

Research Article

Legal Protection of Free Movement of Labour Within the East African Community: A Comparative Analysis

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Abstract

This article critically examines the legal and institutional frameworks that govern the protection of employees' right to free movement of labour within the East African Community (EAC), with particular focus on Tanzania, Kenya, Uganda, Rwanda, and Burundi. The EAC Common Market Protocol (CMP), which came into force in 2010, sets out clear commitments for partner states to guarantee the free movement of persons, labour, goods, and services, aiming at promoting deeper economic integration and equitable social development in the region. However, more than a decade after its adoption, the practical implementation of these commitments remains fragmented and inconsistent. National immigration laws, restrictive work permit regimes, the lack of harmonized standards for the recognition of qualifications, and the non-transferability of social security benefits continue to pose significant obstacles to the free movement of workers. This paper analyzes the constitutional, statutory, and policy measures that each of the five states has put in place to comply with the CMP. The article concludes that while significant progress has been made in protecting workers' fundamental rights within national contexts, deeper harmonization of labour laws, elimination of discriminatory administrative practices, and stronger political will are essential for realizing the EAC's goal of a truly integrated labour market.

Keywords

East African Community, East African Community Charter, Common Market Protocol, Free Movement of Labour, Workers' Rights and Freedoms, Labour Migration

1. Introduction

The East African Community (EAC), re-established in 2000 and currently comprising seven partner states, was founded on the vision of deep economic, political, and social integration. A central pillar of this integration project is the Common Market, operationalized through the EAC Common Market Protocol (CMP), which came into force on 1 July 2010 [1]. The Protocol seeks to create a unified and competitive regional economic space by guaranteeing the free

movement of goods, persons, labour, services, and capital. In the context of labour mobility, the CMP enshrines principles of non-discrimination, equal treatment, transparency, and mutual recognition of academic and professional qualifications to eliminate regulatory and administrative barriers that limit workers' mobility across partner states.¹ These principles position labour mobility not merely as an economic mechanism, but as a fundamental right integral to the reali-

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zation of the EAC's broader integration agenda.

Despite this formal normative framework, evidence across partner states reveals persistent discrepancies between regional commitments and national implementation. A growing body of scholars demonstrates that restrictive immigration rules, divergent labour laws, limited mutual recognition of qualifications, and bureaucratic work-permit systems continue to hinder free movement of labour. Migration Law reveals divergent regulatory approaches that undermine uniformity and frustrate the practical enjoyment of mobility rights. These discrepancies show that, more than a decade after the CMP took effect, partner states have not sufficiently harmonized their domestic frameworks to achieve a functioning and integrated labour market.

This study employs comparative legal analysis to examine inconsistencies across five EAC partner states Tanzania, Kenya, Uganda, Rwanda, and Burundi. The choice of these five jurisdictions is guided by the fact that they represent the most diverse range of national labour and immigration regulatory models within the Community. Historically, Rwanda and Burundi formed part of what was known as 'German East Africa' and part of interlacustrine region. The methodology applied involves a comparative survey of normative sources, including the EAC Treaty, the CMP and its Annexes, national constitutions, labour statutes, immigration laws, subsidiary legislation, and relevant jurisprudence from domestic courts and the East African Court of Justice (EACJ). This methodological approach allows the researchers to identify patterns of convergence and divergence and assess the extent to which national laws comply with, or contradict, Community law obligations.

The significance of this analysis lies in its contribution to understanding the practical barriers to achieving regional integration. Free movement of labour is foundational to economic growth, productivity enhancement, knowledge transfer, and the reduction of structural unemployment across the region. Its effective implementation promotes regional cohesion, facilitates equitable development, and supports the movement toward a future EAC Political Federation. By highlighting gaps in the legal architecture and proposing areas for harmonization, this chapter provides the evidence necessary to strengthen the Common Market and advance East Africa's integration agenda.

2. Conceptual and Normative Foundations on Free Movement of Labour

Free movement of labour is a concept that is applied in various aspects of human life. As an economic concept, the free movement of labour is grounded in classical and neo-classical economic theories, which treat labour as a mobile factor of production that must move freely for markets to function efficiently. Classical economists such as Adam

Smith and David Ricardo emphasized that labour mobility is essential for reallocating skills to areas of higher productivity, reducing wage disparities, and ensuring efficient utilization of human capital [2]. The concept later evolved during the Industrial Revolution, when advances in mechanized production, urbanization, and cross-border industrial expansion created increased demand for flexible and mobile labour markets. In modern capitalist economies, labour mobility is understood as a mechanism for balancing labour surpluses and shortages across regions, thereby enhancing competitiveness, increasing overall productivity, and stimulating long-term economic growth [3]. Within regional blocs such as the European Union and the East African Community (EAC), free movement of labour is a central driver of integration, enabling partner states to benefit from economies of scale, promote intra-regional investment, and reduce unemployment asymmetries through the efficient redistribution of labour across borders.

On the other hand, free movement of labour is a human rights standard incorporated under various international and regional instruments, including the Universal Declaration of Human Rights,² the International Covenant on Civil and Political Rights,³ and the African Charter on Human and Peoples' Rights.⁴ These instruments explicitly recognize the rights to freedom of movement, to work, and to equal treatment under the law. This protection enables individuals to pursue livelihoods, escape adverse conditions, and seek better opportunities without discriminatory impediments. In this sense, the right to move and work across borders safeguards workers' social and economic security by preventing arbitrary restrictions or exploitative practices. It also reinforces the principle that migrant workers should enjoy the same rights and protections as nationals of the host state, thereby promoting fairness, inclusivity, and social cohesion within integrated regions such as the EAC [4].

Likewise, the International Labour Organization (ILO), as the global guardian of labour rights, provides a comprehensive framework for governing labour mobility across borders. Key ILO instruments, including the Migration for Employment Convention,⁵ the Migrant Workers Convention,⁶ fundamental conventions on non-discrimination, equal remuneration, and freedom of association, underscore that migrant workers must be treated with dignity and afforded decent working conditions regardless of nationality. These conventions require states to adopt policies that prevent exploitative recruitment practices, ensure equal treatment in employment, and remove unjustified administrative barriers that hinder lawful employment mobility [5]. The ILO's Decent Work Agenda further underscores that mobility should facilitate access to decent jobs, social protection, and effective dispute-resolution mechanisms.⁷ Collectively, these global standards guide regional organizations and national governments in designing migration laws and labour policies that balance economic interests with the protection of migrant workers' rights, and they heavily influence the normative development of mobility rules within the EAC.

At the continental level, the African Union has increasingly integrated free movement into its development and integration agenda. The AU's Protocol on Free Movement of Persons, Right of Residence and Right of Establishment of 2018 articulates member states' commitments to progressively remove visa restrictions, harmonize labour migration policies, and facilitate the mutual recognition of skills and qualifications.⁸ Complementing this is the Migration Policy Framework for Africa (MPFA) which encourages states to modernize immigration systems, strengthen labour market information sharing, and establish cross-border social protection mechanisms. Although implementation across the continent remains uneven, these instruments collectively demonstrate a regional shift toward mobility-driven integration and reinforce the obligations of EAC partner states to remove structural and administrative barriers that hinder labour mobility. In this regard, AU standards help align national laws with broader regional objectives and provide a normative foundation for harmonizing labour migration governance across Africa [6].

Within the East African Community, the Common Market Protocol (CMP) situates the free movement of labour as both an economic necessity and a legally protected right, drawing from global and regional standards. Article 10 of the CMP guarantees nationals of partner states the right to move, seek employment, and reside in other member states without discrimination, while granting specific entitlements, such as the right to apply for and accept jobs, to conclude employment contracts, to join professional or trade organizations, and to access social security benefits.⁹ In addition, the Protocol ensures equal treatment in working conditions and labour protections and reinforces the principle that migration for employment should occur within a harmonized regulatory environment. The CMP, therefore, operationalizes labour mobility through a rights-based framework that seeks to integrate the region's labour markets, reduce administrative barriers, and ensure that partner states fulfil their obligations under Article 8 to align national laws, remove restrictions, and facilitate implementation. In this way, the EAC conceptualization of free movement is hybrid, merging economic efficiency with human rights protection and international labour law principles to advance deeper regional integration [7]. Thus, the concept of free movement of labour is both an economic and legal concept which entails recognition and protection of movement of people from one place to another in search for job opportunities for sustainable livelihood.

3. Socio-economic Drivers of Labour Mobility Within the East African Community

Although the legal and institutional frameworks governing labour mobility within the East African Community (EAC) provide the formal foundation for cross-border movement,

labour mobility is also shaped by a range of socio-economic factors that influence workers' decisions to move across borders. These structural drivers determine both the pattern and intensity of intra-regional migration, as well as the extent to which legal restrictions impede or facilitate movement. A comprehensive understanding of the free movement of labour, therefore, requires an examination of the socio-economic conditions that underpin migration flows in the region.

(a) Economic Inequalities and Wage Differentials

Persistent economic disparities among partner states remain one of the strongest determinants of labour mobility within the EAC. Countries with higher GDP per capita and more diversified economies—such as Kenya and Rwanda tend to attract workers from economies with relatively lower wages and limited employment opportunities, including Tanzania, Uganda, Burundi, and South Sudan.¹⁰ Wage differentials in key sectors such as services, construction, hospitality, agriculture, and light manufacturing create both “push” and “pull” factors that stimulate cross-border labour flows. Consequently, regional economic imbalances continue to reinforce intra-EAC mobility and amplify the need for harmonized labour-market governance.

(b) Demographic Pressures and Youth Unemployment

East Africa has one of the youngest populations globally, with youth constituting more than 65% of the population.¹¹ High youth unemployment and underemployment in many partner states, particularly Kenya, Tanzania, Uganda, and Burundi, serve as strong push factors for cross-border mobility. With national labour markets unable to absorb the growing labour supply, migration becomes a livelihood strategy for many young people. This demographic pressure increases demand for mobility and makes administrative barriers such as high work-permit fees and lengthy processing procedures especially prohibitive for the youth [8].

(c) Uneven Distribution of Skills and Labour-Market Segmentation

Regional variations in the distribution of skills and qualifications also drive labour mobility. Kenya and Rwanda have relatively stronger tertiary education systems and a larger concentration of skilled professionals in sectors such as ICT, health, engineering, and finance [9]. Other partner states, especially Burundi, Uganda, and parts of Tanzania, face shortages of specialized skills, leading to reliance on expatriate labour to fill technical gaps. At the same time, a significant proportion of the workforce in most EAC states operates within the informal sector. These dynamics create an uneven labour-market structure where demand for specific skills on the one hand and surplus labour on the other drive mobility across borders. Limited progress in the mutual recognition of academic and professional qualifications, as envisioned under Annex II of the CMP, continues to constrain the mobility of skilled workers.

(d) Cost of Living, Social Services, and Quality of Life Differences

Variations in cost of living, access to social services, and

general quality of life also influence migration decisions within the region. Urban centers such as Nairobi, Kigali, and Dar es Salaam provide improved access to healthcare, education, transport infrastructure, and utilities, making them attractive destinations for job seekers [10]. For many workers, therefore, mobility is not merely a pursuit of higher wages but also an attempt to access better living conditions and socio-economic opportunities unavailable in their home states.

(e) Informal Cross-Border Trade and Historical Mobility Patterns

Informal cross-border trade remains one of the most significant sources of employment in the region, especially among women and youth [11]. Traditional mobility patterns that predate colonial borders continue to shape labour flows, particularly in border towns along the Kenya, Uganda, Tanzania, Rwanda, and Tanzania–Burundi corridors [12]. Many workers in these areas engage in circular or short-term migration without formal contracts. Such mobility patterns highlight a critical gap between legal frameworks that primarily regulate formal employment and the socio-economic reality in which informal mobility remains central to livelihoods. Where restrictive permit regimes are applied rigidly, they risk excluding or penalizing workers who rely on traditional cross-border movement.

(f) Political Stability and Governance Factors

Political stability, security conditions, and the quality of governance also significantly influence labour mobility within the EAC. States with relative stability and effective governance, such as Rwanda, tend to attract more migrant workers [13]. Conversely, political tensions or periodic instability in countries such as Burundi and Rwanda, have historically driven outward labour migration [14]. Governance indicators, such as corruption levels, administrative transparency, and the efficiency of immigration processes, further determine the extent to which workers can move and integrate into host labour markets.

(g) Social Networks, Diaspora Communities, and Migration Culture

Social networks, kinship ties, and diaspora communities play an essential role in facilitating mobility by lowering the risks and costs associated with migration [15]. Migrants frequently rely on relatives, ethnic networks, or community members for information about job opportunities, housing, and permit requirements. These networks reinforce a “migration culture” in which movement becomes a normalized strategy for seeking livelihoods, especially among youth and informal-sector workers. Social networks also partly explain why certain national groups dominate particular sectors or cities within the EAC.

(h) Regional Integration and Emerging Market Opportunities

Public and private investments aligned with regional integration efforts, such as the Northern Corridor Integration Projects (NCIP) and the Central Corridor, are generating new labour demand in transport, logistics, construction, and ser-

vices [16]. Expansion of regional value chains in agriculture, processing, and manufacturing further increases intra-regional labour demand [17]. However, workers' ability to access these opportunities depends heavily on the ease of mobility and the consistency of national permit regimes with the Common Market Protocol.

Generally, the socio-economic factors identified above illustrate that labour mobility within the EAC is driven by structural conditions that extend beyond legal provisions. Economic disparities, demographic pressures, skill mismatches, informal-sector dynamics, and governance conditions all shape the movement of workers across borders. To fully realize the objectives of the Common Market Protocol, partner states must develop harmonized policies that integrate socio-economic realities with legal reforms. This requires reducing excessive administrative barriers, promoting skills recognition, investing in labour-market information systems, and acknowledging the central role of informal mobility in regional economies.

4. Legal Framework on Workers' Rights to Free Movement of Labour in East Africa

4.1. Charter Establishing the East African Community

(a) Establishment and objectives

This is the constitution of the East African Community. Article 2 establishes the EAC. The Charter lays down fundamental objectives and principles and establishes organs for implementation. Partner states are obliged to cooperate by pooling resources so as to realize the common goals. Such objectives include developing policies and programmes aimed at widening and deepening cooperation among the Partner States in the political, economic, social, and cultural fields; research and technology; defence; security; and legal and judicial affairs, for their mutual benefit.¹²

(b) Fundamental Principles

The fundamental principles of the East African Community (EAC) Charter, mutual trust, political will, and sovereign equality; peaceful co-existence and good neighborliness; peaceful settlement of disputes; and good governance form the normative foundation of regional integration. By incorporating democracy, the rule of law, equality, and human rights as articulated in the African Charter on Human and Peoples' Rights, the Treaty makes these values binding on Partner States and central to the interpretation of all protocols, including the Common Market Protocol (CMP).¹³ These principles, therefore, establish the standard against which national legal frameworks and administrative actions affecting migrant workers must be measured.

In the governance of labour mobility, principles such as mutual trust, political will, sovereignty, and good governance

directly influence the evaluation of state compliance with CMP obligations. Mutual trust requires states to refrain from adopting protectionist policies that undermine mobility, while political will determines whether regional commitments are translated into domestic practice.¹⁴ Although states retain sovereign authority over labour and immigration regulation, this sovereignty must be exercised consistently with Treaty obligations.¹⁵ Measures that restrict EAC citizens' employment or residence rights, unless justified by permissible exceptions, risk violating the principles of non-discrimination, transparency, and legality. This interpretive approach is reinforced by EACJ jurisprudence, such as *Mohochi*, in which the arbitrary denial of entry was found to contravene Treaty principles of good governance and free movement.¹⁶

Finally, these principles are operationalized through the institutional structure of the Community, the Summit, the Council, the Coordinating Committee, the Sectoral Committees, the Secretariat, the East African Legislative Assembly, and the East African Court of Justice (EACJ). Through their policy-making, oversight, harmonisation, and adjudicatory functions, these organs give practical effect to the Charter's values and provide mechanisms for ensuring state accountability. Relevant decisions, particularly *Anyang' Nyong'o* and *Mohochi*, demonstrate that the EACJ plays a crucial role in safeguarding the supremacy of regional law (excluding national constitutions) and promoting compliance with integration objectives.¹⁷ These principles, therefore, guide the analysis throughout this article by providing the normative and legal framework for assessing domestic measures that affect the free movement of labour within the EAC.

4.2. The East African Community Common Market Protocol (CMP)

The CMP is the principal instrument operationalizing labour-mobility commitments under the Treaty. Article 10 obliges partner states to ensure the free movement of workers, eliminate discrimination based on nationality, harmonize labour and employment policies, recognize professional qualifications, and coordinate social-security systems. The scope of the Protocol extends to nationals of all partner states, including both skilled and semi-skilled workers, thereby covering key sectors such as education, health, construction, agriculture, manufacturing, tourism, and services.¹⁸ By translating treaty principles into legally enforceable obligations, the CMP establishes a framework for partner states to remove administrative barriers and facilitate the integration of regional labour markets.

By translating treaty principles into legally enforceable obligations, the CMP establishes a framework for partner states to remove administrative barriers and facilitate the integration of regional labour markets.

(a) Principles and Objectives of the Protocol

The operation of the Common Market Protocol is guided by four fundamental principles: non-discrimination against na-

tionals of other partner states on grounds of nationality, equal treatment of nationals of other partner states, transparency in matters concerning other partner states, and sharing information to facilitate the smooth implementation of the protocol.¹⁹ These principles seek to ensure that partner states cooperate towards sustainable economic and social development of the people in the region. They are based on the internationally recognized principle of *pacta sunt servanda*.

The general objective of the East Africa Common Market Protocol is to widen and deepen cooperation among the potential states in the economic and social fields for the benefit of the partner states. To ensure that the above goal is achieved, the Protocol outlines other objectives, namely: the acceleration of economic growth and development of states through the attainment of free movement of goods, persons, and labour; the exercise of rights of establishment and residence; and the promotion of free movement of services and capital.²⁰ Furthermore, the Protocol seeks to strengthen coordination and regulation of economic and trade relations among partner states to harmonize and balance development in the EAC. Similarly, the Protocol aims to sustain the expansion and integration of economic activities within the EAC, promote common understanding among the nationals of the Partner States, and enhance research and technological advancement to accelerate economic and social development. The above common goals can be achieved if partner states cooperate to integrate and harmonize their policies in the areas covered by the Protocol and in other areas, as may be agreed by the Council.²¹

(b) The Scope of Cooperation

States are called upon to cooperate to achieve identified common goals. The areas and means of cooperation in the spirit of this study include: eliminating tariffs, non-tariff barriers, and other trade barriers; harmonizing, recognizing, and implementing common standards and trade policies. Similarly, partner states should facilitate cross-border movement of persons and remove restrictions on labour mobility. Partner states must harmonize labour policies, programs, legislation, and provide for social security benefits. They should also establish common standards and measures for the association of workers and employers, establish employment promotion centers, and adopt a standard employment policy.²² The right to free movement of persons cannot be adequately guaranteed unless a state removes restrictions on the right of establishment and residence of nationals of other partner states.

(c) Provision on Free Movements of Persons

The movement of labour, services, and capital is the core of economic integration. They involve the movement of persons who engage in production. Free movement of persons is an essential aspect for the integration of the member states. It is a fundamental right guaranteed under Article 7 of the Common Market Protocol. Free movement is guaranteed if citizens of other partner states can enter the territory of a partner state without a visa, move freely within the territory of a member state, stay in the territory of a partner state, and exit without

limitation.

States are obliged to guarantee free movement of persons who are citizens of other partner states by ensuring that people can enter into each other's territories with visas, exit without restrictions, and also to establish residence in these countries. However, there are factors which may necessitate states to limit free movement of labour, namely: public policy, security and health.²³ The provision on the free movement of persons covers all people seeking employment and those self-employed, including those engaged in business.

(d) Provision on Free Movement of Labour in the East African Community

With regard to the movement of workers, Article 10 of the Common Market Protocol provides that the Partner States should guarantee the free movement of workers, who are citizens of the other Partner States, within their territories. The Partner States are obliged to incorporate into their domestic laws non-discrimination provisions for workers of the other Partner States, based on their nationalities, in relation to employment, remuneration, and other conditions of work. This provision is so necessary when discussing the observance of the rule of law in a country. Similarly, it is a vital provision for promoting human rights and freedoms in the region. It is important to note that partner states are members of the Discrimination (Employment and Occupation) Convention of 1958 (No. 111). Thus, each state party to the organization must take all necessary measures in its policies and workplaces to eliminate all forms of discrimination.

Partner states can promote free movement of labour in several ways. The first on the list is to harmonize and mutually recognize academic and professional qualifications. The labour market usually demands skilled and unskilled personnel. The former is attained through formal education; therefore, partner states should cooperate and harmonize educational and professional training. This will finally ensure that graduates across disciplines share common knowledge and skills, enabling them to be employed in any partner state. Consequently, Partner States undertook to mutually recognize the academic and professional qualifications granted, experience obtained, licenses or certifications granted in other Partner States.²⁴

According to Article 10(3), a worker from any partner state is entitled to apply for employment, accept offers of employment, conclude contracts, move freely within, and stay in the territories of the Partner States. Further, a worker is entitled to enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host Partner State, and to enjoy the rights and benefits of social security accorded to workers of the host Partner State.

(e) Right of Residence

The right to residence is granted to the spouses, children, and dependents of the workers or self-employed persons. The Common Market Protocol provides the right to reside in other territories. It allows them to be employed or engage in any

economic activity, subject to the laws of the land. However, the right of residence may be restricted on grounds of public policy, public security, or public health, provided that the restriction is effectively communicated.²⁵ According to the Common Market Protocol Regulation 7 (Annex IV), the residence permit shall expire upon the expiration of the work permit.

4.3. African Charter on Human and Peoples' Rights

This is an important human rights instrument in Africa. It embodies civil, political, cultural, economic, and solidarity rights. Specifically, it provides for the right to work and the right to receive equal pay for equal work,²⁶ the right to equality under the law,²⁷ the right to equal protection by law,²⁸ the right against discrimination,²⁹ the duty to respect and consider his fellow beings without discrimination, duty to promote, safeguard, and reinforce mutual respect and tolerance.³⁰ Other rights include: the right to be heard, the right to appeal, the right to the presumption of innocence, the right to representation, freedom of association, Freedom of movement, and freedom of residence.³¹

4.4. The East African Community Treaty

The Treaty for the Establishment of the East African Community serves as the constitutional foundation for labour mobility. Articles 5(2)(d), 6(d), and 7(2) emphasize equitable development, good governance, human rights, and cooperation in labour and employment matters, principles that collectively support the progressive removal of restrictions to movement.³² Crucially, Article 104 obliges partner states to adopt measures that facilitate the free movement of labour, demonstrating that labour mobility is not discretionary but a treaty-mandated commitment. Article 8(4), which establishes the supremacy of Community law over inconsistent national laws, reinforces this obligation by requiring partner states to align domestic legislation with regional standards [18]. This creates a constitutional hierarchy in which national immigration, labour, or social-security laws must not undermine regional obligations.

4.5. Common Market Protocol Regulations

Annex I to the CMP provides the regulatory mechanisms necessary for the practical enforcement of labour mobility. It sets out procedures for visa-free entry for EAC citizens, rules for the issuance and extension of work and residence permits, and grounds for refusal of admission, such as public security, public health, or public order. The Annex also governs the rights of dependents and establishes avenues for administrative review and appeals against immigration decisions. Notably, Regulation 7 links the validity of residence permits to that of work permits, illustrating how national immigration

systems continue to influence the implementation of the CMP. While Annex I aims to harmonize procedures across partner states, divergent national practices and administrative discretion lead to inconsistent application and undermine uniform regional mobility.

Workers qualifying under Article 10 of the CMP enjoy extensive rights related to movement, employment, residence, and equal treatment. These include the right to apply for employment, conclude employment contracts, join trade unions, access social security benefits, and reside in the host state during the tenure of their employment.³³ Correspondingly, partner states bear obligations under Article 8 to harmonize labour laws, eliminate discriminatory administrative procedures, facilitate cross-border movement, coordinate social-security systems, mutually recognize professional qualifications, strengthen labour-market information systems, and promote equitable treatment of migrant workers.³⁴ As demonstrated in the country-specific analyses later in the manuscript, these obligations remain only partially implemented, resulting in uneven labour-mobility outcomes across the region.

5. Legal Protection of Employees' Right to Free Movement of Labour in Selected EAC Countries

5.1. Legal Framework on Protection of the Right to Free Movement of Labour in the Republic of Kenya

Kenya, a founding member of the East African Community (EAC), has implemented the Common Market Protocol to ensure the freedom of movement of workers. It has domesticated the Protocol through various national laws, such as the Citizenship and Immigration Act 2011 and the Kenya Citizenship and Immigration Regulations, which facilitate the issuance of work permits to EAC nationals. The Kenyan government has also established immigration desks at border points and strengthened cooperation with other EAC states through bilateral labour agreements. To ease cross-border employment and social protection, Kenya has agreed with member states. For instance, Kenya, Uganda, and Rwanda have entered into mutual arrangements under the Northern Corridor Integration Projects (NCIP) to allow citizens to travel and work using national identity cards rather than passports, thereby simplifying movement and access to employment within the bloc.

Similarly, Kenya and Tanzania have agreed under the Joint Permanent Commission for Cooperation (JPCC) framework to harmonize work permit and residence requirements to promote reciprocal employment opportunities for professionals and traders. In addition, Kenya has signed bilateral labour migration agreements with countries such as

Uganda, Rwanda, and South Sudan, facilitating recruitment and protection of Kenyan workers abroad while enhancing the portability of social security benefits within the region [20]. These initiatives collectively demonstrate Kenya's commitment to the principles of the EAC Common Market Protocol, particularly Article 10, which guarantees the free movement of workers. By engaging in these bilateral frameworks, Kenya not only strengthens regional labour integration but also promotes equitable access to employment across the Community.

5.1.1. The Constitution of Kenya, 2010

The Constitution of Kenya, 2010, is one of the most progressive constitutions, recognizing and protecting employees' rights, including freedom from discrimination, the right to equality and fair labour practices, and general prohibitions against child labour, slavery, servitude, and forced labour.³⁵ Specifically, Article 27 provides for the right to equality and freedom from discrimination. It provides *inter alia* that the states shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, ethnic or social origin, language, birth, and so forth. Furthermore, Article 39 guarantees freedom of movement and residence; whereas article 41 provides for rights to fair remuneration, reasonable working conditions, and the right to form, join or participate in the activities and programmes of a trade union, and to go on strike. Similarly, Article 47 provides for the right to fair administrative action, including the right to written reasons for the decision and to judicial review. On the other hand, articles 48 and 50 require state authorities to ensure a person whose right has been violated has access to justice and a fair hearing.³⁶ Where a person is arrested, then he or she is entitled to fair arrest procedures.³⁷ and rights of persons detained, held in custody, or imprisoned.³⁸

All the above rights and freedoms are extended to all persons, including migrant persons working in Kenya. Where the above labour rights are violated, then article 22 of the Kenyan Constitution guarantees individuals the right to initiate proceedings in court, including the Employment and Labour Relations Court (ELRC) established under article 162(2). More importantly, the Constitution of Kenya, under articles 2(5) and 2(6), clearly states that the general rules of international law and any treaty or convention ratified by Kenya form part of the laws of Kenya. This implies that all international labour standards and conventions, including the core conventions of the International Labour Organization (ILO) ratified by Kenya, form part of Kenya's *grund norm*.

In line with Kenya's constitutional incorporation of international norms, it is emphasized that fundamental international labour standards such as protection against forced labour, non-discrimination in employment, fair remuneration, reasonable working hours, and access to leave apply to all workers irrespective of nationality. Analyses of Tanzanian labour law further illustrate that ILO core conventions establish minimum guarantees on fair treatment, contract protec-

tions, and freedom of association for both citizens and migrant workers. Once domesticated through national constitutions or labour statutes, these standards reinforce obligations related to decent work, equal pay, social security, and safe working conditions [21]. Although such discussions are situated within the Tanzanian context, the principles identified align with Kenya's constitutional commitment under articles 2(5) and 2(6) to give legal effect to international labour norms, thereby supporting the protection of migrant workers within Kenya's legal framework. The above provisions directly domesticate international norms protecting migrant workers in Kenya, including decent work standards and non-discrimination standards.

5.1.2. Labour Relations Act, No 14 of 2007

This Act consolidates the minimum terms and conditions of employment and sets forth the relationship between employer and employee. The Act defines the benefits, duties, and obligations of the employer and employee under a contract of service. It provides for prohibitions against forced labour, discrimination in employment, sexual harassment, payment of wages, leave, and termination.³⁹ It also provides for registration, regulation, management, and democratization of trade unions and employers' organizations or federations.⁴⁰

(a) Scope of Application

The Labour Relations Act applies to both public and private sector employees, except for members of the Kenya Defence Forces, the National Intelligence Service, and the Kenya Police Service, who are governed by separate statutes.⁴¹ Section 3 of the Act explicitly extends its protection to "all persons employed by or under any employer," including citizens and non-citizen employees. This broad scope ensures that migrant and cross-border workers, such as citizens of other East African Community (EAC) member states working in Kenya, fall within the Act's ambit. Accordingly, migrant workers employed in sectors such as construction, hospitality, agriculture, and education are legally entitled to the same protections and rights as Kenyan citizens, including the right to join or form trade unions, to engage in collective bargaining, and to access alternative dispute resolution mechanisms [22].

(b) Protection of Migrant Workers and Free Movement of Labour

The Act plays a vital role in advancing free movement of labour under Article 10 of the EAC Common Market Protocol, which entitles EAC nationals to seek and accept employment within member states without discrimination.⁴² By safeguarding rights to non-discrimination (Sections 5 and 6), freedom of association (Section 4), and collective bargaining (Part VI), the Labour Relations Act operationalizes Kenya's regional commitment to equal treatment of workers irrespective of nationality. This ensures that EAC migrant workers can integrate into Kenya's labour market on the same terms as domestic workers. Kenyan courts have consistently affirmed the centrality of the Labour Relations Act in protecting both local and foreign workers.⁴³ In *Kenya Union of Domestic,*

Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) v. Aga Khan Hospital Kisumu [23], the Employment and Labour Relations Court (ELRC) held that every employee, regardless of nationality, has the right to union representation and to participate in collective bargaining, underscoring the Act's universal application.

Similarly, the Act seeks to promote sound labour relations by protecting and promoting freedom of association and effective collective bargaining.⁴⁴ Finally, the Act establishes an orderly and expeditious dispute-resolution process through Alternative Dispute Resolution (ADR) mechanisms, including mediation, conciliation, and arbitration.⁴⁵ This guarantees conducive economic development and social justice.

5.1.3. Employment Act, No. 11 of 2007

This Act complements the Labour Relations Act, 2007 by regulating the substantive terms of the contract of service and by providing comprehensive protection to employees in both the public and private sectors. The Act codifies fundamental labour rights in alignment with Article 41 of the Constitution of the Republic of Kenya, which guarantees the right to fair labour practices. It incorporates standards derived from International Labour Organization (ILO) conventions that Kenya has ratified. The Employment Act has several strengths that advance the protection of both domestic and migrant workers. It sets out a comprehensive framework for regulating employment relations, guarantees minimum employment standards, and provides safeguards against unfair termination by defining valid reasons and due procedures for dismissal under Part VI.⁴⁶ It further promotes access to justice through labour officers, conciliation, and the Employment and Labour Relations Court (ELRC), thereby giving effect to articles 47 and 50 of the Constitution of the Republic of Kenya on fair administrative action and fair hearing.

Similarly, the Act addresses disciplinary matters in the course of employment and the payment of wages.⁴⁷ On the other hand, the Act stipulates the basic minimum conditions of employment, including: hours of work, annual leave, maternity leave, and sick leave; housing allowance, water, and food.⁴⁸ Further, it protects workers from unfair dismissal by defining the reasons, procedures, and remedies for termination, as well as dispute settlement mechanisms.⁴⁹ Finally, the Act provides for the employer's insolvency and its obligation to meet its liabilities.⁵⁰

However, its effectiveness is limited by several weaknesses. The Act does not expressly mention migrant workers, leaving enforcement to administrative interpretation, and its implementation remains weak, particularly in informal sectors where many EAC workers are employed [24]. It is reported that labour inspections are inadequate, that institutional coordination between the Ministry of Labour and the Immigration Department is poor, and that enforcement of rights often depends on immigration status, contrary to the constitutional guarantee that rights apply to all persons [24]. Many migrant workers, particularly in the informal sector,

remain unaware of their rights, while verbal employment arrangements persist, undermining compliance with statutory standards [25]. Migrant workers without formal documentation face barriers to legal remedies and are more susceptible to exploitation and unfair dismissal [26].

On the other hand, low awareness of rights under the Act, coupled with verbal employment contracts, leads to widespread non-compliance with statutory standards [27]. Nonetheless, the Act remains pivotal in promoting equality and fair labour practices in line with Article 10 of the EAC Common Market Protocol, ensuring that EAC citizens working in Kenya enjoy comparable protection to local workers. To enhance its effectiveness, Kenya must strengthen enforcement mechanisms, improve coordination among relevant institutions, and explicitly incorporate migrant worker protections to ensure that the rights to decent work and the free movement of labour are fully realized within the East African Community framework [28].

5.1.4. The Kenya Citizenship and Immigration Act of 2011⁵¹

This is a key legislative framework that regulates matters of citizenship, immigration, entry, stay, and residence of non-citizens in Kenya. It applies to nationals from East African Community (EAC) member states. The Act operationalizes Kenya's obligations under the EAC Common Market Protocol (CMP) by facilitating the issuance of various immigration permits to foreign nationals, such as work permits, residence permits, and special passes.⁵² Specifically, section 40 of the Act grants the Director of Immigration discretionary authority to issue different classes of permits, such as Class D for employment and Class G for business engagement. The grant of these permits is subject to the fulfillment of a set of conditions, including the applicant's qualifications, the nature of the job, and the availability of local skills.

Notably, the Kenya Citizenship and Immigration Act, 2011, recognizes Kenya's regional commitments under the East African Community (EAC) Common Market Protocol (CMP) by allowing for exemptions and streamlined procedures for nationals of partner states. Pursuant to section 34(3), the Cabinet Secretary may exempt any person or class of persons from the requirement of obtaining a work permit or pass, thereby creating the legal foundation for preferential treatment of EAC citizens.⁵³ Similarly, sections 40(1) to (3) empower the Director of Immigration Services to issue various classes of permits, such as Class D for employment and Class G for business, subject to prescribed conditions. Similarly, section 56(2) authorizes the Cabinet Secretary to make regulations giving effect to regional or international arrangements, including the EAC CMP.

In practice, the above provisions are implemented through the Kenya Citizenship and Immigration Regulations, 2012, which operationalize simplified entry and residence procedures for EAC nationals under the First Schedule. Collectively, these legal provisions support the implementation of

Article 10 of the EAC Common Market Protocol, which guarantees the free movement of workers across partner states.⁵⁴ By creating a structured yet facilitative immigration regime, the Act effectively balances Kenya's national interests with its regional obligations, making it a pivotal instrument for promoting labour mobility and integration within the East African Community.

5.1.5. The Kenya Citizens and Foreign Nationals Management Service Act⁵⁵

This Act establishes the Kenya Citizens and Foreign Nationals Management Service, a statutory body mandated to oversee the registration, issuance, and regulation of identification and immigration documents for both Kenyan citizens and foreign nationals. The Act was enacted to modernize and streamline the management of population data and migration control, ensuring a more efficient and secure system for handling personal identification and immigration records. This institution plays a crucial role in implementing Kenya's obligations under the EAC Common Market Protocol (CMP) by facilitating the entry, stay, and lawful residence of foreign nationals, particularly EAC citizens seeking employment or business opportunities in Kenya [29].

By managing vital documents such as national identity cards, passports, work permits, residence permits, and alien cards, the Act contributes to the harmonization and mutual recognition of travel and identification documents, which is essential for achieving seamless labour mobility within the EAC region. Further, the Act provides for a centralized data system which enhances transparency, accountability, and coordination between immigration, security, and labour institutions. Thus, the Act not only reinforces Kenya's national administrative capacity but also supports regional integration efforts by enabling the practical realization of free movement of persons and workers, in line with articles 7 and 10 of the CMP.

Generally, the existing legal and institutional framework has enabled skilled and semi-skilled workers from EAC countries to take up employment opportunities in Kenya's diverse sectors, including education, health, agriculture, and services. Kenya's vibrant economy and relatively advanced infrastructure make it an attractive destination for workers from neighboring states. For example, in 2018, Kenya issued approximately 9,465 work permits to foreign nationals, but by 2021 the number had dropped to 7,332, with a slight increase to 7,963 in 2022 [30]. Although these figures include all foreign nationals and are not disaggregated by EAC status, they suggest a persistent demand and flow of foreign labour. However, reliable data on EAC worker admissions from 2015 to 2025 remains limited, underscoring the need for improved data collection and reporting to fully assess the impact of free-movement laws. The law and practice in Kenya still require non-citizens to obtain a work permit or an exemption to engage in Kenya. This was properly articulated by the court in *Mastermind Tobacco (K) Limited vs. Nicola*

Romano [31], where the respondent's contract was terminated for lack of a work permit. The respondent had applied for renewal of a work permit from the Immigration Department and paid the required fee of KZS. 10,000/=. Pending approval of the application, the respondent sustained injury to his right knee and was hospitalized. He was treated at Nanyuki Cottage Hospital and later referred to an orthopedic surgeon who recommended 8 weeks of bed rest. Having duly informed the appellant's Human Resources Manager of his injury, and after a consultative meeting, he was told that the company had relieved him of his duties with immediate effect. The letter provided as follows: Further to our discussion this morning, we wish to inform you that your work permit R-No xxxx expired on December 28, 2013. Please note that the management has no intention of renewing your work permit. Please note that your last day of employment shall be Thursday, March 13, 2014. By a copy of this letter, the Director of Immigration Services is advised to close your file and release Mastermind Tobacco (K) from any obligation.'

Aggrieved by the decision, the respondent challenged the decision before the trial court, seeking (i) a declaration that the termination by the applicant was unlawful, unfair, and hence null and void; and (ii) a declaration that his constitutional right of not being discriminated against under article 27(5) of the Constitution had been violated. The respondent sought payment of Kshs 330,000/- instead of a termination notice, Kshs 165,000/- unpaid salary for March 2014, and Kshs 960,000/- as 12 months' salary compensation for unfair termination. The total claim was Kshs 4,455,000/-. The trial judge (Ongaya, B., J.) held in favour of the respondent and declared that the respondent's dismissal from his employment was unlawful and unfair, and that his constitutional right to fair labour practices as set out in Article 41 of the Constitution of the Republic of Kenya had been violated. The trial judge reasoned, *inter alia*, that: 'the court has considered that the need for a work permit was a statutory provision whose satisfaction as necessary towards legitimate implementation of the contract of service but in absence of express contractual provision making lack of the permit as frustrating the contract, the absence of the permit by itself, did not bar the parties from pursuing their respective rights and obligations under the contract of employment, one way or the other.' (emphasis added).

On appeal, it was contended that the respondent, at the time of termination, was in contravention of sections 53(1) and 45(1) and (2) of the Kenyan Citizenship and Immigration Act of 2011, for want of a work permit; hence, the appellant's decision was lawful as it was based on fair reason. The appellate court agreed with the trial court's decision on the fact that any foreigner working in Kenya must have a valid work permit. However, it held the matter in favour of the respondent for the appellant's failure to pursue the matter in accordance with the law. The court observed as follows:

'In our view, from the circumstances of the instant case, there existed no enforceable contract between the parties by

reason of illegality. It was an express term of the contract of employment between the appellant and the respondent that the contract would be terminated if the respondent failed to obtain a work permit from the Immigration Department. *Once the respondent's permit expired, any further work he carried out was illegal. In our view, failure to obtain a work permit was an intervening event which vitiated the contract between the parties... The need for a work permit was a statutory requirement that was necessary for the legitimate implementation of the contract.* Now that there was no express contractual provision making the lack of a work permit frustrating the contract, the parties were entitled to pursue their respective rights and obligations under sections 41, 43, and 45 of the Employment Act, 2007.' [32].

Based on the above judicial precedent, it can be submitted that, while the legislative framework in Kenya is robust on paper, its practical relevance to migrant workers remains uncertain. There are still challenges that constrain effectiveness, including administrative inefficiencies, limited institutional coordination, and inconsistent enforcement mechanisms, which continue to hinder the realization of full regional labour mobility. To bridge this gap, Kenya must strengthen inter-agency collaboration, enhance labour inspection and data systems, and mainstream migrant worker protections within its employment and immigration policies. By doing so, Kenya would not only consolidate its constitutional and regional obligations but also reaffirm its leadership in advancing social justice, economic integration, and the free movement of labour within the East African Community.

5.2. Legal Framework on Protection of the Right to Free Movement of Labour in the United Republic of Tanzania

Tanzania is a dualist country, meaning that international law and municipal law are regarded as separate legal systems. Article 63(e) of the Constitution of the United Republic of Tanzania⁵⁶ provides that all treaties and agreements must be ratified. This corresponds with article 151(3) of the EAC Treaty, which provides that each protocol is subject to signature and ratification procedures. The free movement of workers and their rights in Tanzania is primarily governed by instruments such as the Employment and Labour Relations Act.⁵⁷ Labour Institutions Act,⁵⁸ the Immigration Act,⁵⁹ The Non-Citizens (Employment Regulation) Act⁶⁰, and the National Employment Promotion Service Act.⁶¹

5.2.1. The Constitution of the United Republic of Tanzania 1977

The Constitution of the United Republic of Tanzania (1977) is the supreme law of the land. It entrenches fundamental rights and freedoms, including the right to work, the right to fair remuneration, the right to equality before the law, and the right to freedom of association.⁶² Basically, the provisions of

the bill of rights appear to align with principles set out in international human rights instruments such as the ICCPR, ICESCR, and the African Charter. Any person whose rights and freedoms have been infringed may challenge the said violations in the High Court of Tanzania by way of a petition.

⁶³ Alternatively, any administrative decision that contravenes the principles of natural justice may be challenged in the High Court of Tanzania by way of judicial review.⁶⁴ Similarly, the Constitution provides for judicial and other quasi-judicial bodies for the dispensation of justice, which are expected to be independent.⁶⁵ Likewise, it vests the national assembly with the power to enact laws and ratify international agreements, including conventions and protocols.⁶⁶ It is on this basis that various ILO Conventions, the EAC Charter, and corresponding protocols have been domesticated and form part of the national law.

5.2.2. The Non-citizen (Employment Regulation) Act 2023

The national assembly passed this law on March 18, 2015, and it came into force on September 15, 2015. Generally, it controls non-citizens' employment and involvement in Mainland Tanzania. Section 5 of the Act gives the Labour Commissioner the power to issue work permits to non-citizens wishing to work in Tanzania. As a matter of law, a non-citizen can only work in Tanzania subject to four main conditions: possession of a valid work permit and residence permit, payment of the prescribed fees, and submission of a succession plan. A work permit and a residence permit are distinct types of licenses; therefore, the issuance of a work permit does not guarantee a residence permit.

The Act provides five categories of work permit, namely: Class A, issued to a foreign investor who is self-employed and works in his own establishment; and Class B, issued to a non-citizen who is engaged in a prescribed profession. Class C is issued to a non-citizen who is in possession of another profession. In contrast, Class D is issued to a non-citizen who is employed or engaged by a registered religious and charitable organization. Finally, Class E is issued to refugees. In general, a work permit can be issued only when there is a skills gap in Tanzania, except for investment-related issues under the Tanzania Investment Act.

5.2.3. Employment and Labour Relations Act ⁶⁷ and the Labour Institutions Act ⁶⁸

Tanzania enacted two laws to comply with international labour standards. These legislations are: The Employment and Labour Relations Act 2004, read together with the Employment and Labour Relations (Code of Good Practice) Rules, and the Labour Institutions Act 2004. These labour statutes provide for essential protections for migrant workers. First, it prescribes employers' duties at the commencement of work. An employer in Tanzania is obliged to provide an employee with a written statement of particulars.⁶⁹ Such particulars

include: personal details, place of work, hours, remuneration and manner of calculation, duration of contract, and so forth. Failure to comply may result in penalties. Similarly, an employer has a duty to inform an employee of fundamental rights and freedoms. This should be done in a language the employee understands.

Secondly, the Act stipulates provisions on fundamental rights and protections. This covers provisions on the prohibition of child labour, forced labour, discrimination, and freedom of association.⁷⁰ As a general rule, the law prohibits discrimination of any kind in the workplace based on gender, nationality, race, or social origin. Section 7(1) imposes a duty on every employer to take the necessary steps to eliminate all forms of discrimination, whether in the form of policy or practice. As a matter of law and policy, a non-discrimination provision binds the employer even before an applicant has been selected.

Thirdly, the Act provides for employment standard provisions. These concerns with minimum working conditions of employment, namely: hours of work, annual leave, sick leave, maternity leave, remuneration, compassionate leave, and paternity leave. Section 13(2) of the Act provides for how the employer and employee may improve the provisions of the employment standards. Such ways are through negotiation, collective agreements, and amendments to laws, wage orders, and exemptions. The test is always whether the alternative remedy contains better terms and conditions of employment. Fourth, the Act protects workers against unfair dismissal by prescribing the reasons and procedures for termination.⁷¹ As a matter of law and practice, fair termination is determined and justified when the employer has complied with substantive and procedural requirements. Where the employer fails to comply with the law, the Act provides for terminal relief, including reinstatement, reengagement, and compensation (unfair termination remedies), as well as other terminal benefits such as transport allowance, severance allowance, and a certificate of service.

Finally, the Act provides for dispute settlement through Alternative Dispute Resolution (ADR), including mediation and arbitration at the Commission of Mediation and Arbitration (CMA). If no agreement is reached, parties can apply for revision at the Labour Court. Whereas, on matters of conflict of interest, parties can exercise their right to strike and lockout through registered and recognized trade unions. Thus, the Tanzanian labour law regime protects employees' rights and freedoms in both the public and private sectors, including migrant workers, provided they have complied with work permit and residence permit requirements. This was observed in the case of *Coastal Travel Limited vs. Offiong Russel Ekerete*, [33] where the court held, inter alia, that 'since the second contract of employment with the respondent was done in total contravention of the law. It cannot be valid not only in law but also in equity. To equity, one goes with clean hands. The respondent's contract, therefore, cannot be enforced because it was invalid.' A similar decision was observed in the

cases of *Rock City Tours Ltd vs Andy Nurray* [34] and *Alice M. Kalemela vs Enaboishu Secondary School* [35], whereby it was emphatically observed that a non-citizen's employment contract (both in the formal and informal sectors) would be valid in Tanzania when one possesses a valid work and residence permit.

Furthermore, in *Edith Natabi vs. Kemebos English Medium Boarding Primary School* [36], the applicant (a Ugandan national) was employed by the respondent for 10 years from 2007 to 2017. However, throughout the period, it appears the applicant did not possess a valid work permit. Upon termination of the contract, the applicant referred the matter to the Commission for Mediation and Arbitration (CMA) at Bukoba, which determined the matter in favour of the respondent on the grounds of the contract's illegality. Upon application for revision, the trial judge, Mwipopo, A. E. J., observed the following:

'The evidence available in the record shows that the respondent employed the applicant without obtaining a work permit. This is contrary to section 9 (1) and (2) of the Non-Citizens (Employment Regulation) Act, 2015, and section 26 (1) of the National Employment and Promotion Services Act, Cap. 243 R. E. 2002. It is the respondent who had the duty to obtain the work permit for the applicant under section 10(1) of the Non-Citizens (Employment Regulation) Act, 2015, and section 27(1) of the National Employment and Promotion Services Act, Cap. 243 R. E. 2002. Among the documents which are needed in the application, according to section 10 (2) (b) of the Non-Citizen (Employment Regulation) Act and the Second schedule thereto, is the employment contract of the respective employee. *This means that the employment contract of a non-citizen employee is voidable upon obtaining a work permit. Since the work permit was never obtained, the employment contract was not valid. The employment relationship was illegal.* The CMA, after finding out that the applicant, who is a non-citizen, was working without a work permit, was supposed to end there and hold that it has no jurisdiction to determine the matter since there was no valid employment contract.' (*emphasis added*).

Generally, the above precedents clearly show that in Tanzania, there cannot be a lawful employment contract between an employer and a non-citizen unless a valid work permit is issued by the relevant immigration department, i.e., the Commissioner. Similarly, the precedents clearly state that the legal consequence of such a contract is illegal and unenforceable *ab initio*. Consequently, the labour tribunals and courts lack jurisdiction to determine and issue any effective remedy to a foreigner against his or her employer. This legal position adversely affects the rights of non-citizens guaranteed by various international and regional instruments, as it directly discriminates against their right to equal treatment under the law. It is high time that courts in Tanzania interpret labour laws in favour of migrant workers, notwithstanding the employee's fault in obtaining a work permit. This is because

the employer has an overriding duty to ensure that a work permit is obtained before signing the employment contract.

5.2.4. The Business Licensing (Prohibition of Business Activities for Non-citizens) Order of 2025)⁷²

This Order seeks to protect the job market for citizens of Tanzania. It prohibits licensing authorities from issuing licenses for specified businesses to non-citizens. These businesses include: mobile money transfers; repair of mobile phones and electronic devices; home, office, and environmental cleaning services; tour guiding within Tanzania; and clearing and forwarding. Other prohibited activities include: ownership and operation of gambling businesses, except for casino premises; ownership and operation of micro and small industries; establishment and operation of radio and television businesses; operation of museums or curio shops; and brokerage or agency in businesses and real estate.⁷³

It means that from the date of its operation, all foreigners, including persons from East African Community countries, are not expected to engage in prohibited business activities. However, the Order protects vested rights of non-citizens carrying on business for the remaining license period.⁷⁴ Any person who contravenes the provisions of this Order would be liable for an offence.⁷⁵ In case of a non-citizen, one would be liable for a fine of not less than TZS.10 million or imprisonment for a term not exceeding six months, and revocation of visa and resident permit.⁷⁶ Whereas any Tanzanian who aids or facilitates the commission of the offence would be liable to a fine of TZS.5 million or imprisonment for a term not exceeding six months.⁷⁷

Implicitly, the above provisions suggest that citizens of other East African countries seeking to engage in the listed activities as entrepreneurs no longer have the opportunity to do so. However, the Order does not prevent non-citizens from being recruited or employed in the given sectors, as long as license holders are citizens (employers) from Tanzania. Hence, only domestic companies or business entities are allowed to operate the scheduled businesses. Like the extractive sector, this Order clearly entrenches local content policy within the Ministry for Industry and Trade, thereby giving Tanzanians an opportunity to participate in the development of the national economy.

Conclusively, Tanzania's legal framework demonstrates an apparent effort to balance sovereign economic empowerment goals with regional integration commitments. The Constitution, together with the Employment and Labour Relations Act,⁷⁸ the Non-Citizens (Employment Regulation) Act,⁷⁹ And sectoral instruments, such as the Local Content Regulations. The most prominent among them are the Tanzania Local Content Regulations, issued under the Petroleum Act,⁸⁰ and similar frameworks in the Mining (Local Content) Regulations,⁸¹ 2018. These regulations and institutions, such as the National Economic Empowerment Council (NEEC), seek to maximize citizen participation and technology transfer in

strategic sectors by prescribing quotas for employment of Tanzanians and requiring foreign investors to submit succession and training plans to localize positions held by expatriates progressively. Basically, these initiatives provide a coherent system for promoting employment creation, entrepreneurship, and access to productive resources. While these measures aim to protect national interests and promote skills development, they must operate in harmony with Tanzania's regional commitments under the Common Market Protocol to ensure they do not constitute unjustifiable restrictions on the free movement of labour.

5.3. Legal Framework on Protection of the Right to Free Movement of Labour in the Republic of Uganda

5.3.1. Constitution of the Republic of Uganda 1995

The Constitution of Uganda of 1995 entrenches the bill of rights provisions essential for migrant workers. It recognizes the equality of all persons before the law. It provides that all human beings are equal before the law and that no person can be discriminated against on any ground, including sex, race, colour, ethnic origin, nationality, tribe, birth, creed or religion, social or economic standing, political opinion, or disability.⁸² Furthermore, it provides that all persons are entitled to fundamental rights and freedoms, including freedom of expression and movement; the right to personal liberty and to a fair hearing; the right to protection from slavery, servitude and forced labour; and the right to privacy of person, home and other property.⁸³

With regard to labour rights, the Constitution vests power to the parliament to enact laws to prescribe for the right of persons to work under satisfactory, safe, and healthy conditions; ensure equal payment for equal work without discrimination; and ensure that every employee is accorded rest, reasonable working hours, and periods of holidays with pay, as well as remuneration for public holidays.⁸⁴ Similarly, the Constitution provides the right to form and join a trade union and participate in lawful activities of a trade union, including collective bargaining, and the right to protection during pregnancy and after birth for female workers.⁸⁵

On the other hand, the Constitution provides for rights to marginalized groups and specific groups of women, children, persons with disabilities, and minorities.⁸⁶ It also provides for solidarity rights, including the right to a clean environment; the right to fair treatment in administrative decisions, and the right to prerogative remedies, including habeas corpus.⁸⁷ Where any of the above rights and freedoms are violated, then the Constitution gives locus standi to any person (victim) to apply to a competent court for redress, including compensation, and the right to appeal to the appropriate courts.⁸⁸ Basically, all the above provision protects the rights of all persons living in Uganda, including workers from different parts of the East African Community who reside and work in

Uganda. This is because it clearly vests rights to every person and not a citizen of Uganda, except for civic and participatory rights such as the right of access to information, the right to vote, and be voted for in any public office in Uganda.⁸⁹ Thus, it can be argued that the Constitution of Uganda upholds equality for all people as required by the EAC Charter and the Common Market Protocol.

5.3.2. The Employment Act No. 5 of 2006

This Act regulates relations between employers and employees. Like Kenya and Tanzania, the Act prohibits discrimination based on sex, race, colour, religion, political opinion, national extraction or social origin, HIV status or disability.⁹⁰ Specifically, s.6(2) of the Act obliges the Labour officer, Industrial Court, and the Minister to interpret and apply the laws in a way that promotes and guarantees equality of opportunity to migrant workers and their families. Nevertheless, any distinction, exclusion, or preference in respect of a particular job based on the inherent requirements of that particular job is not, however, deemed to be discrimination.⁹¹ Moreover, the Minister is empowered to limit the types of jobs open to migrant workers.⁹² As a matter of law, no person is allowed to engage any person who is unlawfully residing in Uganda or otherwise organize the illegal movement of migrants in Uganda.⁹³

Furthermore, the Act provides for fundamental rights and protections, as well as employment standards, including: annual leave, fair remuneration, hours of work, paid sick leave, maternity and paternity leave, and a notice period.⁹⁴ Equally, the Act provides for duties of the employer, including: duty to provide work and duty to pay wages, subject to strict rules on deduction;⁹⁵ duty to give a written contract or statement of particulars;⁹⁶ and duty related to migrant workers, recruitment, and repatriation.⁹⁷ It also provides for minimum terms and conditions of employment and protection against unfair termination/summary dismissal⁹⁸; terminal benefits, including payment of severance allowance and other benefits.⁹⁹ Finally, the Act prescribes a mode of dispute settlement framework which involves labour officers who hear and determine claims as a court of first instance, and later one may appeal to the Industrial Court.¹⁰⁰

Unlike Tanzania and Kenya, the Employment Act of Uganda clearly provides protections for non-citizens regarding equal opportunities in employment, so long as they lawfully reside in Uganda. Migrant workers and their families are guaranteed equality in job opportunities and fair remuneration. Similarly, the law clearly imposes an obligation on administrators (labour officers and the Minister) and courts to promote and guarantee equality in employment matters for all migrant workers. This corresponds to the requirements of the East African Common Market Protocol and its enabling Charter.

5.3.3. Uganda Citizen and Immigration Control Act Cap 66

It provides for three modes of acquiring citizenship in Uganda: birth, naturalization, and registration.¹⁰¹ A citizen of Uganda is entitled to a national identification number and, identification card¹⁰² and a passport.¹⁰³ For non-citizens, there is a requirement for an entry permit and an alien's identity card. Section 53(1) of the Act prohibits a person from entering Uganda unless they are in possession of a valid entry permit, certificate of permanent residence, or pass. However, these documents would be given if a person is in possession of a passport, a certificate of identity, a convention travel document, or any other valid travel document.¹⁰⁴ Thus, any person who is not a citizen of Uganda who intends to take an employment opportunity in Uganda should possess a valid entry permit¹⁰⁵ and a certificate of permanent residence or special pass;¹⁰⁶ Failure of which may attract sanctions. This is evidenced by the case of *Paul Kokeyo vs. Peacock Paints Ltd* [37], whereby the claimant, a Kenyan national, secured employment with the respondent as Sales and Marketing Manager in December 2015, expecting the respondent to obtain relevant work permit for him. However, on 24th March 2017, the claimant was asked to hand over the office; hence, filing of an unfair termination complaint. The respondent challenged the claim on the reason that the claimant had no cause of action since he did not procure a work permit/entry permit as required by section 59(1) of the Uganda Citizenship and Immigration Act. The issue for determination was whether or not the absence of a work permit vitiated a contract of employment. It was held that a court cannot sanction an illegality because under section 59(1), (2) and (3) of the Uganda Citizenship and Immigration Act, it is an offence for any non-citizen to be engaged in gainful work or profession without a valid entry or work permit. Thus, since the claimant did not have an entry pr a work permit, it was an offence for both parties, and this meant that the contract was illegal ab initio. The maxim '*ex turpi causa non oritur actio*' (no one can benefit from illegal action) was applicable; hence, the complaint was dismissed [38]. However, the court observed that, since Uganda is a party to the Common Market Protocol, which affords equal opportunity and treatment to migrant workers, any non-citizen residing in Uganda who wishes to undertake any gainful economic activity must regularize their immigration status. Once done, the Industrial Court would be obliged to guarantee equal opportunity to migrant workers and their families.

Basically, it appears from the above precedent that a non-citizen who procures an entry permit or work permit would be readily employed in Uganda. However, looking at the conditions for the issue of a permanent resident permit, it is arguable whether a non-citizen can be employed in Uganda. Section 55(3) of the Act requires a person who wants a certificate to prove the following: that he or she has contributed to the socio-economic or intellectual development of Uganda; he or she has continuously lived legally in Uganda for ten years; and that he or she is of good character and of proven integrity. Further, he or she must show that he or she has not

defaulted in payment of any taxes required under the law. On the other hand, the applicant must have no criminal incidents in Uganda or outside Uganda, and should not have been declared bankrupt or destitute. Finally, an employee wishing to work in Uganda must prove that he/she has been offered and accepted employment in Uganda.¹⁰⁷ All the above conditions depict the state sovereignty to regulate the admission of non-citizens in Uganda. While some of these conditions aim to ensure that only persons of good character are given the opportunity to work in Uganda, others directly or indirectly restrict the free movement of labour. For example, conditions of ten-year residence and economic development factor as a basis for issuance of work permit are prima facie unreasonable, discriminatory, and difficult to attain; hence, there is a need for reforms in order to align with Common Market Protocol and the EAC Charter.

5.4. Legal Framework Relating to the Protection of the Free Movement of Workers in the Republic of Rwanda

(i) Law No. 57/2018 on Immigration and Emigration

Rwanda is not one of the Founding Members of the EAC, but joined the community in 2007. It adopted a comparatively liberal approach to the movement of persons, including workers. Article 8¹⁰⁸ Regulates the entry and residence of non-citizens in Rwanda by requiring all foreign workers to hold valid permits, including visas of different types and residence permits. Likewise, Article 10(4) of the Law provides for the grounds for cancellation of work permits. Since 2018, Rwanda has introduced a visa-on-arrival policy for all nationalities from the African Union, the Commonwealth, and the Francophonie, whereby citizens are entitled to a 30-day visa on arrival. This makes it one of the most open states for cross-border entry within the EAC bloc, hence advancing the stipulated vision under CMP.¹⁰⁹

On the protection of employment rights, Rwanda's Labour Law No. 66/2018¹¹⁰ guarantees employees' rights, including the right to equal treatment, freedom of association, and collective bargaining rights. The Ministerial Orders (2020)¹¹¹ Strengthen labour inspections and dispute resolution mechanisms. Consequently, once admitted, EAC workers enjoy labour protections similar to those of nationals, though they remain subject to work permit procedures, illustrating the gap between free entry for persons and regulated access to the labour market.

5.5. Legal Framework on Protection of Free Movement of Labour in the Republic of Burundi

5.5.1. The Migration Law No. 1/25 of 5 November 2021

The Migration Law No. 1/25 of 5 November 2021 is Bu-

rundi's principal legislation governing the entry, stay, and residence of foreign nationals, replacing outdated migration provisions and aligning with regional and international standards.¹¹² The law applies to all categories of migrants, including refugees, stateless persons, and foreign workers. It establishes the Commissariat Général des Migrations as the authority responsible for regulating visas, residence permits, and migration control.¹¹³ It defines clear categories of residence, such as temporary and permanent, and provides the legal foundation for issuing work and residence permits.¹¹⁴ While EAC nationals enjoy visa-free or visa-on-arrival entry under regional arrangements pursuant to the EAC Common Market Protocol (CMP), they remain subject to separate and often stricter work authorization procedures. The law modernizes the migration framework by introducing more precise definitions, improved visa administration, and recognition of regional mobility frameworks, marking a progressive step toward harmonizing national migration law with the objectives of the East African Community [39].

Under this law, work permits are generally issued for fixed terms of 2 to 5 years, depending on the category of employment and the applicant's qualifications. Applicants must demonstrate professional competence, submit an employment contract or offer, and show that their employer is a registered entity operating lawfully in Burundi. Employers are typically responsible for sponsoring applications and paying the requisite fees, which are often set at approximately 3% of the employee's annual salary.¹¹⁵ Visa fees vary according to the type of visa sought: short-term entry visas cost around US\$90 per month, residence visas about US\$70 per month, and long-term settlement or permanent residence permits between US\$500 and US\$1,200.¹¹⁶

Although the above requirements promote accountability and help the government to manage labour migration, the cost of compliance may deter low-income or informal-sector workers from EAC countries from pursuing formal work authorization. Moreover, it is reported that the system lacks transparency regarding timelines, appeal mechanisms, and detailed eligibility criteria, which can lead to administrative delays and inconsistent application of the law. Despite these challenges, Law No. 1/25 reflects Burundi's intent to balance national sovereignty with regional integration goals. Its main strengths include a modernized legal framework, greater flexibility in residence and permit durations, and improved openness toward African nationals, particularly those from EAC partner states [40].

However, the law's weaknesses lie in its restrictive work authorization system, high fees, and limited public access to procedural information, which together hinder the practical realization of free movement of labour. Implementation also remains uneven, especially at border points and within the private sector, where informal employment persists [41]. To fully align with the EAC Common Market Protocol, Burundi should consider implementing regulations that explicitly provide preferential or simplified procedures for EAC na-

tionals, enhance transparency in permit issuance, and strengthen institutional coordination between migration and labour authorities. These measures would transform the Migration Law into an effective instrument for advancing regional labour mobility, economic inclusion, and protection of migrant workers' rights [42].

5.5.2. Revised Labour Code (Law No. 1/11) of 24 November 2020

This law regulates employment matters in Burundi. It expanded the scope of employment standards to cover both formal and informal economy workers. The Code establishes minimum working conditions, regulates collective bargaining and trade unions, and prohibits discrimination in employment. It mandates that all employment contracts specify essential terms such as job title, duration, remuneration, and notice periods, particularly for engagements exceeding a certain period. It also prohibits discrimination, forced labour, and child labour, while guaranteeing equal pay for work of equal value [43]. These provisions collectively aim to improve working conditions and legal certainty for employees, including those in informal employment relationships, which represent the majority of Burundi's labour force.

Institutionally, the Code strengthens the Labour Inspectorate, empowering it to monitor compliance and enforce labour standards across both public and private sectors. It reinforces the role of trade unions and employers' federations, granting workers the right to form and join independent unions, subject to registration with the Ministry responsible for Labour.¹¹⁷ The Code also aligns with the Social Protection Code of May 2020, which extends social security coverage to informal workers, a progressive step toward promoting decent work for all. Regarding migration and foreign workers, the Code affirms that legally employed foreign nationals enjoy the same rights and working conditions as Burundian citizens. However, restrictions remain in sensitive sectors such as the judiciary, armed forces, and police.

As regards dispute resolution, it introduces a structured process beginning with conciliation and mediation through the Labour Inspectorate, with unresolved disputes referred to labour courts. Remedies for unfair dismissal include reinstatement or compensation, thereby enhancing access to justice and industrial harmony [44]. Despite its progressive reforms, the Code faces notable implementation and enforcement challenges. Resource constraints limit the reach of the Labour Inspectorate, and many informal workers, though legally covered, remain outside effective regulation due to a lack of awareness, written contracts, or access to formal dispute resolution. Collective bargaining rights, while protected in principle, are weakened in practice by procedural hurdles, restrictive thresholds, and state oversight, particularly in the public sector. Legal ambiguities regarding the distinction between formal and informal work, along with broad administrative discretion, may also lead to inconsistent enforcement [45].

Nonetheless, the Revised Labour Code's inclusion of informal workers, its alignment with ILO and EAC standards, and its institutional strengthening mark a substantial improvement in Burundi's labour governance framework. For full realization of its goals, effective institutional coordination, enhanced labour inspection capacity, and practical implementation of migrant worker protections are essential to ensure equitable and inclusive labour mobility within the East African Community.

6. Challenges Facing Realization of the Right to Free Movement of Labour in the East African Community

(a) Prohibitive and Restrictive Domestic Regulations

As explained earlier, different countries' legislations tend to be prohibitive or restrictive to the free movement of workers. For example, the Business Licensing (Prohibition of Business Activities for Non-Citizens) Order, 2025 in Tanzania is a clear example on how domestic legislation can directly undermine the objectives of the EAC Common Market Protocol (CMP). The CMP provisions under articles 7 (on non-discrimination), 13 (on the right of establishment), and 17 (on national treatment) require partner states to grant EAC nationals the same rights as their own citizens in various engagements and economic activities. By expressly barring non-citizens, including EAC nationals who are not Tanzanian, from engaging in various financial activities such as retail trade, mobile money transfers, tour guiding, and small-scale mining, the Order imposes restrictions that partly contravene the CMP provisions.

Basically, the 2025 Order effectively removes accessible employment and self-employment opportunities for regional migrant workers, restricts labour mobility, and entrenches protectionist economic policies that privilege Tanzanian citizens at the expense of the East African Community's integration agenda. Such restrictions are inconsistent with the obligations imposed by the EAC Treaty and the Common Market Protocol (CMP), both of which require Partner States to align their domestic laws with regional commitments. Article 8(4) of the Treaty expressly establishes the principle of the supremacy of Community law over *conflicting national laws*. Significantly, this supremacy does not extend to national constitutions, which remain outside the hierarchy regulated by Article 8(4); only ordinary legislation, subsidiary legislation, regulations, and administrative practices are subject to the supremacy of EAC law.

The East African Court of Justice (EACJ) has consistently affirmed this doctrine in its jurisprudence. A notable example is *Samuel Mukira Mohochi v Attorney General of Uganda* [46], in which Mr. Mukira Mohochi, a Kenyan national and advocate of the High Court of Kenya, was denied entry into Uganda at Entebbe International Airport in 2011 despite holding a valid passport. He was detained overnight and

subsequently deported without being informed of the reasons for the refusal of entry. He filed a reference before the East African Court of Justice (EACJ), alleging that the Ugandan authorities' actions violated the provisions of the Treaty for the Establishment of the East African Community, particularly Articles 6(d) and 7(2), which enshrine the principles of good governance, rule of law, and respect for human rights, as well as Article 104, which guarantees the free movement of persons, labour, services, and the right of residence within the Community. The key issues before the Court were whether Uganda's refusal to admit the applicant violated the EAC Treaty and the Common Market Protocol, and whether the state could rely on national security considerations to justify arbitrary restrictions on entry. The applicant contended that as a citizen of a Partner State, he was entitled to enter Uganda without a visa under Article 7 of the EAC Common Market Protocol, subject only to presenting valid identification. The respondent argued that Uganda retained sovereign discretion to regulate immigration and entry in the interest of national security.

The Court held that Uganda's actions violated the EAC Treaty and the Protocol, finding that the denial of entry without due process was inconsistent with the principles of transparency, legality, and respect for Community rights. It affirmed that the freedom of movement is a core component of EAC integration and that Partner States cannot arbitrarily invoke national security to undermine treaty obligations. The Mohochi decision thus reinforced the protection of EAC citizens' mobility rights and underscored the binding nature of Community law over inconsistent domestic actions.

However, States have been hesitant to apply community law. Instead, they cling to the principle of national sovereignty and prioritize domestic legislation over community law. This legal tension was highlighted in the case of *Prof. Peter Anyang' Nyong'o & Others vs. Attorney General of Kenya* [47]. This case arose from the 2006 election of Kenya's representatives to the East African Legislative Assembly (EALA). Prof. Peter Anyang' Nyong'o and others challenged the process before the EACJ, alleging that the Kenyan Parliament had failed to adhere to the principles of democratic and proportional representation as required by article 50 of the EAC Treaty. The applicants argued that the ruling party monopolized the nomination process, excluding opposition and minority voices, thereby contravening the democratic principles of the Community. The Attorney General of Kenya opposed the claim, arguing that the EACJ lacked jurisdiction to review internal parliamentary procedures and that the election process was a matter of domestic sovereignty.

The central issues were whether the nomination and election process complied with Article 50 and whether the Court possessed jurisdiction to review national parliamentary actions in the context of EAC obligations? The EACJ held that it had jurisdiction to interpret and apply the provisions of the Treaty and that Kenya's nomination process failed to ensure democratic, proportional, and inclusive representation. The

Court held that partner States are bound by the principles of democracy, rule of law, and accountability under articles 6(d) and 7(2) of the Treaty and must ensure that domestic actions align with these obligations.

(b) High Permit Fees and Bureaucracy

Although the Common Market Protocol envisions free movement of workers within the EAC, all EAC countries require non-citizens, including EAC nationals, to obtain work and residence permits. The fees for these permits are often high, ranging from hundreds to several thousand US dollars, creating a financial barrier for ordinary workers. For example, Tanzania Work permit costs vary depending on the class of permit and the type of activity. Generally, fees range from \$500 to \$3,000 USD, with additional facilitation fees for some categories, certain residence permit classes,¹¹⁸ while Kenya and Uganda have similarly costly structures [48]. In addition to the financial burden, the application process is often slow, involving multiple agencies, document requirements, and lengthy approval timelines. Such bureaucracy discourages cross-border employment and undermines the CMP's principle of facilitating labour mobility [49].

Although the Common Market Protocol envisions free movement of workers within the EAC, in many partner states, non-citizens, including EAC nationals, must obtain work or residence permits, and historically, the fees for these have been high. Yet recent reforms have begun to ease the burden in specific categories. In Kenya, the "Class R" work permit for EAC nationals is now issued free of charge for issuance and processing under that class. In Rwanda, permit fees vary

by class but are relatively modest (e.g., RWF 50,000 for "Category A" for higher-income foreigners, RWF 10,000 for "Category B"), and EAC nationals are, in some cases, exempt or charged reduced fees.¹¹⁹ In Tanzania, for "Residence Permit Class B. Specific Employment by Specific Employer," the fee for non-EAC nationals is about US\$2,000, whereas for EAC nationals it is reduced substantially to US\$500 [50]. These differentiated fee structures help reduce financial barriers in some sectors. However, high costs remain for many categories, and bureaucratic procedures (multiple agencies, documentation requirements, and slow processing times) continue to discourage cross-border employment. The claim that all EAC states impose no fees on EAC nationals is therefore inaccurate; while Kenya and Rwanda have abolished fees or reduced them significantly for certain permit classes, many other classes and countries continue to charge, sometimes at steep rates. As a matter of fact, residence and work permit fees have imposed a heavy burden on migrant workers and employers, making it difficult for young people to benefit from available opportunities. This has led to an increase in irregular migrants in the informal sectors in EAC countries.

The table below summarizes permit fees for common employment/residence permit classes across the five countries. Figures refer to official immigration fee schedules or authoritative summaries and are stated in the currency shown by the source (USD, RWF). Where national authorities distinguish fees for EAC nationals, that preferential rate is shown alongside the non-EAC rate.

Table 1. Summary of Permit Fees for Employment & Residence Permit Classes in Five EAC Countries.

Country	Permit/class (typical)	Fee (non-EAC)	Fee (EAC nationals)	Source
Tanzania	Residence Permit Class B Specific employment (B-1)	USD 2,000	USD 500	Tanzania Immigration fee schedule. (Immigration Tanzania)
Kenya	Class R / EAC category (EAC nationals) (work/entitlement class)	varies by class; historically, non-EAC fees ranged from hundreds to thousands of USD.	Often exempt or reduced (Class R for EAC nationals is issued free/preferential treatment)	Kenya Directorate of Immigration / EAC Secretariat (Kenya has abolished or reduced fees for some EAC classes). (Directorate of Immigration Services)
Uganda	Entry/Work permit classes (various)	Ranges reported widely \$400–7,500), depending on class	Some classes have reduced rates (varies by class)	Uganda Immigration service pages and consolidated fee SI; public summaries show a broad fee range by class. (Immigration Uganda)
Rwanda	Work/residence permit classes (A, B, etc.)	RWF 150,000 (common class amounts), other classes up to RWF 250,000	EAC nationals are some- times exempted or charged reduced fees	Rwanda Directorate (permit pages) and firm summaries. (Migration Rwanda))
Burundi	Migration Law: work/residence permits (vari- ous)	Short-term visa fees \$90/month; residence visas \$70/month; long-term \$500–1,200; employer sponsorship fees 3% of annual salary	No consistent preferential schedule is publicly availa- ble	Burundi Migration Law and IOM/ILO country profiles

(c) Lack of a comprehensive legal and policy framework on sustainable labour migration

There is no clear legal and policy framework providing clear objectives, guidance, and actions in the governance and management of labour migration in the EAC countries. While the legal framework and policies show that the United Republic of Tanzania views international migration flows positively and as a pillar of development, there continue to be significant barriers to migrants' employment. In practice, the United Republic of Tanzania privileges international high-skilled foreign workers and has established significant restrictions that limit the access of low- to mid-skilled migrant workers, including citizens of EAC partner states.

(d) Lack of specific institutions and funds for the identification of job opportunities available in different countries for the purposes of exporting the labour market.

Although the Treaty for the Establishment of the East African Community and the Common Market Protocol promote the free movement of labour, they do not establish a specific institutional mechanism or financial framework for identifying, coordinating, and disseminating employment opportunities across partner states. The Treaty, under article 5(3)(c), commits member states to promote "cooperation in social and human resource development. In contrast, article 104(2)(b) provides that partner states shall "cooperate in the development and adoption of common employment policies. Similarly, the Common Market Protocol, under Article 10(1), guarantees the free movement of workers, and Article 10(2)(a) calls on partner states to "adopt measures to achieve employment promotion. However, these provisions remain largely declaratory, lacking a concrete institutional or financial arrangement for implementing regional employment programs or mapping job opportunities across the Community.

Given that the youth population in the East African region is estimated at over 200 million, with more than 60 percent under the age of 30; unemployment remains one of the most pressing socio-economic challenges in the Community [51]. Yet, despite the availability of labour and the demand for skilled and semi-skilled workers across sectors, there is no regional mechanism within the EAC to systematically identify available jobs, match labour supply and demand, or coordinate inter-state labour mobility in both the formal and informal sectors [52]. The absence of a centralized labour market information system has left youth and job seekers without a coordinated platform for accessing cross-border employment opportunities. Consequently, irregular migration, informal employment, and underemployment persist, undermining the objectives of regional economic integration and inclusive growth.

To address this structural gap, there is an urgent need for the EAC to establish a Regional Labour Exchange and Employment Coordination Authority, mandated to compile labour market data, identify sectoral employment trends, and

facilitate job placements across partner states [53]. Such an organ could collaborate with national employment bureaus, private-sector actors, and regional development partners to ensure efficient and equitable employment matching. The absence of this mechanism constitutes a significant institutional weakness in the EAC's integration framework. Therefore, unless partner states take coordinated initiatives and allocate sufficient resources to support structured labour mobility and employment promotion, the challenges of youth unemployment, irregular migration, and social instability will persist, contradicting the EAC's founding objectives of social justice, shared prosperity, and regional cohesion.

(e) Lack of Legal Framework or Agreement on Portability and Transferability of Social Security Benefits.

One of the persistent challenges in the East African Community (EAC) integration process is the absence of a comprehensive legal or institutional framework for the portability and transferability of social security benefits among partner states. Although the EAC Common Market Protocol, under article 10(3)(f), calls upon partner states to "harmonize and coordinate social security benefits for migrant workers," this provision remains largely aspirational and has not been implemented through a binding protocol or mutual agreement. Consequently, migrant workers who move from one EAC country to another are often unable to transfer their pension or social security contributions to their new country of employment [54]. Each partner state maintains separate national schemes, such as the National Social Security Fund (NSSF) in Kenya, the National Social Security Fund (NSSF) in Uganda, the PSSSF and NSSF in Tanzania, and the RSSB in Rwanda, without reciprocal arrangements for benefit transfer.

EAC organs and technical committees, yet no binding Social Security (Portability) Protocol has been adopted. This institutional gap undermines one of the key objectives of the Treaty for the Establishment of the EAC the promotion of balanced human and social development under article 5(3)(e). The lack of a unified mechanism for recognizing social security contributions also discourages regional labour mobility, particularly among semi-skilled and low-income workers who rely heavily on such benefits for post-retirement security [55]. To address this, the EAC should establish a regional social security coordination framework, similar to the EU Regulation (EC) No. 883/2004, which ensures that workers retain their accrued rights as they move across member states.¹²⁰ Without this, the promise of equitable labour integration under the Common Market Protocol remains incomplete.

(f) Lack of Labour Dispute Settlement Framework for Migrant Workers' Disputes

The EAC lacks a specialized regional labour dispute resolution framework that addresses the rights of migrant or cross-border workers. While the East African Court of Justice (EACJ) has jurisdiction to interpret and apply the EAC Treaty under Article 27(1), its mandate is limited to matters concerning the interpretation and application of the Treaty itself

not individual employment disputes. The Court can only entertain cases where a party alleges a violation of Treaty provisions, such as breaches of Articles 6(d) and 7(2) (principles of good governance, rule of law, and human rights), or the Common Market Protocol provisions on free movement of workers.¹²¹ This was exemplified in *Mukira Mohochi v Attorney General of Uganda* [56] where the EACJ upheld the right to free movement but did not adjudicate on employment or contractual disputes. Therefore, the EACJ does not serve as a labour tribunal for migrant workers; rather, its role is limited to ensuring that partner states act consistently with their obligations under EAC law.

Labour disputes such as unfair termination, wage disputes, or working conditions remain governed by domestic legislation and are resolved before national courts or labour arbitration bodies. The absence of a regional labour tribunal or arbitration mechanism leaves cross-border workers without a uniform avenue for redress, leading to jurisdictional uncertainty and inconsistent protection standards. To close this gap, the EAC could consider establishing a Regional Labour and Social Rights Division within the EACJ or an East African Labour Tribunal, empowered to handle employment and migration-related disputes with cross-border implications.

(g) Lack of Uniform or Harmonized Labour Standards.

The lack of harmonized labour standards across EAC partner states remains a significant obstacle to realizing the free movement of labour. While all member states have enacted national labour laws, yet these laws partly differ significantly in their definitions of employment, minimum wage policies, occupational safety provisions, and social protection coverage. For instance, minimum wage levels, working hours, and termination procedures vary widely among partner states, creating disparities that distort the regional labour market and encourage uneven labour migration flows. Moreover, not all EAC countries have ratified or domesticated the same International Labour Organization (ILO) conventions, resulting in inconsistent implementation of fundamental rights such as collective bargaining, non-discrimination, and equal pay for equal work.

The EAC Common Market Protocol, under Article 10(3)(b), calls on partner states to “harmonize labour policies, laws, and programs to ensure the implementation of the free movement of workers. However, progress has been slow, and no binding regional labour code or harmonization directive has been adopted. This fragmentation undermines both the competitiveness and protection of workers, as some states maintain more stringent labour protections while others favour flexible, investor-oriented regimes. The absence of uniform standards also complicates the mutual recognition of professional qualifications and enforcement of contracts across borders. For the EAC to achieve genuine labour integration, there is a need for a Regional Labour Policy Framework that harmonizes employment laws, minimum standards, and enforcement mechanisms in accordance with ILO conventions and the objectives of the EAC Treaty.

(h) Conflicts, Irregular Migration, and Human Trafficking in the EAC Region.

Conflict has been a major driver of forced migration in the East African region, contributing to large numbers of internally displaced persons (IDPs) and refugees. For example, as of mid-2025, the conflict in Sudan had displaced about 14 million people internally, while over 4 million fled to neighboring countries. The Democratic Republic of the Congo (DRC) also registered approximately 7.3 million internally displaced persons, plus tens of thousands fleeing to neighboring states. South Sudan, following renewed violence, has similarly contributed tens of thousands of new cross-border arrivals into Uganda, Tanzania, Ethiopia, and beyond [57]. These movements are facilitated in part by porous borders, especially where geographical features, lack of border infrastructure, and insufficient border management allow uncontrolled or less monitored crossings.

In addition to displacement from conflict, human trafficking is another serious concern in the region, overlapping with irregular migration. While precise statistics are harder to come by, reports and monitoring bodies show that women and children are disproportionately affected. Victims often are coerced or deceived into migration under false promises of work or safety. Some cross-border movements from conflict-affected areas involve vulnerable populations, especially youth, women, and children, who may become prey to traffickers [58]. Although there is no recent consolidated regional figure for trafficking in East Africa by 2025, international agencies have identified trafficking routes involving Kenya, Uganda, Tanzania, and Somalia as source, transit, or destination for human trafficking of women for sexual exploitation and labour. These forced migration and trafficking patterns have serious implications for labour mobility and the protection of rights [59].

Youths often make up a large share of migrants fleeing conflict or seeking better economic opportunities; women and children are likewise heavily affected, often with greater vulnerability. The lack of robust legal protections and coordination across borders means that many of these people fall into irregular work, are exploited, or remain undocumented, making it difficult for host countries to protect their labour rights [60]. All the above challenges need to be addressed for promotion of sustainable labour migration and migrant workers’ protection in the EAC region.

7. Conclusion and Recommendations

Labour migration within the East African Community (EAC) is an inevitable and increasingly important feature of regional integration. Current trends indicate a steady increase in both skilled and unskilled labour mobility, driven by economic disparities, demographic pressures, and uneven job creation across partner states. The push factors include high unemployment rates, limited access to decent work, political instability, insecurity, and the effects of climate change and

environmental degradation that constrain livelihoods in rural areas. Protracted conflicts in parts of the Democratic Republic of the Congo, South Sudan, and Sudan have displaced millions, compelling many to seek safety and employment in neighboring countries such as Uganda, Tanzania, Kenya, and Rwanda. Additionally, low wages and underemployment in certain sectors further push workers to migrate in search of better opportunities. While national governments understandably adopt policies to safeguard local employment, they simultaneously bear treaty obligations to facilitate the free movement of workers and ensure non-discriminatory treatment of nationals from other partner states by undertaking measures as stipulated hereunder.

First, partner states must harmonize their labour laws, migration policies, and administrative practices to eliminate unnecessary barriers to employment mobility. It is equally important to strengthen cooperation through bilateral and multilateral labour agreements aimed at safeguarding migrant workers' rights, benefits and addressing abuses linked to irregular migration and human trafficking. Secondly, the EAC should prioritize the establishment of a Regional Labour and Employment Coordination Authority tasked with mapping regional labour market needs, identifying job opportunities, facilitating lawful migration and exploring funding opportunities within the Community and well-wishers. Member states should also enhance labour inspection systems, improve border management, and invest in digital labour information platforms that enable employers and workers to access cross-border employment opportunities transparently.

Thirdly, the EAC should develop a binding framework on social security portability and strengthen the jurisdiction of the East African Court of Justice to cover regional labour rights violations, and work toward harmonizing minimum labour standards across partner states. Finally, the success of labour migration in East Africa depends on joint commitment to shared prosperity and human dignity. There is no country that can achieve sustainable development in isolation; hence through cooperation in the exchange of labour, technology, and social capital, the East African Community can transform migration into an engine for inclusive growth and regional stability.

Abbreviations

AU	African Union
CMP	Common Market Protocol (EAC Common Market Protocol)
EAC	East African Community
EACJ	East African Court of Justice
EALA	East African Legislative Assembly
EU	European Union (Mentioned In Comparative Context)
FEMC	Migration for Employment Convention (ILO Convention)

ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
JPCC	Joint Permanent Commission for Cooperation (Kenya–Tanzania)
KLR	Kenya Law Reports (Case Citation)
MPFA	Migration Policy Framework for Africa (AU Framework)
NCIP	Northern Corridor Integration Projects
NEEC	National Economic Empowerment Council (Tanzania)
UDHR	Universal Declaration of Human Rights
DRC	Democratic Republic of the Congo
URT	United Republic of Tanzania.

Author Contributions

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Marwa Felix John: Methodology, Resources, Supervision, Writing – original draft

Conflicts of Interest

The authors declare no conflicts of interest.

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