management in Kenya

Ministry	Mandate
Immigration and registration of persons	<ul style="list-style-type: none"> - To control and regulate entry and exit of all persons at airports, seaports and land border posts; - To control and regulate residency through issuance and renewal of entry/work permits and other passes as provided for by the Immigration Act Issuance of Kenya passports and other travel documents including United Nations Convention Travel Document (UNCTD) in conjunction with UNHCR; - To consider and grant Kenya citizenship to qualified foreigners under the Kenya Constitution and the Citizenship Act. Issuance of entry visas provided for under the Kenya visa regulations; - To register all non-citizens resident in Kenya under the Aliens Restriction Act and others; - Declaration and removal of prohibited immigrants; - To offer quasi-consular functions on behalf of a number of Commonwealth countries who are not represented in Kenya and who have requested the Kenya government to do so; - To provide consular services to Kenya nationals and foreigners at the missions abroad; - To investigate and prosecute persons who contravene the Immigration laws and regulations; - To enforce the Citizenship and Immigration Act 2011, and the visa regulations.
Labour	<ul style="list-style-type: none"> - To register, indemnify and inspect employment agencies, ascertaining the integrity of their services as they encourage Kenyans to apply for jobs outside Kenya; - To carry out attestation of employment agencies and follow up on performance.

East African Community	<ul style="list-style-type: none"> - To facilitate, coordinate and oversee the development, monitoring and evaluation of the implementation of the EAC policies, projects and programmes for effective integration; - To promote partnerships, liaison and maintain linkages with all stakeholders on the EAC matters for maximized benefits.
Foreign affairs (diaspora division)	<ul style="list-style-type: none"> - To encourage engagement with the diaspora for the purpose of mainstreaming them into national development.
National Council for Population and Development (NCPD)*	<ul style="list-style-type: none"> - To provide leadership in formulating, coordinating and implementing appropriate population policies and programmes for sustainable development; - To provide enhanced capacity in population policy management for the improvement of the quality of life of Kenyans.

* Note: The National Council for Population and Development (NCPD) is a Semi-Autonomous Government Agency (SAGA) under the Ministry of Planning and National Development and Vision 2030.

2.1.1 Ministry of Immigration and Registration of Persons

In the Ministry of Immigration and Registration of Persons (MIRP), the work of the Immigration Department is guided by a number of frameworks, namely the Immigration Act, Cap 172, Laws of Kenya; the Citizenship Act, Cap 170, Laws of Kenya; the Aliens Restriction Act, Cap 173, Laws of Kenya; the Constitution of Kenya, 2010; and the Citizenship Act 2011, Laws of Kenya.

A critique of the functions of the department pointed out that the current variants of immigration legislation are insufficient to achieve the purpose for which they were

enacted. In the critic's view, they require a review to reform them to accommodate political, social and economic change in Kenya and in accordance with the rise of the BRICS countries (Brazil, Russia, India, China and South Africa; Open, 2003). The existing labour policy frameworks are bound to change in view of the Kenya Constitution 2010 that is already engendering reforms.

Some of the challenges facing the Kenyan immigration system are:

- The system experiences pressure on scarce resources that constrain its work and the complex demands of a wide range of matters relating to immigration. For example, the

Department of Immigration is under-staffed, poorly resourced and its personnel seldom has on-the-job training for capacity enhancement.

- Production of counterfeit and forged passports and visas is so rampant that the Department of Immigration cannot respond appropriately to contain the crime. Consultation by the research team with Government officials revealed that it is a great challenge to eliminate the practice of counterfeiting documents because of corruption, linking officials with those involved in the fraudulent acquisition of these documents.
- There are restrictions for Kenyan passports holders wishing to visit Europe or the USA following some previous cases of people erroneously claiming to be Kenyan citizens.
- The proliferation of small arms following the collapse of the Somali state (since 1991) and previous wars in the Great Lakes region has precipitated the criminal use of arms among the civilian population, causing internally displaced persons (IDPs) and sustaining refugee inflows into Kenya.

- Kenya's proximity to the conflict in Somalia, South Sudan and even in the DRC has generated sustained refugee inflows into Kenya, given the porous, poorly controlled international borders.

2.1.2 Collaboration of the Ministry of Foreign Affairs and Ministry of Labour

The Ministry of Foreign Affairs works closely with the Ministry of Labour on labour migration-related issues. The Ministry is currently working on the process of signing and ratifying the International Convention on the Protection of All Migrant Workers and Members of Their Families (ICMCW) (United Nations, 1990).

The Diaspora Division of the Ministry of Foreign Affairs believes that it is necessary to formulate a single policy that would simplify interactions with emigrant Kenyans' countries of destination whenever the need for discussion arises. On the size of the Kenyan diaspora, no authentic figure exists, but non-researchers give an estimate of three million. Kenya is working towards mapping the diaspora. At a regional forum it was noted that each country currently takes a fragmented approach, not treating the diasporas as an EAC concern.

2.1.3 *Ministry of Trade*

In analysing the options available to immigrant labour, the Ministry of Trade works closely with the Ministry of Labour to ensure observance of the guidelines for the signing of treaties pertaining to migrant labour. Examples of these treaties are the PEACCM (already adopted) and the World Trade Organization (WTO) treaties.

2.1.4 *Ministry of the East African Community*

Currently, the Ministry of the EAC is leading activities stemming from the adoption of the PEACCM with a view to increasing employment and trade opportunities in the EAC region. However, some hurdles remain. First, the EAC Partner States are yet to harmonize migrant labour policies. Kenya shares borders with states espousing incompatible migrant labour policies.¹² For example, it shares borders with Somalia (a failed state since 1991), Ethiopia and pre-separation Sudan and South Sudan (after separation) which all

belong to IGAD and COMESA. It also shares borders with the EAC Partner State of Tanzania which, having withdrawn from COMESA in October 2000, is keener on SADC, to whose labour migration framework it adheres. By being a member of the EAC, IGAD and COMESA, Kenya finds itself in a difficult balancing act when deciding which migrant labour frameworks to follow.

2.1.5 *Ministry of Youth Affairs and Sports*

In 2007, the Government of Kenya mandated the Ministry of Youth Affairs and Sports (MOYAS) to facilitate the labour migration of 23,000 Kenyan youth to foreign countries as a means of creating employment and encouraging the regularized inflow of remittances. A secretariat exists within the Youth Enterprise Development Fund (YEDF) which is currently coordinating all aspects of the youth labour migration. To realize this objective, the secretariat has focal points in key ministries such as the Ministries of Labour, Foreign Affairs, and Immigration and Registration of Persons, and is in the process of developing a legal framework for establishing Youth Employment Scheme Abroad (YESA). Several organizations – KAPEA, the Chamber of Commerce and Industry, the IOM and ILO –

12 The four countries have national labour/employment acts/policies: Kenya – Employment Act 2006 Chapter 226; Rwanda – National Employment Policy 2007 and Law Regulating Labour in Rwanda in Official Gazette of Rwanda, No. 13/2009 of 27/05/2009; Tanzania – Employment and Labour Relations Act 2004; and Uganda – Employment Act 2006.

support the Kenya Youth Migration programme which underscores employment opportunities. Indeed, many initiatives, among them the Youth-to-Youth Fund, have emerged in Kenya for youth employment and productivity both in and outside of Kenya.

2.1.6 Sectoral Ministries

With regard to South–South labour migration, there are no agreements between the Government of Kenya’s Ministry of Public Health and national counterparts relating to South–South labour migration or governing the health of migrants. For several decades, the ministry has been overwhelmed by forced migration, particularly the inflow of Somali and South Sudanese persons. Currently the managers of the sector have been sensitized on the importance of the phenomenon.

Education is another sector that has lost out, notably losing teachers to other EAC countries (particularly Rwanda) and the Seychelles. Given that the two sectors are responsible for human resource development, this implies that the loss of both health and education personnel, in particular those in the public sector and in whom the country had invested, has a negative effect on the country if taking place on a large scale.

2.1.7 The National Population Policy lacking labour migration provisions

Following the International Population and Development Conference (ICPD) held in Cairo in 1994, Kenya’s population policy was drafted in 2000 and recently updated in 2012. To date, the latter edition has not received Parliament approval to pave the way for implementation. Though mandated to provide leadership in formulating, coordinating and implementing appropriate population policies and programmes for sustainable development in Kenya, the National Council of Population and Development (NCPD), a Semi-Autonomous Government Agency (SAGA) within the Ministry of Planning and National Development and Vision 2030, is not currently involved in the development of the National Migration Policy. The latter, in draft form, has been handled by the Ministry of Labour with the technical support of the IOM and the ILO.

There are policies governing labour migration that permit bilateral agreements that have facilitated the employment of Kenyan professionals – for example, English teachers in the Seychelles and Rwanda and other professionals in Rwanda and South Sudan. It is important to stress that the bilateral agreements with Rwanda predate the PEACCM.

2.1.8 Challenges facing the agencies of the Government of Kenya

- Bureaucratic procedures remain an impediment to the formulation and smooth implementation of the labour migration-related policies.
- Existence of legislative gaps and contradictions.
- Lack of adequate human resources for some specific vocations.
- Lack of a cohesive migration policy that can help resolve outstanding issues.
- Although the NCPD is mandated to coordinate all population and population-related activities in the country, it has concentrated mainly on reproductive health (fertility-related issues) and mortality, neglecting migration and, by extension, labour migration.

2.2 Policy Framework in Private Labour Recruitment: The case of KAPEA

International labour migration has gained prominence, especially in the context of globalization, contributing positively to the economies of both countries of origin and countries of destination. This explains why the ILO and the IOM assist both sets of countries to embrace orderly, open and legal labour migration and to encourage practices that recognize and protect migrant labour.

Nevertheless, some challenges remain, including intolerance, discrimination and the smuggling and trafficking of international labour migrants.

2.2.1 KAPEA's contribution

In Kenya, private employment agencies have taken up the challenge of identifying skill shortages, both locally and in international job markets, and enabled Kenyans to access employment. The Private Employment Agencies (PEAs) in Kenya, through their association, the Kenya Association of Private Employment Agencies (KAPEA), have developed a Code to meet some of these challenges, and in the spirit of self-regulation.

To assess the implementation of this code and possible obstacles to its smooth application, this study interviewed a number of KAPEA affiliates. The study targeted agencies that deal with foreign labour recruitment, namely Interlead, Inve-Track, Elmvale Agency, Nassam Solutions, Madinah, Alsair Travel and Placement Africa.

KAPEA carries out the following functions on behalf of employers and partner agencies:

- Recruiting and interviewing;
- Training job-seekers (by specific agencies);

- Acquiring visas and air tickets, for instance for workers going to the Middle East;
- Selection and supply of various categories of staff;
- Employee background checks and verification;
- Human capital needs assessment and recommendations; and
- Employees' performance research, feedback and recommendations.

KAPEA's operations are guided by local and international Conventions, which include:

- ILO Convention No. 96 on Fee Charging Agencies;
- ILO Convention on Migration for Employment Convention No. 97, 1949;
- ILO Convention No. 181 on Private Employment Agents; and
- Cap 486 of the Laws of Kenya.

Affiliates of KAPEA obtain certification mainly from:

- Ministry of Labour;
- KAPEA;
- Kenya National Chambers of Commerce;
- Arab Joint Chambers of Commerce in the Middle East countries.

2.2.2 *Types of labour recruited*

Table 1.2 presents the type of labour migrants recruited through KAPEA arrangements. The study found that most KAPEA members specialize in facilitating the migration of workers from Kenya to other countries but not on recruiting foreigners into Kenya.

The main destinations are the Middle East countries, in particular Saudi Arabia and Afghanistan (mainly army retirees), Iraq and Dubai. The workers recruited are middle-aged men and women, with the vast majority of women being lower skilled. According to Kenyan newspaper reports, it is evident that the few skilled women are mostly recruited as teachers and sales persons, while men are recruited mainly as drivers.

Table 2: Types of labour recruited by KAPEA

Skilled categories division	Unskilled and semi-skilled categories division
<ul style="list-style-type: none"> - Hotel and catering staff - Remote sites catering and facilities staff - Healthcare professionals - Engineering staff - Accounting and administration personnel - IT managers & technical support staff - Teaching / Educational Staff - Telecom industry personnel - Staff in all other professions 	<ul style="list-style-type: none"> - Security guards - Facility workers - Office assistants - Data entry clerks - Hotels and restaurant service and kitchen stewards - Merchandizing staff - Airport luggage assistants - Drivers - Retail, supermarket and shop attendants - General maintenance staff - All other general organization support staff

Source: Based on interviews with KAPEA.

2.2.3 Challenges facing KAPEA affiliates

The numerous challenges facing various PEAs affiliated to KAPEA include:

- Difficulties in obtaining decent work for their clients;
- Aligning qualified applicants with job offers;
- Negotiating better employment conditions;
- Following up recruited labour migrants to ensure employers' compliance with contractual provisions: for instance, when a worker misbehaves or fails to meet employer's expectations within three months of recruitment, s/ he is sent back and the recruiting agency has to replace the employee at its own expense;
- Infiltration by unscrupulous agencies engaged in unethical recruitment practices;
- Inadequate knowledge and application of national and international standards and best practices; and
- The contracts are normally short, the longest being two years.

2.3 Main lessons learnt from Kenyan perspectives

When the progress report was presented to the National Consultative Committee (NCC) consisting of policymakers, researchers and civil society, on 12 April 2012, it became clear that Kenya's dominance in the East African Community (EAC) and the dynamics of its labour migration patterns required an extension of the study to other EAC Partner States: Burundi, Rwanda, Tanzania and Uganda. These are East African countries that frequently exchange labour migrants with Kenya and, having adopted the PEACCM in

November 2009, would be expected to observe the labour migration frameworks pertaining to the protocol and its implications for individual EAC Partner States. In a way, they provide perspectives of the South–South labour migration system in which Kenya's regional labour migration dynamics are embedded. Against this background of the Kenyan situation, the analysis turns to three other EAC Partner States with which it shares much in common in terms of labour migration, namely Uganda, Tanzania and Rwanda. Unfortunately, logistical shortcomings and time constraints did not permit coverage of Burundi.

3. The Kenyan policy framework in the context of EAC States

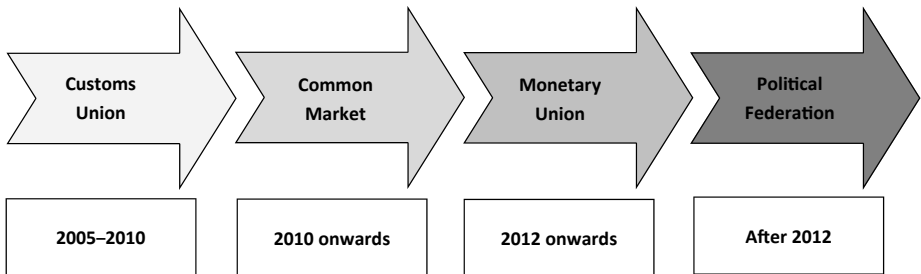
3.1 National policy frameworks and the EAC free movement of labour

The EAC is committed to evolve through various phases of regional integration to arrive ultimately at a political federation as scheduled in Figure 2. It has so far achieved the first three phases of the Customs Union (in 2010), the Common Market (since 2010) and the Monetary Union (since 2012) and it is endeavouring to fast-track the political federation after 2012.

‘five freedoms’ and ‘two rights’: the free movement of goods; the free movement of persons; the free movement of labour; the right of establishment; the right of residence; the free movement of services; and the free movement of capital (EAC, 2009: 3). Annex II spells out the EAC Common Market’s Free Movement of Workers (pp. 33-51). Table 3 presents parts and articles of the Protocol to facilitate our appreciation of Part D on the free movement of persons and labour which is relevant for this study.

In accordance with the provisions of Articles 76 and 104 of the EAC II Treaty, the PEACCM consists of

Figure 2: Roadmap to East African integration



Source: EAC Secretariat (n.d.) Basic Facts about the East African Community.

Table 3: Parts and Articles on the five freedoms of movement and rights in the protocol on the EAC Common Market

Part	Articles
C: Free movement of goods	6: Free movement of goods.
D: Free movement of persons and labour	7-12: (7) Free movement of persons; (8) standard identification system; (9) travel documents; (10) free movement of workers; (11) harmonization and mutual recognition of academic and professional qualifications; and (12) harmonization of labour policies, laws and programmes.
E: Rights of establishment and residence	13-15: (13) Right of establishment; (14) right of residence; and (15) access to and use of land and premises.
F: Free movement of services	16-23: (16) Free movement of services; (17) national treatment; (18) most-favoured nation treatment; (19) notification; (20) domestic regulation; (21) general exceptions to trade in services; (22) security exceptions on trade in services; and (23) implementation of the free movement of services.
G: Free movement of capital	24-28: (24) Elimination of restrictions on the free movement of capital; (25) general exceptions; (26) safeguard measures; (27) conditions for application of safeguard measures; and (28) capital and related payments and transfers).

Source: Compiled in J.O. Oucho (2012), table 2.

Table 4 provides details on annexes and regulations relating to the various freedoms and rights of the PEACCM. A cursory look at II permits appreciation of regulations guiding the free movement of workers.

Mobility provisions for EAC citizens address several issues pertaining to entry, residency and employment (see Box 1).

Table 4: Annexes specifying regulations relating to the various freedoms of movement and rights in the protocol on the EAC Common Market

Annex	Regulation and titles
I: Free movement of persons	(1) Citation; (2) purpose of regulations; (3) interpretation; (4) scope of application; (5) entry, stay and exit; (6) stay of students; (7) limitations; (8) border management and (9) registration.
II: Free movement of workers	(1) Citation; (2) purpose of regulations; (3) interpretation; (4) scope of application; (5) entry, stay and exit; (6) procedure for acquiring work permits; (7) denial of work permit; (8) cancellation of work permit; (9) employment of spouse and child; (10) expulsion of worker; (11) deportation; (12) access to employment opportunities; (13) equal treatment in employment; (14) monitoring of the labour market; and (15) implementation of regulations.
III: Right of establishment	Same as in II regulations 1-8; (9) registration of licensing; (10) removal of restrictions; (11) cooperation between competent authorities; (12) professional and trade organizations; and (13) certification.
IV: Right of residence	Same as in I and II regulations 1-4; (5) basis for residence; (6) procedure for application of residence permit; (7) duration of residence; (8) procedure for acquiring dependant pass; (9) denial of residence permit; (10) cancellation of dependant pass; (11) expulsion of a resident; and (12) deportation.
V: Schedule of commitments on the progressive liberalization of services provided	Ranging from professional services to computer and related services; research and development services; and other business services; courier services; telecommunications services; audio-visual services; wholesale trade services; retailing services; commission agents' services; franchizing; various types of educational services; banking and other financial services; all insurance and insurance-related services; and tourism and travel-related services.

<p>VI: Schedule on the removal of restrictions on the free movement of capital</p>	<p>Differs according to individual Partner States' structure of the economy, including assets and liabilities.</p>
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Source: J.O. Oucho (2009), table 3.

BOX 1: MOBILITY PROVISIONS FOR CITIZENS OF PARTICIPATING STATES

Entry: An EAC citizen will be required to present a valid travel document issued by the competent authority in his/her country. Acceptable travel documents for EAC nationals to access each other's territory are: national passports; EAC passports; temporary permits and/or temporary movement permits; conventional travel documents; and emergency travel documents. The EAC Passport allows the national of a given Partner State multiple entries over a six-month period. Students from other EAC Partner States may be issued a student or pupil pass free of charge based on satisfactory evidence of citizenship, such as an identification card and/or an acceptable travel document.

Residency: The Partner States agree to adopt measures to ensure the enjoyment of the right of establishment and residence of their citizens within the community.

Employment: The Partner States agree to: harmonize their labour policies, programmes and legislation, including those on health and safety; establish a regional centre for productivity and employment promotion; exchange information on the availability of employment; and make their training facilities available to persons from other Partner States. At present, the right of EAC nationals to work within the region is contingent upon the possession of a valid work permit.

Source: IOM (2007: 20).

Table 5 shows that 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 Tanzania languished in *Ujamaa* and

both Burundi and Rwanda were embroiled in serious civil wars.¹³ 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

¹³ *Ujamaa* is a Swahili word which Tanzania adopted for 'socialism' from the late 1960s until the late 1980s whence the country has embraced capitalism.

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.

Table 5: Categories of workers and subgroups of workers by the EAC by Partner States

EAC Partner State	Category of Workers	
	Main group	Subgroup
Kenya	Administrators and managers	Directors and CEOs, specialized departmental managers.
	Professionals	Physical science professionals; Mathematicians, statisticians and computing professionals; Engineering science professionals; Health and life science professionals; Teaching professionals; Legal professionals; Social science and related professionals; Business professionals; Other professionals.
	Technicians and associated professionals	Engineering technicians; Medical and health science associated professionals; Physical and life science professionals; Ship and aircraft controllers; Business and social services associate professionals; Primary and pre-primary education and other teachers; Other business social services; Athletics, sports and related workers.
	Craft and related trades workers	Extraction and building trades workers.

Burundi	-	Physical, mathematical and engineering science professionals; Life science and health professionals; Teaching professionals and other professionals.
Tanzania	Professionals	Teaching; Engineering;; Science; Health; Land surveying.
	Technicians and associate professionals	Air traffic.
Rwanda	-	Physical science professionals; Mathematicians, statisticians; Engineering science professionals; Health and life professionals; Teaching professionals.
	Technicians and associate professionals	Engineering technicians; Optical and electronic equipment operators.
Uganda	Administrators and managers	Directors and CEOs; Specialized departmental managers; Other departmental managers.
	Professionals	Science and engineering; Health; Teaching professionals; Business and administration professionals; Computing professionals; Legal professionals; Writers and creative or performing artists.
	Craft and related trade workers	Air traffic and Ship controllers and technicians; Extraction and building trade workers; Metal, machinery and related trade workers.

Source: EAC (2009), 'Schedule for the Free Movement of Workers', pp. 38-51.

3.2 Kenya's dominance in the Eastern African labour market

To understand and appreciate Kenya's position in the East African labour migration system, a retreat to the history of colonialism and the emergence of the migrant labour system is necessary. The two decades 1903 to 1923 saw the influx of British settlers from World War I (being rehabilitated in the colonial dependency), and the development of infrastructure generated a great increase in labour demands (Stichter, 1982). This demand later attracted four dominant types of internal migration – rural-rural migration of wage labour to farms in particular: rural-urban migration to emerging towns with modern-sector employment; urban-urban migration as town sizes increased; and urban-rural migration including return migration after retirement or upon loss of the bread winner (Ominde, 1968; Oucho, 1996).

After World War II, returning soldiers from Kenya, Uganda and Tanganyika (now mainland Tanzania) had the option to decide where to return to as there were no restrictions or strong adherence to the nationalist label. In any case, Kenya, Uganda, Tanganyika and the island of Zanzibar were all British dependencies where free movement of people, including labour, took place. Uninhibited

cross-border migration among these dependent countries laid a strong foundation for the first ever African regional integration when, in 1917, Kenya and Uganda formed a customs union, later joined by Tanganyika in 1927; the second instance was the East Africa High Commission (EAHC) which Governors of the three countries (Zanzibar had a Sultan, not a Governor) initiated up to 1961; the third was the East African Common Services Organization (EACSO) 1962 to 1966; the fourth was the first East African Community (EAC) from 1967 to 1977; and the latter was reconstituted in 2000, admitting Burundi and Rwanda in 2007 (Oucho, 1995, 1998, 2009, 2012).¹⁴ Thus the current exchange of migrant labour among the EAC Partner States, based on Ministry of Labour reports from the respective countries, represents one of the best models of South–South migration but with diverse and little-known policy frameworks. This is because the three EAC countries have had close relationships in the past and those neighbouring Burundi and Rwanda have strong cultural affinity, both conditions sustaining the current format of the EAC.

Kenya emerged as the strongest agricultural economy that was

¹⁴ To avoid confusion, the two editions of the East African Community (EAC) are referred to in this study as EAC I (1967–1977) and EAC II (since 2000). For details, see Oucho (1998, 2006, and 2009).

heavily dependent on wage labour and had evolved the most ambitious educational programme which produced increasing numbers of highly educated and skilled persons that far exceeded the country's absorptive capacity in employment. As unemployment increased (from 1984 onwards) and Kenya's neighbours realized the country's human resource capacity, labour emigration became the norm in Kenya even as the country received a counter-flow of immigrant workers. Under the first four EAC regional integration initiatives already highlighted, free movement of labour took place, and while Uganda was under military rule (1971–1979), both Kenya and Tanzania hosted huge numbers of Ugandan refugees, some of them employed by the two host countries.

3.3 The Kenyan policy framework in comparison with EAC partner States' Frameworks

As the work on Kenya progressed and based on recommendations from the National Consultative Committee of Kenya, the study was extended to other EAC Partner States. This was specifically designed to conduct interviews with key stakeholders in order to provide regional dimension data that could be juxtaposed with the labour market policies in Kenya. A notable development is that all the EAC Partner States studied have national Employment Acts that predate the Protocol on the EAC Common Market, and which were necessary for review in the light of the latter, ultimately to harmonize the respective national migrant labour policy frameworks. In principle, the respective EAC Partner States' policy frameworks, based on ILO/UN conventions/protocols, are identical (Table 6).

Table 6: Policy frameworks guiding labour migration in the EAC by partner state

EAC partner state	Policy framework	Remarks
Kenya	The Employment Act Chapter 226 (2010)	- Guides employment of Kenyans and Foreigners
	Kenya Citizenship and Immigration Act 2010, No. 12 of 2011	- For bona fide and naturalized (immigrant) Kenyan citizens, including dual citizens ¹
	Draft Diaspora Policy of Kenya 2011	- Takes care of Kenyans in diaspora
Rwanda	National Employment Policy 2007	- Guides citizen and immigrant employment
	Law Regulating Labour in Rwanda (2009)	- Provides detailed insights into regulating citizen and foreign labour
	National Migration Policy and Strategies	- Facilitates tourism, attracts skills and supports/promotes investment; passed in 2009 and implemented from 2010
Tanzania	Employment and Labour Relations Act 2004	- Guides citizen and immigrant employment and labour matters
Uganda	Employment Act 2006	- Guides citizen and immigrant employment and labour matters

Source: National policy and legislative documents of the EAC Partner States.

3.3.1 *A comparison of Kenya and Tanzania*

The first two decades of independence in Kenya and Tanzania, based on capitalism and socialism (*Ujamaa*) respectively, saw the two countries evolve separate labour market frameworks despite being member states of the mistrust-ridden EAC I (1967–1977). Even with the EAC II (since 2000), the two countries are still uneasy neighbours, especially as Tanzania receives increasing investments from South Africa (the dominant economy in SADC) that target Tanzanian labour. However, given the abundance of well-educated and skilled human resources in Kenya, Tanzania has had to rely on immigrant Kenyan labour in various sectors of its economy. Consultations made in Tanzania targeted state agencies as well as private labour-recruiting agencies.

- **Agencies of the Government of the United Republic of Tanzania**

The United Republic of Tanzania (URT) consists of mainland Tanzania (formerly the British dependency of Tanganyika) and island Tanzania (the island of Zanzibar). All consultations were limited to the former because all the head offices of the URT are located there. However, this still allowed access to information on the latter and, therefore the entire URT was referenced (simply referred to in this study as Tanzania).

Ministry of Home Affairs

This Ministry houses the Department of Immigration. Consultations with the Commissioner of Immigration provided useful insights into immigration to Tanzania. It indicated that Kenyans are by far the leading immigration country among the EAC Partner States, followed by South Africa and Australia (the last two concentrating on the mining industry). Kenya is the second investor to the United Kingdom in the Tanzanian economy. Naturally, Kenyan immigrant workers would be expected to work in Kenyan-owned firms in the country. The consultations revealed further that lower educational levels in Tanzania, which started from zero at independence in 1961, have provided an opportunity which Kenya has exploited fully. This made Tanzania grant ‘gratis permits’ initially to Kenyan and Rwandan citizens and later to the EAC Partner States following the ratification of the PEACCM, though levying the necessary fees still continues. The Ministry decries a lack of domestication of the PEACCM. On the diaspora, the mainstream citizen perception is that the Tanzanian diaspora are ‘traitors’ with whom the homeland citizens are uncomfortable since they have a competitive advantage that is beyond the reach of the latter. This sentiment was documented in another study (AMADPOC, 2012).

Ministry of Labour and Employment

In Tanzania, the Employment Department of the Ministry of Labour and Employment responded to the same Convention. The department consists of three sections that handle employment service, labour market information and employment promotion. Concerning the issue of labour migration, it also has three units that deal with many more issues, namely general aspects of labour migration, work permit processing and the recruitment of workers within and outside the country. It has evolved a tripartite working relationship with the Association of Tanzania Employers (ATE) and the Trade Union Congress of Tanzania (TUCTA). Despite its involvement with the ILO, Tanzania has not yet signed the Convention in question. This jeopardizes the way the country has attracted a burgeoning amount of foreign workers, particularly in the private sector since transforming from socialism to capitalism.

The Ministry admits highly educated and skilled immigrant workers to Tanzania, notably in the mining, health and tourism sectors through the Tanzania Investment Centre (TIC). The major countries of origin are the United Kingdom and Kenya, highlighting an important intraregional labour mobility angle. However, the Ministry is apprehensive of the country's inability to implement the two 2000 UN conventions on trafficking in persons and smuggling

respectively, hence from time to time the country encounters trafficked/smuggled transit migrants from the Horn of Africa who are destined for Southern Africa. Semi-skilled migrant workers from Tanzania move to the Middle East, and highly educated, as well as skilled workers, reside mostly in the three Southern African buoyant economies (Botswana, South Africa and Namibia), the United Kingdom, the United States and Canada.

The Ministry has mandated private labour recruitment agencies, through the Tanzania Employment Services Agency (TaESA), to recruit emigrant workers based on the Employment and Labour Relations Act 2004. In addition, the Ministry reaches out to diplomatic missions in the country on immigrant labour destination. It works closely with the President's Office (Public Service Management), the Ministries of Foreign Affairs and International Cooperation, Home Affairs, East African Cooperation and sectoral ministries (education, health, etc.) on labour immigration and emigration.

Ministry of East African Cooperation

This is an important Ministry which, unlike its counterparts in other EAC Partner States, works more closely with the EAC Secretariat in Arusha. It handles national consultations, regional negotiations and the dissemination of REC reports for implementation by national stakeholders.

▪ **Private Labour Recruiting Agencies:**

Consultations with private labour recruiting agencies in Tanzania were limited to two agencies: the umbrella organization for various agencies and an agency working in both Tanzania and Kenya.

The Tanzania Employment Services Agency (TaESA)

The Tanzania Employment Services Agency (TaESA), established in 2008, has the motto 'employment is empowerment'. TaESA was formerly the Labour Access Centre that operated under the Employment Department of the Ministry of Labour and serves the interests of job seekers locally, with its Cross-Border Placement Unit catering for foreign employment. It recognizes and supervises a number of private employment services agencies in the country. TaESA adopts a consultative process in recruiting workers. Once an employer approaches TaESA with a request to recruit employees, it invites applications which it shortlists for the employer's attention to enable it to make the final decision. In certain cases, TaESA solicits employment opportunities from employers. The major destinations of TaESA's products include the Gulf States (Saudi Arabia and Oman in particular) which employ drivers, housemaids and other unskilled/

semi-skilled Tanzanians. The Agency works closely with Tanzania's diplomatic missions abroad that act on its behalf. Other aspects of TAESA's work include pre-emigration workshops held to orientate those already recruited, the issuance of the letter by the Immigration Department on an emigrant workers' impending departure; and exposure of the recruited workers to the ICMW of 1990. Two important virtues of the TaESA process are being transmitted among Tanzanians and emigrant worker's remittances back to the country.

Radar Recruitment Agency

This agency has been marketing Tanzania for the last eight years, helping in the recruitment of personnel from secretarial to executive levels. With offices in both Nairobi and Dar es Salaam, the agency engages consultants in Kenya and Tanzania for both commercial and non-commercial public and private sector employment. Labour recruited between the two countries is for the sectors that require them, with Kenya providing more workers. Once the agency defines employment criteria with clients, it advertises the jobs where necessary or opts for 'headhunting' recruitment, particularly for the executive positions. While the process of recruitment by the agency saves both

time and money, it has had problems placing Kenyan workers because of the difficulty they face in securing work permits for public record purposes and to avoid conflict with citizens' interests); it is a double-edged situation given that Tanzanian citizens have less competitive qualifications. The latter shortcoming is attributed to poorer proficiency in the English language by most Tanzanian citizens and their problem of shifting the mindset from socialist thinking to the capitalist framework. To resolve the problem, Radar organizes biannual 'graduate sessions' on aptitude tests, interviews and job searches. Another problem in Tanzania is poor Internet infrastructure that constrains Internet access in the country.

3.3.2 *Comparison of Kenya and Uganda*

Kenya and Uganda have remained inseparable neighbours when it comes to sharing migrant workers. As in the case of Kenya, state and private agencies are considered separately.

▪ **Agencies of the Government of Uganda**

Ministry of the East African Community Affairs

The Ministry of East African Community Affairs (MEACA) is keen on implementing the PEACCM, in particular the five freedoms and

the two rights it enshrines. While recognizing that 'free movement' in the EAC region has been part of the subregional integration, only curtailed by Idi Amin's military rule in Uganda (1971–1979), the Ministry's key informant raised the issue of a lack of empirical studies, and therefore evidence, on the progress of the protocol. The informant believes that the Inter-University Council of the EAC's public universities has a role to play in ensuring continued specialization, in particular national universities: labour and business administration at the University of Dar es Salaam; medicine at Makerere University; engineering and architecture at the University of Nairobi; and ICT at the National University of Rwanda. That, it is believed, would permit a harmonized production of skilled labour that the EAC Partner States could readily share. Moreover, the porous borders and similar sociocultural backgrounds of Uganda and Kenya render ineffectual any national laws prohibiting an exchange of labour. Among other things, the Ministry calls for a study into the implications of the PEACCM, a level-playing field in the implementation of the Protocol by the EAC Partner States, enhancement of intra-EAC trade, as spearheaded by the East African Business Council, and a multiREC labour migration arrangement by the EAC, IGAD, COMESA and SADC.

Ministry of Internal Affairs

Uganda's Ministry of Internal Affairs, in particular the Department of Immigration and Citizenship, has been at the forefront of immigration affairs, including labour immigration. Its role has been crucial in developing Uganda's National Migration Policy (NMP) that is currently underway. It recognizes the longstanding exchange of labour between Uganda and Kenya: receiving from Kenya professionals, business people, employees in the hospitality sectors as well as services and transportation. In view of the PEACCM, the Ministry has influenced the appropriate amendment of Cap 66 of the Employment Act, yet has little to show on the progress of the Protocol itself.

The EAC Secretariat holds sectoral meetings on specific sectors of the EAC Partner States, particularly those relating to the spirit and letter of the PEACCM. In Uganda, 'clustered sectors', such as Justice, Law and Order, Education and Social, are represented in those meetings, giving impetus to the full realization of the Protocol. With the increase of human trafficking and allied forms of crime, an Interministerial Task Force has been formed to tackle the problem on both regional and global scales. It is expected that the Ugandan NMP will streamline labour, immigration and emigration in the PEACCM and that national chapters will be developed from.

Ministry of Gender, Labour and Social Development (MGLSD)

The Ministry recruits Kenyans, mainly in the business sector, including banking and the hotel industry, as top executives. The executives manage supermarkets (specifically Nakumatt and Uchumi), which are incorporated/licensed in Kenya but which are fast expanding to Uganda. If anything, employers have the discretion to recruit Kenyan workers that the proposed 'one-stop-shop' initiative will regulate; and the Ministry is a key member of the Employment Board that was created for this. On emigration, the Ministry is guided by the Employment of Ugandan Migrant Workers Abroad. Uganda ranks among the few countries (the only EAC Partner State) that have signed the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families (ICMW) which enables it to domesticate elements of the Convention and compels it to demand a reciprocal gesture from countries with which it exchanges migrant labour. Nonetheless, some problems still persist, among them weaknesses in enforcing labour laws and regulations, migrant smuggling by certain Ugandans (not Ugandan firms) from Asian countries and lack of a functioning institutional framework to govern the situation of all immigrant workers but the top executives. Moreover, there is no

strong interministerial cooperation regarding the implementation of the PEACCM.

▪ **Private recruitment agencies**

Uganda has a growing number of private labour recruitment agencies that are not affiliated to a national body. Accordingly, it is up to each agency to do its own business by merely observing national laws and regulations.

Ham Property Services and Management Limited

Interviews with Ham Property Services and Management Limited revealed useful information. The agency has been established for job placement outside Uganda, skill levels notwithstanding. It secures from the Uganda Police the recruited workers' certificates of good conduct and then proceeds to process their passports and visas for particular countries of destination. The main countries of destination underpin the importance of South–South migration of Ugandans, like Kenyans migrating to the Middle East. It has a stable partnership with Kenyan counterparts which, through a Memorandum of Understanding (MOU), help it to recruit Kenyans for employment, in particular 'blue collar' jobs which Ugandans refuse. Kenyans are by far the most popular of immigrant

workers.¹⁵ Unfortunately, African immigrant workers receive lower remuneration than Asian (Indian and Pakistani in particular) counterparts despite the former having superior qualifications.

Sepher Employment

Consultations with this agency revealed significant enthusiasm by three officers interviewed in a group interview. Statutorily, all job opportunities through the agency have to be cleared by the MGLSD. Before engaging migrant workers, Shelter Employment trains and orientates them and enlists their consent for the kind of work that they are expected to do. The agency, however, complains that sheer greed by counterparts in Uganda constrains efforts towards viable partnerships. However, by being in constant contact with Kenyan counterparts it has managed to play its desired role. Unlike most agencies, Sepher makes supervisory visits to the countries for which it has recruited emigrant Ugandan labour. The absence of a

15 All Ministries handling immigrant labour are unanimous about the demand for Kenyans who are considered to be the most hardworking, and least likely to shun any jobs available. Private labour recruitment agencies expressed the same sentiment. However, as much as Kenyan workers are preferred in official circles, they are met with hostility by the general public who complain that their jobs, even the ones they detest, go to these immigrant workers.

partnership among private labour-recruiting agencies in the EAC is particularly telling as it denies the agencies opportunities for knowledge and information sharing.

Maghreb Agencies Limited

This agency recruits Ugandans mainly for Middle East countries and believes it could recruit Ugandan teachers for Kenya. It enjoys partnerships with some Kenyan counterparts (e.g. Forbes Lobo, Silverpay Limited, Ivetrack and Nasam) to place both Ugandans and Kenyans in the jobs where they are needed. It routinely follows up with its recruits quarterly to ascertain observance of their contracts with employers and to resolve any problems.

SGA Manpower Limited

This agency deals exclusively in the recruitment of guards. The fact that it employs six Kenyans at senior management level underscores its faith in well-trained Kenyan immigrant workers. However, all the guards are Ugandan. A major problem facing SGA is the high senior staff turnover (though a minority), which implies losing many Kenyans that are already employed. SGA is also a labour-exporting outfit, recruiting guards for Middle Eastern countries with much better remuneration.

Uganda Veterans Development Limited

This agency seeks employment opportunities for veterans from the armed forces, as well as younger persons in the age bracket of 22 to 45 years, largely for the hospitality industry, which relies heavily on security. Its main clients are Middle Eastern countries. The agency has to contend with very poor remuneration for the unskilled workers it recruits. It believes that intergovernmental agreements among the EAC Partner States are necessary as a step towards improving the veterans' labour needs.

3.3.3 Comparison of Kenya and Rwanda

The research took a participatory approach, as many participants were frightened to share information for fear that it might be used for various reasons inimical to their situations.

■ **Government of Rwanda Agencies**

Foreign Labour: Employment and Welfare

Consultations with the Directorate of Labour and Employment revealed the following:

- Permits are formally given to immigrants according to the Immigration Law of 2006. The law does not grant preferential treatment to foreigners or

nationals as it governs locals and nationals, and internal as well as international migrants without discrimination. Rwanda has created an environment that encourages immigration and promotes immigrants to be integrated into the community.

- Rwanda has formulated a National Migration Policy and Strategies (Rwanda, 2009) which help in managing immigrants, emigrants, trafficking in persons and migrant smuggling, among other phenomenas. It provides temporary residences and investment opportunities in which Kenyans have participated effectively.
 - The country also has a National Employment Policy (Rwanda, 2007) which has a clause on foreigners and an occupational demand list that the Ministry of Labour uses to consider work permits. The policy welcomes citizens from EAC Partner States, with Kenyans dominating the Rwandan job market, the only requirement being that Kenyans and Kenyan businesses register with the Rwanda Development Board, which grants permits free of charge.
 - Having ratified the PEACCM's annex on the Free Movement of Labour, Rwanda recognizes all the provisions of the annex in the interest of the EAC citizens.
- Most consultancies in Rwanda are done by Kenyans given that the open-door policy to all other EAC Partner States failed to admit Rwandans who have credentials incomparable with those of Kenyans. The influx of highly qualified Kenyans has enhanced the government's policy development and accounts for the successful high-quality institutional framework. While Kenyans dominate employment as accountants and university/technical college lecturers as well as teachers, citizens of other neighbouring states are in semi-skilled vocations such as working in motor garages, restaurants and beauty salons.
 - A notable problem is the exclusive employment of foreigners by some investors. For example, Kenya Airways employs 100 per cent foreigners – mainly Kenyans. This problem is attributable to the government's inability to vet such companies' adherence to laws and regulations pertaining to conditions for the employment of citizens vis-à-vis foreigners.

Completion/supplementation of skills that are lacking

The case of diasporas has both positive and negative impacts as indicated in the following list:

- The Directorate emphasized that where the Rwandese face challenges, such as proficiency in English language, Kenyans are often able to fill the gap. This equally applies to Kenyan accountants, architects, construction engineers and other professionals.
- With bilingualism decreasing in Rwanda, the Rwandese are increasingly embracing English and Swahili, the former boosted by Rwanda's membership of the Commonwealth and the latter because it is a widely spoken language in the EAC.

Challenges/weaknesses

- Most investors have the freedom to choose investment partners. This reduces the investors' strict adherence to national laws regarding employment.
 - There is a general tendency within the EAC that most citizens feel that top-job positions are filled by foreigners, which could lead to xenophobia. In many instances, in the Directorate and other national agencies, even jobs statutorily meant for Rwandese go to foreigners.
 - Crime and insecurity discourage foreign labour migrants from entering the country, resulting in personnel shortages where it is needed.
- **Immigration**
 - Rwanda's National Migration Policy and Strategies aims to facilitate tourism, to attract skills and to support/promote investment. This was reinforced by a new law passed in 2009 and implemented from 2010 onwards.
 - The Ministerial Order of 2011 is comprehensive: with composite provisions, it changed business and specified the number of visas for both residents and visitors. The most common investments relate to businesses, investments, trade, ICT, hospitality and education, among others that are creating employment opportunities in the country.
 - Requirements for all these include a certificate of good conduct (a police clearance certificate); proof of capacity; and due registration by the Rwandan Development Board – a one-stop-shop for all requirements when registering business in a matter of only six hours. Kenyans have excelled in these, hence their dominance in all sectors including investments and trade.
 - Kenyans working in Rwanda in the education sector have been well integrated in the labour market where Kenyan teachers and mentors are employed (the Kigali institute of Education is headed

by a Kenyan) and in finance where Kenyan accountants and auditors dominate and where Kenyan banks (Equity Bank and the Kenya Commercial Bank) provide better services than local banks.¹⁶ Kenyans have been found to be particularly skilled in architecture and graphic design as well as interior design; the health sector; agriculture; and the hospitality industry, including restaurants.

Rwandans in Kenya

Rwanda has not developed a proper system for registering the Rwandese in Kenya, especially Rwandese workers, most of whom lack the skills that Kenya requires. This implies that there is no framework which guides emigration from Rwanda to Kenya. Rwandese emigrants lack important labour-market requirements, such as being able to offer particular skills that are needed and being demanded by the local (Kenyan) market.

■ **Private Labour Recruiting Agencies**

There are 72 associations affiliated to a private sector federation in Rwanda. In the EAC, both Kenya and Rwanda grant work permits fairly quickly, compared, for example, with Tanzania that has more stringent conditions. In Rwanda, the banking, accountancy

and hospitality sectors have witnessed impressive investments by the Kenyan private sector. Even the highest slot for exhibitors in the Rwandan Trade Fair is dominated by Kenyan organizations.

Challenges and Opportunities

One of the main challenges is corruption – for example, in cases where sexual favours are demanded in order to obtain a job. Moreover, the Rwandese trained locally in the banking sector often prefer migrating to Kenya where their career advancement is more assured than in Rwanda.¹⁷

There are Memoranda of Understanding (MoUs) signed between Kenyan and Rwandan institutions. Through consular contacts, Kenyan labour migrants in Rwanda are expected to fulfil several requirements for immigration visas: to execute good conduct; be in possession of a CV, a valid passport, an appointment letter and valid certificates; and be able to pay the 5,000 Rwandan francs (Kshs 700) visa fee.¹⁸

¹⁶ This opinion was expressed by the respondents who compared these banks with other foreign banks in the country.

¹⁷ Kenya hosts many UN agencies and international NGOs that employ bilingual workers, with the result that Rwandese immigrants, being bilingual, could easily secure employment.

¹⁸ At the time of the field work in August 2012, this was equivalent to about USD 8 only.

The 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. Finally, they evolve mechanisms for investment through the Kenya Commercial Bank (KCB), Equity Bank, CFC and Dian Blaire based in

Rwanda. There is also a registered Kenyan association recognized by the Kenyan Embassy in Rwanda; it has a membership representing mixed professions. Rwanda considers the PEACCM to be both an advantage (as the country gains immigrants' skills and knowledge) and a disadvantage as the locals cannot compete favourably with the immigrants. This might appear over-optimistic but it is the reality, given the popularity of Kenyan workers and Kenyan financial institutions. Kenyans who have worked in Rwanda confirm this feeling and are grateful for the reception received from the Rwandese.

4. Conclusion and recommendations

4.1 Conclusion

This study has revealed 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 sociocultural 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.¹⁹

Specific conclusions flow from this:

1. Kenya’s and other EAC Partner States’ employment and labour policies and legislation predate the PEACCM and therefore require revision and harmonization 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.
2. 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.
3. 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.
4. 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

¹⁹ Kenya has been a peaceful country since independence with the exception of the end of 2007 and the first two months of 2008 when post-election violence (PEV) shook the foundations of the country’s solidarity. From the PEV, the country embarked on diverse reforms that other EAC Partner States emulate as positive lessons in democratic recovery and realigning of political, economic and sociocultural elements of development.

emigrant and immigrant labour regimes. The five freedoms and two rights of the PEACCM touch on the socioeconomic fabric of society and should, of necessity, be incorporated in national development frameworks, such as national Vision 2000s.

4.2 Recommendations

Recommendations for further research

This study has shown that the EAC would benefit immensely from a REC-wide study on policy frameworks and legislation concerning regional labour migration. Such a study would be instructive for all other African RECs and other world regions where the ACP Observatory on Migration is under way or expected in future.²⁰

Kenya has produced increasing numbers of emigrant highly educated and skilled workers in Southern Africa – notably Botswana, South Africa and Namibia – which future research on South–South labour migration frameworks should explore to provide broader perspectives of Eastern–Southern African migration as well as interdependence.

The issue of how women and men experience labour migration differently has not been adequately explored and very little attention has been paid to understanding their current circumstances. Given the importance of female labour migration in certain sectors in the economies of the EAC Partner States, future research is necessary to explore this issue.

Policy recommendations

The policy recommendations are of a more immediate and long-term nature as follows:

a. Immediate recommendations

- The Government of Kenya agencies recognize the need for Kenya to balance its labour emigration and immigration policies given the large Kenyan diaspora and the attraction of Kenya to immigrants. For that to happen and in view of some incomplete work on protocols pertaining to labour migration, Kenya should sign and ratify the IMWC 1990.
- Kenya should take a leading role in implementing the PEACCM from which it stands to gain, ensuring that it renders help to its EAC counterparts where necessary. It should also engage with the Member States of the Southern African Development Community (SADC), in particular Botswana,

²⁰ A study commissioned by the ACP Observatory on Migration is looking at the implementation of the Protocol on Free Movement of Persons and the Right of Residence and Establishment, adopted in 1979, by the Economic Community of West African States (ECOWAS). See www.acpmigration-obs.org.

South Africa and Namibia to update bilateral agreements with them on the protection and improved welfare of its migrant workers in that region.

- In spite of the impact that migration has as a social factor in the management of health services, currently there is no policy on migration both when considering the impact of migration on health services and the health needs of migrants. This is an issue that calls for a carefully conceived policy direction.
- Emigrant Kenyans should constantly be made aware of the support provided by the Ministry of Foreign Affairs and the Ministry of Labour on their general welfare and working conditions respectively in the countries of destination. Yet, for the two ministries to do that successfully, they should liaise closely with Kenya's diplomatic missions overseas to develop a diaspora database which should be updated regularly.
- Given the crucial role of the Kenya Association of Private Employment Agencies (KAPEA) and its affiliates regarding emigrant Kenyan labour to the Middle East, it is recommended that:
 - KAPEA should work with the Government of Kenya to sustain the link between Kenya and the destination countries of its emigrant labour for the smooth management of migration and better welfare of migrant workers, as well as strict observance of the migrants' rights;
 - All Government of Kenya's agencies dealing with population issues in general, and migration aspects in particular, should be harmonized to ensure effective management of labour recruitment agencies, and thus facilitate an efficient flow of both emigrant and immigrant workers;
 - Existing legislation on curbing illegal and exploitative activities undertaken by certain ghost/ unscrupulous recruiting agencies should be implemented, monitored and evaluated to safeguard prospective migrant workers from fraudulent recruitment or trafficking into unknown destinations;
 - The general public should be adequately sensitized on identification of the labour recruiting agencies with the necessary credibility and profiles to avoid trafficking in persons and to identify fraudulent practices;
 - There is a need for a clear follow-up strategy on the recruited migrant workers

to ensure their safety and to safeguard their rights in the countries of destination; and

- A viable system for the transferability/portability of social security to any of the foreign countries of destination should be instituted to avoid exposing Kenyan emigrant workers to hardships upon retirement or on expiry of their contracts.
 - An EAC-wide Private Labour Recruiting Agencies Conference is necessary where the PEAs can showcase their work, share information and knowledge and lay the ground for handling matters of common interest to them.
 - Furthermore, the Government of Kenya should foster the implementation both of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (HTP) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (MSP) of 2000, which it acceded.
 - Rwanda, which hosts a huge number of emigrant Kenyan labourers, should institute regular registration of its nationals in Kenya to ascertain their number and what activities they engage in exactly in the latter to find ways to support that engagement.
 - There is a need to formulate policies to facilitate the issuance of the EAC passport that provides identical profiles for citizens of the EAC Partner States for ease of comparison and contrast of the desired migrant labour.
- b. Long-term recommendations**
- The EAC Partner States should emulate the work of the Ministry of Immigration in the Government of Rwanda (GOR) to evolve a strong partnership and direct links with various immigrant-handling organizations and with international organizations supplementing government efforts in assisting in proper insertion of immigrants wherever they are required.
 - Policies should be formulated to facilitate the issuance of EAC passports that provide identical profiles of citizens of the EAC Partner States for ease of comparison and contrast of the desired migrant labour.
 - A viable system for the transferability/portability of social security is also needed for Kenyan emigrants and should be complemented with similar provisions for immigrants in Kenya.
 - There is a need to establish credit facilities enshrined in labour recruitment policy for all PEAs in

the EAC Partner States for their clients to access credit and settle in to their work, as well as advance their welfare wherever they reside.

- There is a need for putting in place monitoring mechanisms and to regularize scholarly exposure, such as a common position on internship to enable students to embrace internships in the wider EAC region and to grow a mutual understanding and appreciation of the opportunities and challenges in the REC on the understanding that the interns would be future workers in the EAC.
- Further, it will be necessary at some stage to assess the implementation of the Code of Conduct that KAPEA developed in order to detect possible obstacles to its smooth application.

c. Recommendations for the EAC Secretariat

- There is a need for the EAC Secretariat to foster and streamline the implementation of policies relating to immigration, ultimately harmonizing them as appropriate, with the EAC Partner States vetting

the policies thoroughly in order to exploit locally available skills, and thus avoid void outsourcing them.

- The EAC Secretariat should promote civic education on the PEACCM to expose the EAC citizens to it and its implications for the five freedoms and two rights enshrined in the protocol, and which are bound to regulate labour migration and legislation, as well as policy prescriptions in the region.
- The EAC should work on a scheme to make air fares affordable for the Partner States' citizens who are keen on investments; a development that could also work towards improvements in the transportation and communications infrastructure within the EAC to facilitate effective implementation of the PEACCM.

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6. Annexes

A. QUESTIONNAIRE/CHECK LIST FOR VARIOUS STAKEHOLDERS

ASSESSMENT OF THE KENYAN POLICY FRAMEWORK CONCERNING SOUTH-SOUTH LABOUR MIGRATION

All information given in this survey will be kept strictly confidential and is only for the use of African Migration and Development Policy Centre (AMADPOC) and the ACP African, Caribbean and Pacific (ACP) for analytical purposes. We sincerely appreciate your cooperation in this study.

Introduction:

Kenya is one of the six countries selected by the ACP Observatory on Migration for a study that aims to contribute to the identification and better understanding of the South-South labour migration needs. The research will analyse the institutional framework governing labour migration in Kenya and foster recommendations to improve the programmatic and policy framework by elaborating a short- and long-term policy strategy based on good practices from other ACP and developing countries. This will entail a capacity needs assessment with an intention to look into how improvements could be made on the framework that governs the emigration of workers to ACP countries by taking into consideration their potential in the national and regional development plans. The Kenyan study is being undertaken by the African Migration and Development Policy Centre (AMADPOC), which is expected to make a set of key recommendations for policy interventions that would facilitate South-South labour immigration and emigration and promote its positive potential for human development. Results of the research will be disseminated, discussed and endorsed by the national forum of various stakeholders. The information given for this study will remain confidential and no part of the information will be made available to a third party without your consent. The survey will take about 30 minutes.

Thanking you in advance for your cooperation.

Research Team

African Migration and Development Policy Centre (AMADPOC).

Questionnaire completed by (name):

Title and responsibilities:

Contacts (tel., fax, email address):

Date:

Place:

Migration Policy, Institutional and legal framework in Kenya

Migration and development policies

1. Is migration policy incorporated in the government's development agenda? Which policies and how are they being implemented?
2. Which are the main migration policy directions in Kenya?
3. What kind of policies are there to address internal migration management?(National policies)
4. What kind of policies are there to address the management of regional migration in the neighbouring countries? (Regional policies)
5. What kind of policies are there to address the management of international different types of migration (trafficking, smuggling, regular/irregular migration)?
6. What are the gender specificities of the diasporas – behaviours, expectations, organizations, returns – and how does the government tailor its policy response to these specificities?
7. What are the skills, know-how and qualifications of the Kenyan diaspora? What are the needs of Kenya in terms of human capital? How does it match the two?
8. What are the flows and trends of investments and remittances transfers from the Kenyan Diasporas? What mechanisms already exist to support them?
9. What are the existing trade and entrepreneurial exchanges established by individuals from the diaspora with Kenya?
10. What networks (cultural, social, political, professional, business, academic, etc.) do diasporas build between Kenya and their countries of destination?
11. Are there policies for social rights of Kenyan Diasporas portable and transferable (pensions, social security)? If not, is it a real obstacle to their involvement?

12. What are the main obstacles that impede government migration policy: both 'hard' obstacles such as technical, financial, infrastructural, macroeconomic or administrative obstacles and 'soft'
13. What are the policy challenges for dealing with regional migration between Kenya and other ACP countries?
14. Does the Government of Kenya adopt any measures targeting the financial and business resources of the Kenyan diaspora?
15. What are the main Kenyan migrant groups involved in migration policy discussions (name, position, policy document title, year)
16. Which are the major countries of destination for the Kenyan migrants?
17. What are the main business interest groups involved in migration policy discussions (name, position, policy document title and year)?
18. Are there political parties' official policy positions on migration (with reference to key documents)?

Policies towards the Diaspora

1. Does the Government of Kenya/ministry/department have policies for diaspora engagement? What are they?
2. Does the government engage in activities directed towards the Kenyan diaspora for development purposes?
3. Does the government engage in activities directed towards third-country Diasporas from the ACP countries living in Kenya for development purposes?
4. Does the government collect data on Kenyan diaspora? What kind of data is collected?
5. Who is/are in charge of diaspora issues in the government/ministry/department?
6. How do different institutions collaborate on this matter and what are the resources devoted to these activities?
7. What are the extent and resources of the consular network and other services abroad?
8. What are the development goals, priorities and strategies for Government of Kenya/ministry/department to involve diaspora in development activities?

9. How does the Government of Kenya/ministry/department match the development goals, priorities of the diasporas with its own?
10. What are the main resources of the diaspora (human, social, entrepreneurial, financial,) that the government wants to target?
11. What is the political participation of the Diasporas (citizenship, elections, and eligibility, consultations)?
12. What is the level of the Kenyan diaspora's trust of the government? What is the image of the government and country abroad?

Institutional framework

1. What kind of institutions are there to deal with migration issues at the local, national, regional and international levels? When were they established and what is their mandate?
2. What are the policy formulation mechanism within these institutions
3. How do different institutions collaborate on migration matters and what are the resources devoted to these activities?
4. Who are the main actors in migration policy formulation and implementation
5. What kind of migration data is available within the relevant ministries/ departments?
6. To what extent do these institutions engage with Diasporas?
7. What kind of partnerships has the government established with international organizations to on migration and development issues?
8. Does the government have institutional measures aimed at Kenyan Diasporas?
9. What role does the local government play in the migration-related programmes
10. What is the nature of your working relationship with the local government on migration issues? Which departments?
11. What role does the central government play in the migration-related programmes?
12. What is the nature of working relationship with the local government on migration issues? Which departments?
13. What is the role of the local community?

- To what extent is the local community involved in the planning, design and implementation of the diaspora projects?
14. Are there other actors involved in local migration related development initiatives?
- From the ACP countries
 - From the EU
 - From the US
 - From China

Legal framework for the management of migration in Kenya

1. What is the migration legislation framework in Kenya?
2. To what extent does the constitution of Kenya address migration issues?
3. What are the specific legislations that address migration issues in Kenya
4. What kinds of migration-related international instruments (treaties) have been domesticated by the government?
5. What are the existing agreements (bilateral, multilateral) pertaining to migration at regional and international levels?
6. Does the government have legislative measures aimed at addressing issues pertaining to the Kenyan diaspora?
7. What specific legislative changes are needed to favour the Kenyan diaspora's participation in the homeland?

Local and national stakeholders

1. To what extent are COTU-K/FKE/CSOs engaged in migration issues
2. What is their involvement at policy level?
3. What programmes (e.g. policy, intervention) do they have on migration?
4. What is their relationship with Kenyans in diaspora?
5. What is their relationship with diasporas from the ACP countries resident in Kenya?
6. What are the regional consultative processes on migration? (Existence, periodicity, main policy documents).
7. How and to what extent does the AU/IGAD/EAC/ACP embassies engage with migration issues in Kenya (which specific areas)?

8. What are the regional bilateral agreements (visa, labour, etc.) with neighbouring countries (by title and year)?
9. What are the main regional bodies and sub-bodies in charge of migration?

International stakeholders (International organizations)

1. To what extent does IOM/UNDP/EU engage with migration issues in Kenya (which areas)?
2. What is the nature of involvement at policy level?
3. What is the nature of support to migration policies and programmes?
4. What programmes do they have on migration (policy, intervention)?
5. What are their relationships with the Kenyan diaspora?
6. What is their relationship with diasporas from the ACP countries resident in Kenya?
7. What are the UNDP/IOM/EU perspectives on migration and development in Kenya?
8. What are the UNDP/IOM position/perspectives on migration policy in Kenya?
9. What are the UNDP/IOM migration policy initiatives in Kenya?
10. What kind of project does UNDP/IOM/EU implement in Kenya?
11. Are there other relevant programmes or activities?
12. In which regions are the programmes implemented and why?
13. What links do UNDP/IOM/EU programmes have with Kenyan diaspora?
 - Organizations – which ones?
 - Individuals – who?
 - Countries of residence?
14. What kind of partnerships does UNDP/IOM/EU has with local CSOs on migration issues?
 - Which ones?
 - What programmes?
15. What is the role of diasporas in the UNDP/IOM/EU programme implementation?

- Cases - What difference is made by the diaspora initiatives to the local community? What is your perception on the development input potentials of these initiatives?
- What experiences and lessons have been encountered and learnt from working with Diaspora organizations?

Please add any other comments and attach any documentation you might consider useful to support your answers to this questionnaire.

WE THANK YOU MOST SINCERELY FOR COOPERATING WITH US IN THIS STUDY.

B. GUIDELINE FOR FIELD WORK IN KENYA:

1. Secondary data– Migration policy, legal and Institutional framework

A) Policy framework

- Policies targeting internal migration management (National policies)
- Policies targeting management of regional migration (neighbouring countries (Regional policies)
- Policies targeting international management of migration (trafficking, smuggling, regular/irregular migration)

Policy	Date of establishment/ Implementation	Details
National:		
Regional:		
International:		

B) Institutional framework

- At the national level
- At county level (if applicable)
- Representation of Kenya in international bodies that deal with migration – foreign missions, UN bodies, AU, IGAD and EAC
- Any available documentation on all above

Institution	Migration-related Functions	Migration policy
Ministry of Foreign Affairs		
Ministry of Immigration		

Ministry of Labour		
Ministry of East African Community Affairs		
Ministry of Trade		
Ministry of Planning		
Ministry of Education		
Missions abroad		
Representation abroad (UN, AU, IGAD, EAC)		
Office of the Prime Minister		

C) Legal framework

- The constitution
- Regulations
- Procedures
- International instruments
- Agreements – regional, continental and international, bilateral or multilateral
- Any available documents on all above

Laws	Date of establishment	Details

International instruments/agreements

Instrument	Date of signing/enforcement	Details

2. Primary Data

Interviews:

A) Tools/techniques

- Questionnaire (questions are being developed)
- Observations
- Focus group discussion
- Expert meetings
- Pictures
- Videos

B) Levels and respondents

Level one in Kenya:

- Officers in Ministers and departments
- CSOs
- FKE
- COTU
- ACP Diaspora in Kenya
- ACP Liaison office in Kenya

Level two in Kenya:

- Ministers and permanent secretaries in relevant ministries
- Directors and programmer officer of key organizations and departments
- IOM
- ILO
- UNHCR
- WHO
- WB
- IMF
- UNDP
- EAC
- EC
- IGAD
- ACP Missions in Kenya

Level three – Abroad:

- Kenyan mission abroad in the select ACP countries
- Kenyan Diaspora organizations in the select ACP countries
- Ministers and permanent secretaries in relevant ministries in the select ACP countries
- Directors and programmer officer of key organizations and departments in the select ACP countries

3. Sources for both secondary and primary data

Government ministries/departments:

- Foreign Affairs
- East Africa Corporation
- Labour
- Immigration
- Planning and National Development and Vision 2030
- Trade
- Office of the Prime Minister

International organizations:

- IOM
- ILO
- UNHCR
- WHO
- WB
- IMF
- UNDP
- EAC
- EC
- IGAD

Other actors:

- Civil society organizations working on migration issues
- Research Institutions
 - UoN
 - KIPPRA
 - AMADPOC
- Kenyan Diaspora Organizations
- Foreign missions
- ACP Missions in Kenya
- ACP Diaspora organizations in Kenya
- Chamber of Commerce
- Federation of Kenya Employers
- COTU
- EPZ secretariat

Additional Requests to Government Ministries/Institutions Concerned with Labour Migration

Ministry/Departments to be visited

Ministry of State for Planning, National Development and Vision 2030

Youth Enterprise fund

- Any information on the Youth Sessional Paper on Labour Development
- Kindly make available a copy of the Sessional Paper and any other strategy documents.

Ministry of Labour – Labour commissioner

- Ratification of Labour Migration Conventions: (a) ILO-propelled conventions and (b) the UN Convention on Migrant Workers and Members of Their Families.
- Treatment of immigrants workers
- Status of the labour migration policy

Ministry of State for Immigration and Registration of Persons

Office of the Prime Minister

- Any information on the National migration policy & how the information tallies with the Diaspora policy.
- Where will the Migration functions move after the forthcoming general elections?

Ministry of Foreign Affairs

- UN Placement office

Central Organization of Trade Unions

National Council for Population and Development

No	Areas of Concern	Status	Documentation
	What are your functions as concerns Labour Migration? Please explain in detail		
	Do you have any policies that you refer to in your work? If so please name them and summarize the policies and the challenges they are to address?		
	Who are your partners in labour migration related work both private and Government?		

	Are there any pending local Legislation/Policy/Rules/Guidelines on Labour Migration in your area of responsibility?		
	Are there international instruments that guide your work? If so, please name them?		

C. ADDITIONAL REQUESTS TO GOVERNMENT MINISTRIES/INSTITUTIONS CONCERNED

WITH LABOUR MIGRATION

[Ministry of immigration, Labour, Foreign Affairs, etc.]

No	Questions	Status	Documentation
	In South to South Labour migration, which are the major countries of destination for Kenyans?		
	Which are the major countries of origin?		
	What level of labour migrants are most likely to immigrate.		
	Please advise on the regulatory framework in place that guides you in your functions (Include the international instruments)		
	What support services are available for migrants in the South-South migration system?		
	How does Kenya ensure that migrant workers are performing the jobs they came to Kenya to do?		
	Do we have a way of disseminating information to migrants?		
	How do we ascertain demand for immigrant labour locally?		

	Is there interministerial cooperation in the migration function if so which ministries do you work with?		
	What measures are in place to safeguard against trafficking of migrant workers?		
	Is there a migration policy that guides your functions? (Either a draft or a final)		

D. INSTITUTIONS CONSULTED WITH

Kenya:

Government Agencies

- Ministry of Immigration and Registration of Persons
- Ministry of Labour
- Ministry of Foreign Affairs
- Ministry of the East African Community
- Ministry of Youth and Sports (MOYAS)
- National Council for Population and Development (NCPD)

Private Labour Recruiting Agencies

- Kenya Association of Private employment Agencies (KAPEA)
- Interlead
- Inve-Track
- Elmvale Agencies
- Nassam Solutions
- Madina
- Alsair Travel
- Placement Africa
- Silver Pay

Rwanda:

- Chief Advocacy Officer –Private Sector Federation
- Director of Immigration
- Damascene-Director National
- Director - Policy Research and Statistics and Claims
- Acting Director - East African Community
- Director of Labour
- Chair – HAGURUKA
- CEO – ICPAR
- Head of Human Resources

United Republic of Tanzania:

Government Agencies

- Ministry of Home Affairs
- Ministry of Labour and Employment
- Ministry of East African Cooperation

Private Labour Recruiting Agencies

- Tanzania Employment Services Agency (TaESA)
- Radar Recruitment Agency

Uganda:

Government Agencies

- Ministry of Internal Affairs
- Ministry of East African Affairs
- Ministry of Gender, Labour and Social Development

Private Labour Recruiting Agencies

- Ham Property Services and Management Limited
- Sepher Employment
- Maghrib Agencies
- SGA Manpower Limited
- Uganda Veterans Development Limited

