

The integration in the East African Community ,challenges, opportunities for lawyers

On the historical scheme the integration has began in 1900 when the town of Mombasa has been established as the collection center for the perception of the customs for Kenya and Uganda, due to the lack of the integrated political strategy, and the professionals in terms of integration process the first organization did not survive, and in 1977 it was dissolved. This dissolution drives to the losses of jobs as problems among others.

On the 14th of March 1996 the secretariat of the EAC(East African Community) was launched and Burundi adhere to it on the 1st January 2007. The civil society is going to be associated in the process of establishing the new EAC ,there has been a decentralization of the power so to avoid the risk of the dissolution seen in the past. In real, there has been a special need for the countries of EAC to have a regional structure which is going to help in developing their countries. The core values of this regional structure are good governance, promotion of human rights, and rule of law. Principles that help in implementing the objectives of the EAC are the creation of the EAC states members of an adequate environment for the circulation of goods, services and humans.

On the issue of steps of the integration the article 5(2) states that the integration process is:

- The customs union which has been implemented on 1/05/2005,
- The common market which began on the 1/07/2010,
- The monetary union (the negotiations began in January 2011),
- The political federation which is the utmost step of the process of the integration.

The common market protocol precises that the lands and usage of the commercial house are organized by the law of the owner's country, in order to avoid that the free circulation of people cause the occupation of lands of countries which still have bigger lands. The Article 9 of the treaty establishes a unique passport for all countries members of the EAC.

The common market discussion has enhanced the reluctance of the EAC states members to be overwhelmed by the other country because of difference of

the countries power.

The third step is the monetary union and it is going to be realized when two or more countries are going to be in accord of using the same currency. The negotiations have begun in January 2010.

The utmost step will be the political federation, the treaty did not precise the agenda of the political federation but the article 123 of this treaty states that the summit can initialized the process of the political federation. During the extraordinary summit of the Presidents in Nairobi Kenya in 2006, the Presidents have realized that the process of political federation is very slowly and they have proposed strategy that can help to attain the political federation, like the national consultation on the different point of view that can enhance that federation.

The national consultations have begun in three countries on the 13th October 2006, and the summit has decided to focus on the sensitization of the population because the countries have seen that there is lack of information among people. A team of experts and the summit of ministries have been organized in order to analyze the need and the preoccupations for a good integration.

On the issue of the development program set by the EAC, it has adopted a global development of all sectors. The main programs are the eradication of poverty, promotion of business and cooperation between the members of the EAC, contribution to the millennium goal objectives.

Development sectors have been defined and are:

Agriculture; environment and natural resources; gender and development; good governance and education. The EAC has challenges like the lack of financial means; the need for sensitization of the treaty, the malfunction of the financial infrastructures. The Burundian Presidency of the EAC began in December 2010 and ends up in November 2011; it was a period of great achievements such as the nomination of the general secretary of the EAC and the institutional reforms.

The best challenge for Burundi was to maintain a high standard of integration during the period of its presidency. The Burundian presidency made the sensitization of the population on common market for the purpose of real

integration and for that: the contribution of the legal practitioners is to give their point of view on how the common market integration can be conducted.

The legal practitioners (advocates among others) should be associated in harmonization and their respective bar association might play a key role in that harmonization. There should be a sensitization of translated treaty and CMP (Common Market Protocol) in local languages so to help people in understanding what is going on in the region because many are still ignorant on the matter.

The article 52 of the common market protocol, and the protocol understood an annex as an additional package of some articles of the CMP which need operational clarification and implementation. And each concluded annex is accompanied with its scope of application, its regulations, and its interpretation.

The annex one covers the free movement of persons who do not need to be employed in the territory they are passing in. If they find a job the immigration office may cancel their transit pass. In order to help in the harmonization procedures there has been a creation of a regional advisory committee (RAC) which will follow up the implementation of the CMP.

The annex two is for free movement of workers it provides the entry, stay and exit of the workers and their entire family (spouse and children) in case they have one. The partner states must share the information on the jobs opportunities. The annex on the social security is still pending, and for the implementation of the social security the insurance health scheme the labor code and the social security code must be amended.

The third annex is for the establishment of the foreign investors in the protocol state territory and the establishment of the family investors (spouse and children). The annex four is for the right of residence for the self employed persons, their spouses, children and dependant. The application procedure of having the work permit should be a procedure of having a residence permit; and at the same time dependant, children and spouse pass.

The Fifth annex is a schedule of commitments on the progressive liberalizations of service described by the classification made by the world trade organization.

The Sixth annex is for the free movement of capital ,partners states have defined types of capital, payments and transfer and eliminate the restrictions on those capital movements from December 2009 to 2015. The seventh protocol is for

mutual recognition of academic and professional qualifications. The article 11.1(a) of the protocol shows the levels and corresponding description of an academic qualification such as what it is a degree means, a diploma, certificate, and the minimum duration in academic year. In Burundi, national commission on high learning has been put in place and is being managed by its executive secretary.

The annex eight is for free movement of workers and for that point the protocol states are still apart on that issue, there should make a binding agreement on that issue.

The treaty and the CMP were for a creation of a single market where any barriers will be removed for a free travel of labour, goods and services, for a free establishment and residence in the protocol states. Henceforth, the common market should be progressive according to the schedules of the council. The article 104 is for the movement of persons, labour, right to residence and establishment. In the post negotiations of CMP includes finalization and harmonization of annex on the recognition of professional and academic qualifications, annex on social security.

Partners states are obliged to domesticate the treaty and the CMP and annex (Pacta sunt servanda principle), the common market shall be managed in accordance with relevant laws of the community and this is why the community laws such as the commercial laws relevant to customs union and the common market should be harmonized and that will take a lot of time.

In order to provide a free movement there should be standard documents for travel and it is a challenge to have a harmony in laws and also there is apprehension of sovereignty, lack of resources the large number of the laws to harmonize causes delays, nevertheless there is a harmonized law on the counterfeit practices.

The CMP implies that the lawyers can establish their law firm wherever they want in any of the partner states, and they can establish themselves and their family (spouses and children). Host state must deliver them residence permits.

Nowadays a lawyer can practice but he will need to get the recognition of the bar association of the host state. Common market is still a process not an event and states must domesticate the CMP in their municipal laws, and there must be reviewed in order to harmonize citizenship laws, commercial laws.

And the practice of lawyers need to focus on the implementation of the treaty especially trade liberalization and development, review relevant areas of the cooperation including investment.

As challenges, the institutions must be reviewed for an effective implementation of the common market and this will enhance the chances for lawyers as well. There is also a language barrier Rwanda and Burundi use French whilst Uganda and Kenya use English; the other barrier is the legal system Rwanda and Burundi use the Roman Catholic law whilst the Uganda and Kenya use the Common law.

There is poor perception and fear of being swallowed up by the other partner state, delay of the harmonization of the law with possibility of unfair competition. Common market attracts investors from abroad and from the partners' state and there are so many opportunities.

In order to help advocates to practice law wherever they want without any legal limitation, their respective Bar Association have created a law society which make propositions in order to harmonize the need for legal practitioners of the barriers removal.

Because of these barriers and challenges, nowadays advocates and law firms, from different legal systems, should be partners in order to wait for the harmonization of the laws and procedures.