

## **Legal Challenges to the Implementation of East African Community (Eac) Common Market Protocol Case of Free Movement of Capital In Rwanda**

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**ABSTRACT** This research has investigated the legal challenges in the realization of free movement of capital under EAC common market but with much focus on Rwanda as a case study. The general objective was to identify such challenges, to find out their nature, the causes and their extent and finally to suggest solutions thereto. The hypothesis was that the Community and the Partner States, Rwanda all need effective institutions, the harmonized laws to enhance the free movement of capital but also the manner of reception and implementation of community law in Rwanda. The research findings reveal that in Rwanda there are some laws in contradiction with the protocol; the Community lacks effective institutions for monitoring the implementation of the Common Market Protocol and for settling disputes of the common market nature. The research concludes that the aforesaid challenges pose a negative threat to the success of free movement of capital under EAC. The research recommends that effective institutions for monitoring the implementation of the common market should be established and accorded sufficient capacity to perform their obligations. The study also recommends the direct effect and direct applicability of the community law within Partner States of the EAC, and lastly, that Rwanda should make amendments of all laws in contradiction with the community law to enable the free movement of capital in the State.

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### **I. GENERAL INTRODUCTION**

#### **1.1. Background of the study**

Currently, the world is witnessing an increase of regional integration as a popular trend and the justifications of many integration initiatives are mainly economic<sup>3</sup>. The main basis of creation of various regional integrations across the world is therefore to enhance the development. The EAC countries were not left behind, thus innovation as in the year 1999 witnessed the revival of the EAC after its collapse in 1967<sup>4</sup>. The EAC as we have it today is established by the Treaty for the establishment of EAC and it has a wide range of coverage beyond the economic aspect and in accordance with the Treaty, the EAC aims at achieving a custom union, a common market, a monetary union and eventually the political federation<sup>5</sup>.

The common market is the second stage in the process of economic integration within the EAC and it involves the integration of Partner States markets into a single market in which there is free movement of capital, labor, goods and services<sup>6</sup>. The common market in EAC is established by the Protocol for the Establishment of the EAC Common Market which was signed by EAC Heads of States on 20<sup>th</sup> day of November 2009 and entered into force on 1<sup>st</sup> day of July 2010.

In accordance with the provisions of Article 76 of the Treaty for the Establishment of East African Community; an overall objective of the EAC is to widen and deepen cooperation among the Partner States in the economic and social fields for the benefit of their population<sup>7</sup>. This study is shading upon the understanding of the challenges and constraints facing the free movement of capital in Rwanda as well as in the regional integration process as provided for under the Protocol on the Establishment of the East African Community Common Market.

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<sup>3</sup> Aderladus, K, *Regional integration and international law: A study of the new East African Community*, 2003, p. 56.

<sup>4</sup> *Ibid.*

<sup>5</sup> Article 5 (2) of the Treaty for the Establishment of the East African Community that entered into force in July 2000.

<sup>6</sup> Article 1 of the Protocol on the Establishment of East African Community Common Market.

<sup>7</sup> Article 4 of the East African Community Common Market Protocol of 20<sup>th</sup> November 2009, entered into force on 1<sup>st</sup> July 2010.

The full implementation of the Common Market is a challenging task since it calls for strong implementation by all parties, particularly the Partner States, so as to deliver the rights and freedoms enshrined in the East African Community Common Market Protocol<sup>8</sup>. The Partner States are under obligation to make sure that their existing laws and regulations in their respective countries are in conformity with the common market provisions. In that respect, this work shall analyze the legal challenges to the implementation of Common Market Protocol but with emphasis on the case of free movement of capital in Rwanda and shall suggest possible measures for the smooth running of common market. The EAC comprising of Burundi, Kenya, Rwanda, Tanzania and Uganda, is a regional organization which seeks to encourage economic growth and development, through trade and competitiveness. That makes free movement of capital to be a critical component in the attainment of regional competitiveness and efficiency in the integration process<sup>9</sup>. In fact, once the free movement of capital is not assured, the trade and competition are affected thus, delay of economic growth and development in the region. The Protocol for the Establishment of the East African Community Common Market provides for the free movement of capital whereby the elimination of restrictions on the Free Movement of Capital by the partner States<sup>10</sup>. The rationale for the East African Community Common Market is compelling; the common market in EAC has the potential to build economies of large scale, to accelerate competitiveness, and to bring the region closer in achieving its dream of becoming a single investment destination<sup>11</sup>. However, it is expected that there in the process should be some constraints that states are to undergo if the common market is to be attained. What is important to discuss in this topic is the legal challenges to the implementation of such a Common Market Protocol in case of free movement of capital in Rwanda by highlighting the reasons for restrictions to the free movement of capital that subsist in Rwandan legal framework despite the ratification of EAC Common Market Protocol by the country making it a part of municipal law. Through all those perspectives, this work attempts to demonstrate how far Rwanda has gone in removing restrictions to the free movement of capital and to highlight legal challenges and constraints affecting the implementation of the Common Market Protocol on free movement of capital with much focus on Rwanda as a case study.

## **1.2. Statement of the Problem**

Under the EAC Common Market Protocol, Partner States agreed on various matters which include removing all barriers and restrictions on the movement, sale, investment and payments of capital and Partner States also agreed to remove any discrimination based on the nationality or on the place of residence of the persons or on the place where capital is invested<sup>12</sup>. The implementation of a common market requires setting up common institutions and harmonizing laws overseeing the free movement of, not only goods, but also capital. According to Ogalo<sup>13</sup>, this form of deeper integration, if properly conducted, can deliver important economic benefits for the region, which may in turn have a positive effect on productivity. However, the extent to which these benefits can accrue to the region will depend on both the efficiency of the newly created institutions in overseeing the implementation of appropriate common provisions in Common Market Protocol. In the implementation of Common Market protocol, laws and regulations and institutions in charge of their implementation of the East African Community Partner States constitute a barrier for its realization<sup>14</sup>. Here, it is important to mention here that the topic only covers Rwanda by the fact that Rwandan legal and institutional framework still present much barriers to increased cross-border trade and foreign direct investment into the region which hinders the movement of capital.

Despite the great achievements in trying to comply with its international obligations regarding the EAC Common Market Protocol by enacting different laws and regulations to implement it, in Rwanda, there are some of the legal and regulatory measures which remain inconsistent with regional commitments to establish a common market; the excessive power of the central bank to intervene in money market, the prior authorization from central bank to carry any financial activity and differences in the amount of capital required for investors

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<sup>8</sup> Aderladus, K, *Op. cit*, p. 57.

<sup>9</sup> Freidrich Ebert Stiftung, *The East African Community Market Protocol for Movement of Labor: Achievement and Challenges of Implementation of the Protocol*, Nairobi, 2012, p. 45.

<sup>10</sup> Protocol on the Establishment of the East African community Common Market, art. 24 (1).

<sup>11</sup> Alfred Ombudo Kombudo in partnership with the World Bank and East African Community Secretariat, *East African Common Market Score card: Tracking EAC compliance in the movement of Capital, Services and Goods*, Arusha, 2014, p. 1.

<sup>12</sup> H. Kyambalesa and M.C. Houngnikpo, *Economic integration and development in Africa*, Regis University, USA, 2001, p. 23.

<sup>13</sup> Ogalo, V., *Achievements and Challenges of implementation of the EAC Common Market Protocol in Kenya: Case of free Movement of Labor*, Nairobi, 2012, p. 67.

<sup>14</sup> R. Dehousse, *Integration and Beyond: The Institutional Dimension of the Internal Market Program*, Legal Issues of Integration, (1992), Paris, p. 345.

are among others<sup>15</sup>. The implementation also depends on whether the legislative reform process is consultative and whether the laws enacted are facilitative or limiting<sup>16</sup>. It is not sufficient to rush implementation of the Common Market; however, implementing the right policies and laws is more important. Therefore, there is a need to assess the extent to which domestication and implementation of the Common Market Protocol has been achieved in Rwanda and whether the enacted legislations are facilitative or limiting in so far as achieving the objectives of the Common Market Protocol on movement of capital is concerned. Further, we also need to look at the most beneficial policy change that Rwanda should put in place in order to harmonize where necessary the policy-law development on movement of capital.

### **1.3. Research hypotheses**

This research paper is guided by the following hypotheses:  
Some of the laws regulating movement of capital in Rwanda are to certain extent inconsistent with the East African Community legal regime on the free movement of capital. Moreover, some of the institutions having relation with the implementation of free movement of capital are ineffective to assure free movement of capital in Rwanda and in EAC in general. Finally, the East African Community legal framework itself is inadequate in ensuring the incorporation of free movement of capital in domestic laws of Partner States and to ensure its effectiveness in Rwanda particularly and in EAC in general.

### **1.4. Objectives**

The study has a general objective of assessing the status of harmonization and conformity of Rwandan laws with East African Community laws on the free movement of capital due to the fact that the implementation of EAC Common Market Protocol, especially the free movement of capital depends much on the laws, policies of Partner States. Alongside to the above mentioned main objective, this study presents the following specific objectives:

- To identify the challenges to the free movement of capital in Rwanda;
- To find out the extent and causes of said challenges affecting the free of movement of capital in Rwanda as it is enshrined in the Protocol on the establishment of East African common market; and
- To suggest viable solutions to those challenges in order to ensure a fully implementation of EAC common market provisions regarding the free movement of capital.

### **1.5. The structure of the study**

The study is divided into five chapters. Chapter one presents the general overview of the common market in East African Community. Chapter two discusses the positive implications of Rwanda in the implementation of Common Market Protocol: Case of free movement of capital. Chapter three deals with negative implications of Rwanda in the implementation of Common Market protocol: Case of free movement of capital. A part from a general introduction, the study concludes with a summary of the main arguments and general assessment of recommendations on the way forward.

## **II. CHAPTER ONE GENERAL OVERVIEW ON THE EAST AFRICAN COMMUNITY COMMON MARKET**

### **1.1. Introduction**

Almost every region in the world today is divided into some sorts of economic cooperation, especially in the African continent. This chapter discusses the concept of integration within the East African Community in as far as the common market is concerned. This is due to the fact that EAC is currently under the Common Market stage of integration.

### **1.2. Historical background of the East African Community Common Market**

The East African Community has a long history which can be traced back during and after the colonial period in East Africa<sup>17</sup>. The regional integration in East Africa is not a new issue due to the fact that it dates back to the

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<sup>15</sup> East African Community, *Common Market Score card*, 2014, p. 15.

<sup>16</sup> Ogallo, V., *Op. cit*, p. 70.

<sup>17</sup> Gordon, J., *Free Movement and Equal Rights for low-wage Workers: what the United States can learn from the new EU migration to Britain*. California: The chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkeley Law School, 2011, p. 67.

end of the 19<sup>th</sup> century by the construction of the Uganda Railway from the coastal town of Mombasa to Fort Florence on the shores of Lake Victoria<sup>18</sup>.

It was in 1917 when a Custom Union was established between Uganda and Kenya, in which Tanganyika joined later in 1919; the cooperation arrangements culminated into the formation of the East African High Commission in 1948, which lasted until the independence of Tanzania in 1961. Henceforth, the High Commission was superseded by the East African Common Services Organization and later the East African Community in 1967<sup>19</sup>. The former East African Community, however, collapsed just after ten years of existence in 1977 on grounds of various problems mainly on account of inequitable distribution of costs and benefits among the Partner States in the sense that, there was skewed beneficiation in favor of one particular country led to interstate imbalances of trade<sup>20</sup>. Secondly, there emerged ideological differences, which led to the three countries adopting different politico-economic models whereby Kenya preferred a socialist model<sup>21</sup>. Furthermore; following Idi Amin's military coup in Uganda in 1971, personality clashes ensued and as such the East African Authority, constituted by the three Heads of States could not meet to discuss and resolve emerging issues. Despite the historical setback, the spirit of cooperation among the three East African States namely: Kenya, Uganda and Tanzania was rekindled in the mid of 1990s through a Cooperation Agreement which was later upgraded into a Treaty for the Establishment of East African Community in 1999, which came into force in the year 2000, following ratification by the partner States<sup>22</sup>. However, the EAC membership expanded to five Partner States when Rwanda and Burundi joined the bloc in 2008 after signing a Treaty of accession by both countries to the Community. Under the revived East African Community (EAC) of 1999, the Custom Union was launched in 2005 and was supposed to take full effect by 2010<sup>23</sup>. This has however not happened due to several challenges that have been encountered but the Partner States agreed to go ahead in fulfilling their obligations deriving from Custom Union protocol concurrently with the ones of Common Market. The Custom Union was expected to be achieved in 2010 and the next step in the integration process envisaged by EAC was the creation of a Common Market in order to create a single internal market. On the same regard, the five EAC countries as a way of moving forward with integration process jointly established a Common Market which would provide for the free movement of factors of production such as people, goods, services, money, the right of establishment and right to residence of the EAC citizens within EAC member states among other things; and this will be in addition to the free movement of goods under the Custom Union<sup>24</sup>. The Common Market comes in and shall be implemented together with the Custom Union. The protocol on the establishment of the EAC Common Market entered into force on 1<sup>st</sup> July 2010, following ratification by all the five Partner States: Burundi, Kenya, Rwanda, Tanzania and Uganda and this protocol was signed by Heads of States on 20<sup>th</sup> November 2009, coinciding with 10<sup>th</sup> Anniversary celebrations of the revived Community<sup>25</sup>. Even though, the Treaty does not exhaustively define the term Common Market but it refers to situation where obstacles to the free movement of the most important sectors of the economy have been removed<sup>26</sup>. In the European community Treaty, the essential part of the Common Market was expressed as involving five freedoms and two rights, free movement of goods, free movements of persons, free movements of services, free movement of capital, free movement of workers, right of establishment and right of residence<sup>27</sup>. The establishment of the EAC Common Market is in the line the provisions of the EAC treaty and provides for four freedoms namely: free movement of goods, labor, services and capital, which will significantly boost trade and investments and make the regional more productive and prosperous.

Essentially, Common Market or internal market which includes the common policies in certain areas such as competition in agriculture as currently referred to in European Union is about the absence of internal barriers but not absence of control and management, it is therefore, an arrangement that integrates the markets of

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<sup>18</sup> United Nations Economic Commission for Africa (UNECA)- sub-regional office for Eastern Africa, *Domestication and Mainstreaming of Regional integration Processes instruments and decisions into National Policies, Legal and Regulatory Frameworks: Issues, Challenges and Opportunities*, Kigali, Rwanda 2013.

<sup>19</sup> *Ibid.*

<sup>20</sup> Jaime de Melo *et al.*, *Getting the best out of regional integration: Some thoughts for Rwanda*, 2011, p. 100.

<sup>21</sup> *Ibid.*

<sup>22</sup> MINEAC, *East African Community Common Market Implementation Plan*, Report, Kigali, November, 2011, p. 8.

<sup>23</sup> *Ibid.*

<sup>24</sup> Walter Odhiambo, *East African Integration, Dynamics of equity in Trade, Education, Media and Labor*; published by society for international development, regional office for East Africa, 2011.

<sup>25</sup> Juma V. Mwapachu, Statement by the EAC Secretary General, Arusha 1<sup>st</sup> July 2010.

<sup>26</sup> John Bosco Kanyangoga, *Integrating Migration with Development in EAC: Policy Challenges and Recommendations*, 2010, p. 65.

<sup>27</sup> Poster, Richard A, *Business and Reform*, 4<sup>th</sup> edition, Cambridge University Press, 1984, p. 64.

factors of production from individual Partner States into one single market<sup>28</sup>. This means that, the Common Market involves the integration or amalgamation of all three markets which are goods markets, the labor markets and capital markets. The Common Market is an area without internal frontiers in which the free movement of factors of production is ensured and the foundation of current Common Market in East Africa focuses on five freedoms, namely free movement of goods, free movement of labor, free movement of services, free movement of capital and rights of establishment and residence<sup>29</sup>. As far as the objectives are concerned, the overall objective of the Common Market is to widen and deepen cooperation among the partners in the economic and social fields for the benefit of the Partner States<sup>30</sup>. Alongside to the overall objective, the specific objectives of the EAC common market are:

- To accelerate economic growth and development of Partner States through the attainment of the movement of goods, persons and labor, the rights of establishment and residence and free movement of capital and services;
- To strengthen, coordinate and regulate the economic and trade relations among the Partner States in order to promote accelerated, harmonious and balanced development within the community;
- To promote common understanding and cooperation among nationals of the Partner States for their economic and social development; and
- To enhance research and technological advancement in order to accelerate economic and social development.

Therefore, the free play of market forces within the market is expected to increase economic efficiency, widen the consumer choice and enhance the community's competitiveness in the world market<sup>31</sup>. In order to realize the objectives of EAC Common Market, the Partners States undertake to cooperate in, integrate and harmonize their policies in areas provided for in the protocol and in such other areas the council may determine. In fact, this section has discussed the background of EAC and particularly the origin of the EAC Common Market. It is expected that transiting into a common market should be relatively easier than most of the required institutions are already in place, but the challenge has always been one of strengthening these institutions to ensure that they can support an effective Common Market.

### **1.3. Rights and Freedoms of the East African Community Common Market**

A Common Market is made up of Partner States of a regional bloc which operates a single market for goods, services, labor and capital, common taxes, and common trade laws. The Common Market supplements and integrates the Customs Union, and is a process in itself as the implementation goes on. This section highlights the various freedoms and different rights that are enshrined under the Protocol for Establishment of EAC Common Market.

#### **1.3.1. Free Movement of Goods**

The free movement of goods implies the following: elimination of internal tariffs, application of common external tariffs, application of uniform rules of origin, elimination of non-tariffs barriers and the application of common external trade policy<sup>32</sup>. This implies that, the goods manufactured within the bloc shall be totally free from tariffs within the member states, and those states shall apply an identical tariffs for products imported outside the integration bloc. In terms of implementing the free movement of goods between partner states, the EAC Common Market Protocol provides that it shall be governed by the customs law of the community together with the East African community protocol on standardization, quality assurance, metrology and testing<sup>33</sup>. The East African community protocol on standardization, quality assurance, metrology and testing entered into force on 15<sup>th</sup>, January 2001, the same date it was signed in Arusha, Tanzania.

#### **1.3.2. Free Movement of Persons**

In accordance with the Protocol for the Establishment of EAC Common Market, the free movement of persons confers right to citizens of EAC Partner States to enter into a territory of other Partner States without a visa, and stay in the territory of other Partner States for a period of six (6) months<sup>34</sup>. Each Partner State in accordance with international law, shall guarantee the protection of citizens of other Partner States while in their territories. However; in doing this, the free movement of persons shall not exempt prosecution or extraction of a national of a partner state who commits a crime in another Partner State.

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<sup>28</sup> Kennedy Gaston, Herald Sippel and Urlike Wanitzek, *Regional Integration in East African Community*, Dares Salaam University press, Dares Salaam 2011, p. 67.

<sup>29</sup> Article 76 and 104 of EAC Treaty 1999.

<sup>30</sup> Article 4 of Treaty for the Establishment of EAC of 1999.

<sup>31</sup> Article 104 of the Treaty for the Establishment of EAC 1999.

<sup>32</sup> Article 6 of the EAC Common Market Protocol.

<sup>33</sup> Article 39 of the Protocol on the Establishment of East African Community Custom Union.

<sup>34</sup> Article 7 of the EAC Common Market Protocol.

### **1.2.3. Free Movement of Capital**

The free movement of capital occurs when the Partner States agreed among themselves to remove restriction between the Partner States on the movement of capital belonging to the partner resident in the community, remove any discrimination based on nationality or on place of residence of the persons or the capital is invested, remove any restriction and not to introduce any new restriction on the movement of capital, payments and transfers or apply more restrictions or regulations, remove restrictions relating the current payments connected with the movement of goods, persons and services or capital between Partner States in accordance with the provisions of Common Market Protocol<sup>35</sup>. In other words, the free movement of capital requires the absence of restriction hindering the free movement of finances from one to another or to all members of the community. It is important to mention that, the free movement of capital depends in one way or another to the implementation of other rights such as the right of establishment, residence and free movement of services also enshrined in the same protocol.

### **1.3.4. Free Movement of Workers**

There is free movement of workers in situation where the citizens of the EAC Partner States have the right to apply for employment and accept of employment actually made move freely within the territories of Partner States for the purpose of employment, conclude contracts and take up employment in accordance with the contracts, stay in the territory of the other Partner States for the purpose of employment in accordance with national laws and the administrative procedures governing the employment of workers of that Partner State, enjoy the freedom of association and collective bargaining for better working conditions in accordance with national laws of the host Partner State and the right to be accompanied by a spouse, child and dependents<sup>36</sup>. This means that, for the purpose of the work a person from one partner state shall stay in another together with his or her family but also other persons depending on the worker freely as long as he or she respects the domestic laws of the hosting country. In terms of the scope, a part from the power conferred to the Council which may if it deems necessary, issue directives and make regulations on social security benefits; in regard of exception to the general provision, the provisions of EAC Common Market Protocol do not apply to the employment in the public services, unless the national laws and regulations of the lost Partner State so permits<sup>37</sup>. In limiting the abuse of this discretionary power bestowed to States, it is provided that the national regulations and procedures shall not apply unless they are not against the principal aim of the protocol.

### **1.3.5. Free Movement of Services**

The Partner States hereby guarantee the free movement of services supplied by nationals of Partner States and the free movement of service suppliers who are nationals of Partner States within the community<sup>38</sup>. This means that, by the free movement of services the provider from one of the Partner States will be allowed to supply the service in any other Partner State without constraints. The free movement of services shall cover the supply of services from the territory of a Partner State into the territory of another State; in the territory of a Partner State to service consumers from another Partner State; by a service supplier of a Partner State through commercial presence of the service supplier in the territory of another State and by the presence of a service supplier, who is a citizen of a Partner State in the territory of another partner state<sup>39</sup>. For the implementation of the free movement of services, the Partner States are under obligation to take necessary measures and steps including not limited to legal and administrative actions by removing and not introducing new restrictions on the delivery of services within the partner states.

### **1.3.6. Right of Establishment**

There is right of establishment, whereby the Partner States guarantee the right of establishment of nationals of the Partner States within their territories and the Partner States shall ensure that there is no discrimination of nationals of the other Partner States based on nationalities<sup>40</sup>. The right of establishment entails that a national of a Partner State has right and freedom to take up and pursue an economic undertaking in the territory of another Partner State. The companies and firms established in accordance with the national laws of one of the Partner States and having a registered office, central administration or principal place of business and which undertake substantial economic activities in the Partner State shall, for purpose of establishment, be

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<sup>35</sup> Article 24 of the EAC Common Market Protocol.

<sup>36</sup> Article 10 of the EAC Common Market Protocol.

<sup>37</sup> Article 10 (4) of the EAC Common Market Protocol.

<sup>38</sup> Article 16 of the EAC Common Market Protocol.

<sup>39</sup> Article 16 (2) (a) (b) (c) (d) of the EAC common market protocol.

<sup>40</sup> Article 13 (1) (2) of the EAC Common Market Protocol.

accorded non-discriminatory treatment in other Partner State<sup>41</sup>. On the same regards, for the purposes of undertaking an economic activity, the Partner States shall mutually recognize the relevant experience obtained, requirements met, licenses and certificates granted to a company or a firm in the other Partner States<sup>42</sup>. In other words, a company with a certificate and registered in accordance with national law of one of the Partner States shall be allowed to carry out its activities in other Partner States.

#### **1.2.7. Right of Residence**

By right of residence, the Partner States guarantee the right of residence to the citizens of the Partner States who have been admitted in their territories in accordance with the protocol<sup>43</sup>. As the case for right on the free movement of workers, the right to residence shall also apply to spouse, child and dependents of the worker or self-employed persons entitled to the right of residence as enshrined in the protocol. After signing of the protocol and launching its operations, the EAC Partner States had to put the EAC Common Market in the process mode. The Common Market Protocol indicates clearly rights, freedoms, duties and obligations of people themselves to carry out common market forward and reap its benefits. The Common Market Protocol provides schedules for its implementation. Foremost as provided in the schedules, is the domestication of protocol's provisions by Partner States within their national laws by December 2010.

#### **1.4. Comparative Analysis of the Free Movement of Capital in East African Community and the European Union**

In the EAC, the free movement of capital explicitly provided in the EAC Treaty which stipulates that for ensuring the free movement of capital, the Partner States shall in accordance with the time table to be determined by the Council, permit the free movement of capital within the Community, develop, harmonize and eventually integrate their financial systems<sup>44</sup>. On this regard, the Partner States undertook to<sup>45</sup>:

- Ensure the unimpeded flow of capital within the Community through the removal of controls on the transfer of capital among the partner states;
- Ensure that the citizens and the persons residents in a Partner State are allowed to acquire stocks, shares and other securities or to invest in enterprises in the other partner states; and
- Encourage cross border trade in financial instruments.

As for European Union, with capital liberalization, all restrictions on the movement of capital between member States and between States and member States and Third countries shall be prohibited<sup>46</sup>. It is then clear that the European union market is more open than East African market since in terms of free movement of capital the first includes even third states. Furthermore, the grounds justifying restrictions in EAC are relatively similar to those in the EU, namely prudential supervision and public policy. However, differences between the EU and the EAC are regarded as grounds of restrictions to the free movement of capital include the ground of public security that exists only in EU, and the grounds of anti-money laundering and financial sanctions exclusively agreed to by the Partner States in the EAC Treaty<sup>47</sup>. Again, the Treaty for the Establishment of the EAC does not explicitly talk about the organ which shall oversee the implementation of the free movement of capital and the possible infringements. However, in the EAC the Council may approve measures designed to remedy any adverse effects a Partner State may experience by reason of the implementation of the free movement of capital, provided that such a Partner State shall furnish to the Council proof that it has taken all reasonable steps to overcome the difficulties, and that such measures are applied on a non-discriminatory basis<sup>48</sup>. On another side, for the European Union, the free movement of capital is essential for the realization of other stages of integration mainly the monetary and therefore for citizens it means the ability to do many operations abroad, as diverse as opening bank accounts, buying shares in non-domestic companies, investing where the best return is, and purchasing real estate and or companies. It principally means being able to invest in and own other European companies and take an active part in their management<sup>49</sup>. In the EU, it is the Commission (organ that can be compared to the Secretariat in EAC) which monitors restrictions to the free

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<sup>41</sup> Article 13 (5) of the EAC Common Market Protocol.

<sup>42</sup> Article 13 (6) of the EAC Common Market Protocol.

<sup>43</sup> Article 14 (1) of the EAC Common Market Protocol.

<sup>44</sup> Article 86 of the Treaty for the Establishment of East African Community of 1999.

<sup>45</sup> Article 86 (a) (b) (c) of the Treaty for the Establishment of East African Community of 1999.

<sup>46</sup> Article 56 of the Treaty of European Community of 1956.

<sup>47</sup> Free movement of capital in European Union and in East African Community, available at: [www.media.leidenuniv.nl/legacy/eac-final-summary.pdf](http://www.media.leidenuniv.nl/legacy/eac-final-summary.pdf). Accessed on 12<sup>th</sup> May 2015.

<sup>48</sup> Article 88 of the Treaty for the establishment of East African Community of 1999.

<sup>49</sup> Free movement of capital in the European Union, available at: [www.eubusiness.com/topics/single-market/capital/](http://www.eubusiness.com/topics/single-market/capital/) accessed on 23<sup>rd</sup> July 2015.

movement of capital and acts in order to eliminate any barrier which is incompatible with the Treaty<sup>50</sup>. This enforcement is done in the way of a co-operation with the member states or by pursuit of infringement cases where appropriate. In short terms, both integrations have got some common features but with many differences especially sanctions, thus enhanced the progress of the free movement of capital within members of the European Union than in EAC. The next chapter discusses the positive implications of Rwanda in the implementation of common market protocol: Case of free movement of capital; in which the Rwandan legal and institutional framework available for the implementation of the free movement of capital is going to be analyzed.

### **III. CHAPTER TWO POSITIVE IMPLICATIONS TO THE FREE MOVEMENT OF CAPITAL IN RWANDA**

This chapter focuses on the positive implications of free movement of capital, namely: the undertakings of Rwanda in ensuring the free movement of capital, the legal and institutional effectiveness in capital liberalization and the removal of restrictions to the free movement of capital removed in Rwanda.

#### **2.1. The undertakings of Rwanda in ensuring the free movement of capital**

As mentioned as earlier, the Common Market Protocol was signed on 20<sup>th</sup> November, 2009 and came into force on 1<sup>st</sup> July, 2010 and the next step was to align all the domestic laws of the Partner States with the said protocol and to carry out sensitization program. It was then the responsibility of each and every Partner state in the EAC to ensure that the provisions contained in the common market are implemented firstly in their respective countries but also in the Community. Here, it must be borne in mind that the main focuses during sensitization was on free movement of goods, persons, labor, services, capital, right to establishment and residence<sup>51</sup>. In the couple of that, to manifest the willingness in executing commitments regarding to the free movement of capital, the Partner States as well as Rwanda undertook to:

- Remove restrictions between the Partner States, on the movement of capital belonging to persons resident in the Community;
- Remove any discrimination based on the nationality or on the place of residence of the persons or on the place where the capital is invested;
- Remove any existing restrictions and to not introduce any new restrictions on the of capital and payments connected with such movement and on current payments and transfers, or apply more restrictive regulations; and
- Remove restrictions relating to current payments connected with the movement of goods, persons, services or capital between Partner States in accordance with the provisions of this Protocol.<sup>52</sup>

Though, the implementation of the above provision was supposed to be progressive and in accordance with the schedule (time or a plan that gives a list of events or tasks and the time at which each one should happen or done) on the removal of restriction on the free movement of capital, specified in Annex VI to the CM Protocol, the Ministry for East African Community Affairs in Rwanda reports that so far, almost all commitments under the free movement of capital have been almost fully implemented in Rwanda<sup>53</sup>. According to the Ministry of East African Community reports; there are no restrictions on capital transfers to other EAC Partner States; the purchase of foreign securities; sale or issue of foreign securities locally by non-resident, subject to approval from the Capital Market Authority; and outward direct investment and finally, that a draft of investment code was pending (now into force) while approval and amendments to the company law were being processed in order to be published in Official Gazette<sup>54</sup>. This indicates that, as far as the undertakings of Rwanda were concerned in terms of free movement as provided by the Common Market protocol, Rwanda complies with some while others are still pending as it will be demonstrated in the next chapter.

#### **2.2. Legal and Institutional Framework for the Effective Implementation of the Capital Liberalization in Rwanda**

The integration cannot move forward in absence of appropriate laws and strong institutions from implementing Treaty provisions. There is a necessity of having in Partner States laws and institutions welcoming the community and fathering their implementation. In this section, the researcher discusses the extent on which such conditions have been attained in Rwanda. Remember that, this is from the reporters and

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<sup>50</sup> *Ibid.*

<sup>51</sup> MINEAC, *Annual Report*, Kigali 2012-2013, p. 8.

<sup>52</sup> Article 24(2) of the East African Community Protocol for the Establishment of the East African Community Common Market.

<sup>53</sup> MINEAC, *Op. cit.*, p. 13.

<sup>54</sup> *Ibid.*, p. 8.



governmental sources; therefore with the next chapter it will be observed whether restrictions to the free movement of capital have been theoretically and practically removed.

### **2.2.1. Rwandan Legal Framework on the Implementation of Community Law**

The effectiveness of the East African community law specifically the free movement of capital in member States of the EAC as well as in Rwanda presupposes the conditions such as the precedence of integration law and the appropriate legal reforms<sup>55</sup>. This cannot happen unless and until the community law is given supremacy over national laws of partner states, the direct effect and direct applicability of the community law in partner states. In that respect, this part of the work deals with how Rwandan legal framework facilitates the implementation of Treaty provisions within the country.

#### **2.2.1.1. Supremacy of East African Community Law in Rwanda**

To underscore the existing relations between the EAC Treaty and Protocols on one hand and national constitutions and laws on another, community laws will take precedence over national ones on matters pertaining to the implementation of the Treaty<sup>56</sup> in the line with the EAC Treaty requires each Partner State to make the community laws enforceable within its territory and also to create legal instruments to confer precedence of the community laws over similar national ones<sup>57</sup>. Rwanda as one of Partner States to the EAC Treaty admitted the supremacy of the EAC laws over similar national laws on matters pertaining to the implementation of the EAC Treaty<sup>58</sup> and further that decisions of the EACJ must be adopted and applied by Partner States<sup>59</sup>. In order to give full effect to these provisions, Rwanda arguably made a constitutional amendment to accommodate EAC Treaty provisions which includes the three movement of capital in particular<sup>60</sup>. Thus, supremacy of an integration law helps to resolve disputes arising from differences that are found within national legal systems of partner states, since all states members of the community must take the appropriate modifications in order to meet the requirements of the integration law.

#### **2.2.1.2. Legal Reforms undertaken by Rwanda to ensure the Free Movement of Capital**

Nothing can be done in implementing the free movement of capital as enshrined by the EAC Common Market Protocol unless national laws are in compliance with Treaty provisions vis-à-vis the freedom under examination. That is why the legal framework of Rwanda was not left behind concerning the compliance with the EAC commitments. That framework mainly comprises: the constitution of the Republic, and other laws. This section highlights legal reforms undertaken by the government of Rwanda in order to accommodate common market provisions into Rwandan legal framework.

##### **2.2.1.2.1. Constitution of the Republic of Rwanda**

As a part of the execution of undertakings of Rwanda pertaining to the implementation of the EAC common market, the legal reforms started by amending the constitution. Today, the Rwandan constitution provides that, upon their publication in the Official Gazette, international Treaties, agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic and ordinary laws except in the case of non-compliance by one of the parties<sup>61</sup>. The Rwandan Constitution further states that, the Constitution of the Republic is the supreme law in the country, however, due to the commitments that Rwanda has made in acceding to the EAC Treaty, careful considerations were given to whether Rwanda's constitution required amendment in the light of the Treaty obligations and legal framework including obligations within the Common Market Protocol which contain the free movement of capital<sup>62</sup>.

In order to give treaty provisions effect in Rwanda led to the amendment of the constitution so that; the obligations resulting from Rwandan accession to the EAC were inserted. This amendment of constitution just to harmonize with international treaty is provided constitution of the Republic of Rwanda itself where an international treaty contains provisions which are inconsistent with the Constitution, the authorization to ratify the treaty or agreement cannot be granted until the Constitution is amended<sup>63</sup>. This indicates that, the Rwandan

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<sup>55</sup> J. E., Ruhangisa, *Dispute Settlement in the East African Community: The Role of East African Court of Justice*, A course Material, Arusha 2010, p. 23.

<sup>56</sup> Article 8 (2) (b) (4) of the EAC Treaty of 1999.

<sup>57</sup> Article 8 (5) of the EAC Treaty of 1999.

<sup>58</sup> Treaty Establishing the East African Community, art. 8.

<sup>59</sup> *Id.*, art. 38.

<sup>60</sup> MINEAC, *The National Policy & Strategy on EAC Integration*, February 2012, p. 22.

<sup>61</sup> Article 190 of the constitution of Republic of Rwanda of 04<sup>th</sup> June 2003 as amended to date.

<sup>62</sup> MINEAC, *Op. cit.*, p. 49.

<sup>63</sup> Article 192 of the Constitution of Republic of Rwanda of 04<sup>th</sup> June 2003 as amended to date.

legal framework through the constitution provides somehow the flexibility to accommodate the EAC provisions. However, being the Rwandan Constitution nor any other law none talks about the direct effect and the direct applicability of community law, the two important issues that may make the Treaty provisions more binding and applicable to the big number of Rwandans as well as other nationals from EAC Partner States carrying their activities in Rwanda or having relation with Rwandan laws in daily businesses. Importantly, the constitution does not regulate all issues in the country itself that is why the legal reform was also looked on the other national laws.

#### **2.2.1.2.2. Legal reform of other national laws**

Unlike the initial EAC Partner States, Rwanda joined the EAC on 1<sup>st</sup> July 2007, later upon membership the government of Rwanda undertook to comply with the existing EAC commitments made by the other three countries<sup>64</sup>. Upon becoming a member, Rwanda had to put in line its national laws with the laws of other Partner States and the Community. Thus, EAC legislative compliance audit commissioned by MINEAC for the national policy on EAC integration scopes out the extent of Rwanda's commitments and their legislative implications and showed that the alignment of Rwanda's national laws with EAC commitments would involve the review and possibly the amendment of over two hundred pieces of legislation across Rwanda's legislative framework<sup>65</sup>. The task which seems not to be easier to any country since it requires the mobilization of many financial and capacity resources as well to be time consuming. In effect, in addition to the EAC legislative reform program which concerns the alignment of national laws with EAC Commitments; Rwanda wished to undertake practical law reforms, Rwanda also needed to ensure that no new laws or regulations are put in place in breach of EAC commitments whereby this requires each new piece of legislation to be vetted for EAC compliance; which would enable to reap full benefit from EAC membership.

Rwanda has therefore ensured that new national legislation enacted is in EAC compliance; incorporated practical law reforms, the work tasked to Rwanda law reform commission to further Rwanda's interests in the EAC; maintained the EAC legislative compliance audit as a rolling tool to track Rwanda's EAC commitments which have legislative implications; and developed an EAC compliance checklist for Ministry of Justice to ensure that proposed new national legislation is in EAC compliance<sup>66</sup>. On the top of that, the Community Acts enacted by the East African Legislative Assembly are directly applicable in Rwanda as long as they are published in the official Gazette which is good practice and which makes a transparent legislative framework for Rwanda to amend its domestic laws so that they do not conflict with Community law<sup>67</sup>. This means that, the law reform process needs to take on board the impact of laws made by EALA by examining and determining whether such national laws are in compliance or in contradiction with the community acts and if necessary make the appropriate modifications therein.

The alignment of Rwanda's laws with EAC commitments is a considerable undertaking; the careful prioritization is vital to make sure that the most important laws are formed first. The alignment task would impact virtually all Ministry Department Agencies' work plans and programs, Ministry of Justice's legislative drafting department, the role of the newly formed Rwanda Law reform commission, and parliament's workload and legislative program since new laws may be required where these do not exist but are needed to comply with EAC commitments<sup>68</sup>. In fact, the reforms discussed above were also necessary in order to comply with the commitments within Common Market Protocol as provided by article 24 of the Common Market Protocol which provides for the elimination of restrictions on the free movement of capital and particularly according to the Common Market Annex VI containing the Schedule on the removal of restrictions on the free movement of capital. Indeed, it is worth mentioning that laws that are being published in Rwanda usually take reference, in their preamble, to international treaties which include EAC Treaty as well. For example, the new law relating to investment promotion and facilitation acknowledges the importance of the international treaties and EAC treaties in particular whereby it provides that pursuant to the Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA) adopted in Kampala, Uganda on 5<sup>th</sup> November 1993 as ratified by the Presidential Order n° 004/94 of 1<sup>st</sup> December 1994 and pursuant to the Treaty of Accession of the Republic of Rwanda to the East African Community, signed in Kampala, Uganda on 18<sup>th</sup> June 2007 as ratified by the Presidential Order n° 24/01 of 28<sup>th</sup> June 2007, the chamber of deputies adopts this new law<sup>69</sup>.

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<sup>64</sup> Treaty of Accession of the Republic of Rwanda into East African Community 1<sup>st</sup> June 2007.

<sup>65</sup> *Ibid.*

<sup>66</sup> MINEAC, *Op. cit.*, p. 50.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Id.*, p. 64.

<sup>69</sup> Preamble of the law n° 06/2015 of 28<sup>th</sup> /03/2015 Law relating to investment promotion and facilitation *Official Gazette* no. Special of 27<sup>th</sup> /05/2015.

This indicates how the new laws being enacted give much importance to international treaties. Leaving alone the fact that the EAC Treaty provides its precedence over national laws of the partner states, Rwanda through its constitution admits the position of international treaties such as the Treaty for the Establishment of the East African Community as a part of national laws. In addition, the laws which have not in compliance with the EAC provisions have been others are being amended through the Rwandan Law Reform Commission and the new laws being enacted take reference have their preambles to the international treaties for which EAC Treaty is part. Therefore, having discussed the Rwandan legal framework in relation with the free movement of capital in Rwanda and the next section shall deal with the institutional machinery in charge of the execution of such implementation.

### **2.3. Institutional Framework for the Free Movement of capital in Rwanda**

This section sets out in the detail manner the institutional framework in Rwanda with the role of coordinating the implementation of EAC activities on national level. In other words, the organs vested with the duty of management, coordination, implementation, as well as monitoring and evaluation of Rwanda's EAC related activities and it is therefore crucial to mention that, the free movement of capital in Rwanda shall depend on how those institutions effectively work together.

#### **2.3.1. Ministry of East African Community: It's Mandate, Positioning and Capacity**

The MINEAC has as mandate is to coordinate the EAC integration process and through this Ministry, Government periodically reviews the current arrangements with a view to amending them in case of need, in consultation with relevant stakeholders<sup>70</sup>. MINEAC's mandate works in terms of playing its coordination and guidance role vis-à-vis other MDA's (Ministry, Department or Agencies), for the purpose of focusing leadership in Rwanda's engagement with the EAC and ensuring that Rwanda's EAC commitments are complied. Therefore, MINEAC's capacities are strengthened. In that respect, the ministry of EAC affairs in Rwanda has among other tasks of identifying of EAC related issues demanding attention; and assisting the relevant MDA's to tackle these issues timely and adequately. To ensure that, it attains its mandate, MINEAC must have adequate numbers of the experienced and high level staff including lawyers who able to address complex issues, necessary for engaging effectively with MDA's and participate effectively in Sectoral Working Groups.

#### **2.3.2. Ministerial Committee and Sector Working Groups**

The Ministry of East African Community in Rwanda is intended to strengthen and consolidate line ministries' ownership of their responsibility to embrace and prioritize EAC activities within their strategies, work plans and day to day activities<sup>71</sup>. However, the sector working groups are the driving force for EAC implementation, working in line with the national policy and strategy for EAC integration both to ensure compliance with EAC commitments<sup>72</sup>. These commitments also include the removal of restrictions to the free movement of capital in Rwanda. The Government takes all steps necessary to ensure that the Ministerial committee exercises its important functions in respect of overall regional integration and EAC decision-making and providing policy guidance to the sector working groups. Among other duties, the Ministerial Committee must: First; continuously monitor the sector working groups structure as it exists and functions at any one time, including the mandate and scope of each sector working group, in terms of their composition and workloads, and will draw and act upon the lessons learned from their on-going activities; and

Secondly, report quarterly to the office of the Prime Minister on the progress of the implementation of the EAC integration agenda; and make recommendations to the Office of the Prime Minister on steps necessary for the effective implementation of the EAC integration agenda and the national policy<sup>73</sup>.

The manner in which all those institutions carry out duties pertaining to integration; the Ministry of the East African Community is the overall supervisor of the process of integration in the country and represents the country all affairs pertaining to integration; Ministry, Department or Agencies (MDA's) are organs or agencies in charge of integration in each and every ministry; Ministerial Committee is an organ that monitors the sectorial working and which reports to the Prime Minister the progress of the integration policies and finally; Sector Working Groups it is an organ in charge of the daily implementation of the regional integration policies. Furthermore, to ensure the coordination of those institutions, before the Ministry of East African Community Affairs in Rwanda takes a decision engaging a particular Ministry, those in charge in the issue in those Ministries they sit and handles the issue together. This allows the Ministry which later will be in charge of the implementation to provide its views about the matter under discussion, thus enabling the easy implementation.

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<sup>70</sup> MINEAC, *Op.cit*, p. 15.

<sup>71</sup> Art. 47(1) (2) of the EAC Common Market Protocol.

<sup>72</sup> *Id.*, p. 16.

<sup>73</sup> *Id.*, p. 54.

We cannot conclude this part of institutional framework, without mentioning that in the private sector there is also enough institutions, companies etc. which are also contributing in the process for the free movement of capital in Rwanda.

#### **2.4. Removal of Restrictions to the Free Movement of Capital**

According to the research carried under this study, even though there some impediments that are going to be highlighted the in the next chapter, free movement of capital is almost fully implemented in Rwanda. There are no restrictions on: capital transfers to other EAC Partner States; the purchase of foreign securities since the publication of the capital markets law; and sale or issue of foreign securities; and outward direct investment. For example, in facilitating financial market liberalization in insurance sector, a company or private person can seek insurance in another partner State and there must not be other restrictions<sup>74</sup>. Since the Common Market Protocol came into force on 1<sup>st</sup> July, 2010, the following operations concerning the circulation of capital are no longer restricted but open to persons from EAC Partner States in Rwanda<sup>75</sup>. They include those relating to securities namely the sale of bonds and other debt securities abroad by residents<sup>76</sup>, purchase of foreign shares or other securities of a participating nature; local purchase by non-residents of shares or other securities of participating nature, allocation criteria for previous IPOs in favor of Rwandese nationals not being tracked by any law; participation of residents in initial public offers (IPO,s) in foreign capital; local sales by non-residents of foreign shares or other securities of a participating nature are open in Rwanda.

Furthermore, foreign sale by residents of shares or other securities of a participating nature; local purchase of bonds and other debt instruments by non-residents; local sale of bonds and other debt instruments by non-residents; local purchase or sale of money market instruments by non-residents; foreign purchase or sale of money market instruments by residents; local sale or issue by non-residents of collective investment schemes external borrowing by residents; and lending abroad by residents<sup>77</sup>. According to our point of view, Rwanda as one of the Partner States of the EAC which signed Common Market Protocol and its annexes including removal of restrictions to the free movement of capital has done as much as possible in ensuring the free movement of capital by limiting the restrictions which were hindering such movement by then.

##### **2.4.1. Local purchase or sale of money market instruments by persons from outside of Rwanda**

In accordance with the law regulating capital market in Rwanda, any company whose head office is located outside Rwanda may, in accordance with the registration regulations, apply to the Authority for approval to be a foreign securities exchange or a foreign clearing house in accordance with the law governing capital market in Rwanda<sup>78</sup>. Therefore, such foreign securities exchange and a foreign clearing house shall be exempted when they are approved by the authority to carry out activities in relation to capital market business in accordance with the law regulating capital market in Rwanda.

However; a foreign securities exchange and a foreign clearing house shall be subject to the Authority's regulations relating to the inspection, investigation, conduct and functioning as provided in Chapters V, VI, and VII of the law regulating capital market in Rwanda<sup>79</sup>. In accordance with the law regulating capital market in Rwanda, a well-established company following the laws of one the Partner States can easily applies to carry out its activities in Rwanda subject to the approval and rules regulating capital market in Rwanda<sup>80</sup>. This indicates that even if there are still impediments especially related to the approval as it will be demonstrated in the next, it is the step made by the Rwandan government in ensuring the free movement of capital in Rwanda by allowing a well registered company in one of the EAC Partner States to carry out its capital market activities in Rwanda.

##### **2.4.2. Local sales by non-residents of foreign shares or other securities of a participating nature**

The Central Bank shall perform the functions of Central Securities Depository system which is abbreviated as CSD<sup>81</sup>. About the sale of foreign shares and the securities of participating nature, Rwandan law on the circulation of securities provides that except when authorized by the Central Bank regarding the sole

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<sup>74</sup> B., Nsengiyumva, Officer in Rwanda Central Bank (BNR), Insurance sector, Interview conducted in Kigali, 2015.

<sup>75</sup> World Bank, *EAC Common Market Score card*, New York 2014, p. 49.

<sup>76</sup> Law n° 26/2010 of 28/05/2010 governing the holding and circulation of securities, Official Gazette n° Special of 28/05/2010, art.2.

<sup>77</sup> *Ibid.*

<sup>78</sup> Article 11 of the Law n° 01/2011 of 10<sup>th</sup> /02/2011 regulating capital market in Rwanda.

<sup>79</sup> *Id.*, article 13.

<sup>80</sup> Article 14 of the Law n° 01/2011 of 10<sup>th</sup> /02/2011 regulating capital market in Rwanda.

<sup>81</sup> Article 3 of the Law n° 26/2010 of 28/05/2010 governing the holding and circulation of securities published in *official gazette* n° special of 28/05/2010.

securities issued by foreign companies or securities of companies accepted on a foreign capital market, each participant is required to hold the entirety of the Book-Entry securities it holds on behalf of Securities holders or for its own account directly with the Central Securities Depository<sup>82</sup>. However, in case the Central Bank provides an exception, it shall set instructions to be filled by participants within Central Securities Depository in terms of due skills and diligence required when participants are selecting their depositories, especially in case the depository is located in a country that does not have laws on central securities depository and safekeeping of Securities for the account of a third party<sup>83</sup>.

#### **2.4.3. Foreign sale by residents of shares or other securities of a participating nature**

Rwandan law governing the holding and circulation of securities seems to put restrictions to securities issued in foreign financial markets or governed by the laws of a foreign country. In fact, the Central Bank may put in place regulations requiring the dematerialized form on any other securities issued by any other Rwandese entity, and that any other securities may be subject to dematerialization within the Central Securities depository, regardless of the laws governing the issuer, provided that such dematerialization is admitted by the law governing the issuance of the said securities<sup>84</sup>. Yet, it is noticeable that the above provision does not give as much chance to the foreigners as to domestic investors. Also, the same law continues to stipulate that with the exceptions of dematerialized securities under the aforementioned law, any securities, regardless of the nature of their issue, whether a public or private entity, their type, whether shares, obligations, or any others, and form, whether in foreign dematerialized form, registered in the name of their owners or bearers may be subject to immobilization with the CSD, without prejudice to the provisions of this Law, the CSD may sub-deposit immobilized securities with other CSD abroad, by means of book-entry transfer<sup>85</sup>. In case of conflicting laws, the law governing the holding and circulation of securities provides that some matters can be governed by the laws of the country where securities account is opened<sup>86</sup>. Basing on the above details, it is noticeable that Rwanda has made an effort for better reintegration in terms of removing all restrictions between the Partner States, on the movement of capital belonging to person resident in the Community being nationals of one of the Partner States or registered in one those countries making up the EAC and implementing other commitments within the common market protocol.

#### **2.4.4. Harmonization of payment system of Rwanda and other EAC Partner States for the facilitation of free movement of capital in Rwanda**

The integration must take into account the changing environment of contemporary laws as a way of forward and the integration has no further steps to be achieved as long as there are differences in the laws of Member States<sup>87</sup>. Indeed, the free movement of capital entails also the harmonization of monetary and financial laws and policies of states making up the integration. The Protocol for the Establishment of East African Common Market provides for the Partner States the avenue to coordinate and harmonize their economic and monetary policies to ensure macro-economic stability, the sustainable economic growth and balanced development<sup>88</sup>.

The states undertake to coordinate and harmonize their financial sector policies to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment systems for financial sector policy cooperation<sup>89</sup>. Considering money transfers operations, the states have agreed on the late of charges and those charges are similar in all partner states. For example, if someone sends 200 to 300 \$ within EAC he or she has to pay 16\$ for the operation while if the same amount of money is being sent in any other country than EAC partner, the sender will be obliged to pay 23\$<sup>90</sup>. This indicates that there is an agreement reached in terms of money transfers.

Upon the coming into force of the East African Community Common Market Protocol has led to the harmonization of the East African States financial sector rules and regulations ensure that, and monitor the implementation all those undertakings, monetary affairs committee of Central Bank Governors and technical

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<sup>82</sup> *Id.*, Article 8.

<sup>83</sup> Article 8 of the law n° 26/2010 of 28<sup>th</sup> /05/2010 governing the holding and circulation of securities Official Gazette n° Special of 28/05/2010.

<sup>84</sup> *Id.*, art. 23.

<sup>85</sup> *Id.* art. 25.

<sup>86</sup> *Id.*, art. 28.

<sup>87</sup> Roger Cotterel, *supra note* 20, p. 45.

<sup>88</sup> Article 30 (1) of the Protocol for Establishment of the East African Common Market 2010.

<sup>89</sup> *Id.*, Article 31.

<sup>90</sup> M Mushimiyimana, Officer in charge of Western Union Operations, Access Bank, Kigali, Interview conducted on 23<sup>rd</sup>, May 2015.

committees were set up that sit regularly to see banking standards and review laws and regulations to ease the free movement of capital in the region.<sup>91</sup>

As matter of fact, Rwanda was not left behind rather it participates in this process effectively<sup>92</sup>. The Rwandan Central Bank is better positioned to learn from our colleagues in the region so that we can improve our service delivery in the banking sector. In addition, Rwanda central bank also have participated in inspection of banks among our countries and this has enhanced information sharing regarding our banking regulations in the region and what should be done to further facilitate the free movement of capital, he said<sup>93</sup>. So far, the introduction a similar payment system in the EAC has eased the payment for goods and services procured without the physical person being present since money can be transferred fast and easily to a service provider electronically and the harmonized payment system has led to the effective and efficient functioning of capital markets in the region hence making the trading much easier and faster<sup>94</sup>. Today, any person registered with MTN mobile money, Airtel money and Tigo Cash can receive and send money to another person in EAC as long as the person is also registered with the company of the sender<sup>95</sup>. Here, the problem relies on convertibility of the money and the withdrawal since the person will be required to look an agent the concerned person<sup>96</sup>. However, to facilitate the free movement of capital in Rwanda, private individuals have managed become mobile money agents of some of telecommunication companies operating within EAC. This is the case of Nabukeera Hanifah, Ugandan woman working as one of agents of both MTN and Tigo-Uganda, who revealed to us that she facilitates people wishing to send or to received money from Uganda to Rwanda and vice versa as long as they come with Ugandan shillings<sup>97</sup>. Therefore, through the harmonization of rules governing the central banks, the payment rates, and the establishment of coordination committees; there is an observable positive realization in ensuring the free movement of capital in Rwanda and in the region in general. Alongside those achievements of Rwanda in particular and EAC in general in ensuring the free movement of capital as provided by the EAC common market protocol, there are still obstacles for the full realization of set objectives. Despite the achievements of Rwanda in removing restrictions and ensuring the free movement of capital, the challenges still exist and the following chapter shall analyze the laws having relation with the free movement of capital in Rwanda and indicate precisely that still the Rwandan legal system to the certain extent constitutes a challenge to the free movement of capital in Rwanda.

#### **IV. CHAPTER THREE NEGATIVE IMPLICATIONS TO THE FREE MOVEMENT OF CAPITAL IN RWANDA**

This chapter on negative implications to the free movement of capital in Rwanda the issue is to see if there are still some restrictions after the signing of the Common Market Protocol and their negative effects of the implementation of free movement of capital in Rwanda. The government of Rwanda has done a lot in implementing the provisions of the EAC Common Market Protocol in general and free movement of capital in particular; however, there are still some restrictions or challenges that are observed in the national laws which are to be removed for ensuring the free movement of capital in Rwanda.

##### **3.1. Restrictions on the Free Movement of Capital based on the license**

Under Rwandan law, applicants requesting licensing to participate in the Central Securities Depository may be refused if their domestic law does not offer reciprocal market access under the same conditions to participants governed by Rwandan law<sup>98</sup>. Furthermore, the Capital Market licensing requirements of 2012 require applicants for approval of a foreign securities exchange to demonstrate that adequate arrangements exist for cooperation between the authority and those responsible for the supervision of the applicant in the country in which the applicants head office is located<sup>99</sup>. That constitutes a challenge to the free movement of capital in the sense that, sometimes the person wishing to carry out any financial activity is required to comply with issues

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<sup>91</sup> Amb. Clever Gatete, The Central Bank Governor of Rwanda, now Minister of Finance, *Presentation on the Role of Central Banks in the Realization of Free Movement of Capital in EAC*, Kigali, 2015.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> J. Munyaneza, MTN mobile money agent, Nyabugogo, Kigali -Rwanda, Interview conducted on 30<sup>th</sup> June 2015

<sup>96</sup> *Ibid.*

<sup>97</sup> Nabukeera Hanifah, MTN mobile money and Tigo cash Uganda agent, operating in Kigali, interview conducted on 30<sup>th</sup> June 2015.

<sup>98</sup> Article 8 of the Law No 26/2010 of 28/05/2010 governing the holding and circulation of securities published in Official Gazette no. Special of 28/05/2010.

<sup>99</sup> EAC, *East African Community Common Market Score card*, Arusha 2014, p. 15.

that are beyond his power and by the discretion given to officials of where the investment is directed either to accept or refuse. Furthermore, the license may be refused in the interest of national integrity and or security or to ensure healthy competition in the telecommunication sector<sup>100</sup>. This means that, this provision in Rwandan law governing people wishing to invest their money in telecommunication sector constitute a challenge to the free movement of capital is observed in the law governing telecommunications which allows a refusal of a license if the regulatory body reasonably believes that competition in the communication sector can be adversely affected<sup>101</sup>. It is unfortunately that, there is no a regulatory organ at the community level to deal with such matter, but granting full powers to a national regulatory organ constitutes a restriction.

### **3.2. The Restriction on the Free Movement of Capital based on the Excessive Power of the Central Banks in the financial market**

It must be borne in mind that the Common Market Protocol provides that where the movement of capital leads to disturbances in the functioning of the financial markets in a Partner States, the Partner State concerned may take safeguard measures<sup>102</sup>, where a competent authority of a Partner State makes an intervention in the foreign exchange market, which seriously distorts the conditions of competition, the other Partner States may take, for a strictly limited period, the necessary measures in order to counter the consequences of the intervention<sup>103</sup> and finally a Partner state may take safeguard measures, where the Partner State is in difficulties or is seriously threatened with difficulties, as regards its balance of payments<sup>104</sup>. In the context of the protocol, capital refers to the direct investment, equity, portfolio investments, banks, credits transactions, payments of interests or loans, amortization, dividends and other on investment, repatriation of proceeds from the sale of assets and other transfers and payments relating to investment flows<sup>105</sup>. Capital can be also considered as the mobile of foreign capital which contributes to the financing of the domestic investment and vice-versa<sup>106</sup>. It is therefore inevitable in this situation to exclude the role of central banks of concerned. In order to achieve monetary policy objectives, the central bank may intervene on money market especially for lending, borrowing, selling, buying liquid assets with option of repurchase or of pension of public or private effects or any other negotiable instrument<sup>107</sup>.

In fact, the central bank of Rwanda has been given excessive powers in controlling the financial market of the country which are used to limit some financial operations to enter or to go out the country, thus constitute restrictions to the free movement of capital. These restrictions in Rwanda are practically observable in the domain of security operations whereby the law potentially allows the central bank to intervene in money markets, especially for lending, borrowing, selling or buying liquid assets, as well as pensions and all other negotiable instruments<sup>108</sup>. This provision is hindering the free movement of capital by the fact the central bank disposes an excessive power which be used abusively to hinder the financial resources from any partner state.

### **3.3. Restrictions based General Exceptions and Notification Requirement**

The freedoms and rights enshrined in the Common Market Protocol are not absolute as they can be limited in accordance with public policy, public security, public, public health but also by the fact that the Common Market Protocol has adopted a progressive approach to the establishment of the common market<sup>109</sup>. The Protocol allows Partner States to restrict the freedom of movement of capital for reasons of prudential supervision, public policy, money laundering, and financial sanctions agreed to by partner states<sup>110</sup>. On the same regard, the Partner States may adopt any of the restrictions and notify the EAC Secretariat and other Partner States and furnish proof that a restriction was reasonable and justified<sup>111</sup>. This approach was designed to allow for discussion of the proposed actions, taking into account the views of state and non-state actors that

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<sup>100</sup> Article 8 of the law no 44/2001 of 30<sup>th</sup>/11/2001 governing telecommunication in Rwanda

<sup>101</sup> EAC, East African Community Common Market Score card 2014, p.14.

<sup>102</sup> Article 26 (1) of the Protocol for the Establishment of East African Community Common Market 2010.

<sup>103</sup> Article 26 (2) of the Protocol for the Establishment of East African Community Common Market 2010.

<sup>104</sup> Article 26 (3) of the Protocol for the Establishment of East African Community Common Market 2010.

<sup>105</sup> Article 28 (a) (b) (c) (d) (e) (f) (g) of the protocol on the establishment of East African community common market.

<sup>106</sup> Vlatka Bilas, *Regional Integration and Capital Movement: Measuring the Level of Capital Mobility*, Hague, 2007, p. 270.

<sup>107</sup> Article 55 of the law n<sup>o</sup>.55/2007 governing the Central Bank of Rwanda.

<sup>108</sup> Law No. 55/2007 governing the Central Bank of Rwanda, Article 55.

<sup>109</sup> Article 2 (5) of the Common Market Protocol.

<sup>110</sup> Article 25 (1) of the Common Market Protocol.

<sup>111</sup> Article 25 (2) of the Common Market Protocol.

might be affected by them, and for monitoring to ensure that such restrictions last only as long as needed. On the basis of the general exceptions, there is limitation on the amount of money a person is supposed to carry out. For example, it is stipulated that, any person who leaves or enters the Republic of Rwanda transporting cash or negotiable bills or exchange or an amount above that of the threshold set by the financial investigation unit without prior declaration except for funds certified by a withdrawal slip issued by an accredited institution in Rwanda shall commit the offense of money laundering<sup>112</sup>. It is regrettable that, this is silent about the exact amount of which the holder may be held liable for the crime of money laundering and financial. This means that, there is a limitation on the amount first, but the necessity of informing the authority and finally to the institutions allowed to issue withdrawal slips; thus limits the free movement of capital.

Consequently, it was recommended that Partner States need to develop guidelines to regulate the content for notifications. This may include standard notification instruments, reaction forms, and criteria for classifying notifications and those guidelines should also include operating arrangements, such as deadlines for steps in the notification process. The public should have access to exceptional measures, and all such restrictions should be temporary<sup>113</sup>. Yet, none of the EAC Partner State including Rwanda has complied with these notification requirements<sup>114</sup>. According to the authors' view, the discretionary power given to Partner States to take some prudential measures as long as they notify other Partner States about the nature and extent of the restriction adopted constitutes a challenge to the free movement of capital since even states after the entry into force of the Common Market Protocol states introduced some new restrictions but none of them informed other Partner States nor the EAC Secretariat.

### **3.4. Restrictions on the free movement of capital based on the discrimination of investors**

The term capital do not only refer to money, rather capital can be identified in many ways and it includes financial operations especially concerned with investment of the funds in question rather than remuneration of the service<sup>115</sup>. This means that, since the capital takes various forms, the restrictions also vary and they can be imposed on investment, loans, and dividends and on other operations as long as they linked with capital, and such restrictions shall also be regarded as restrictions to the free movement of capital.

The law on investment and export promotions and facilitation defines a foreigner investor to include Tanzanians given the fact that they are not members of COMESA and the subsequent law goes ahead to provide incentives not provided to COMESA members<sup>116</sup>. This has been emphasized by the law which requires more minimum capital from Tanzanian investors than from majority investors in Rwanda or other EAC Partner States<sup>117</sup>. It is provided that, a Tanzanian investor to invest in Rwanda must be of at least 250.000 US Dollar like other investors outside the East African Partner States contrary to other EAC citizens whose threshold is of 150.000<sup>118</sup>. This requirement of much capital to Tanzanians rather than to all other investors from other Partner States and nationals constitutes an act of discrimination and thus, hinders or limits the free movement of capital especially from Tanzania to Rwanda. The EAC Common Market Protocol requires the Partner States to eliminate restrictions on the free movement of capital<sup>119</sup>. That includes restrictions based on nationality, place of residence, current payments, and where capital is invested. These operations cover securities, credit, direct investment and personal capital transactions.

The Capital controls inhibit some residents from benefiting from the increased investment opportunities of financial integration in the EAC. Despite the fact that the restrictions to purchase of foreign shares or other securities of a participating nature are said to have been removed; for example, as at January 2014, the Initial Public Offerings (IPOs) of Bralirwa, Bank of Kigali, and Energy, Water and Sewerage Agency (EWASA) have had positive share price increases. But stringent capital controls kept Burundian and Tanzanian investors from participating in this upside as much as their EAC peers<sup>120</sup>. On this matter, it is alleged that, the Tanzanians and Burundians were not invited to give their bids when those initial offerings were been done while

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<sup>112</sup> Article 64 of the law no 47/2008 of 9<sup>th</sup>/09/2008 on the prevention and penalizing the crime of money laundering and financial terrorism.

<sup>113</sup> Article 25 (3) of the Common Market Protocol.

<sup>114</sup> EAC, CM Score card 2014, p. 15.

<sup>115</sup> Case 286/82: ECJ: *Graziana Luisi and Guiseppa Carbone v. Ministero Del Tesaro*.

<sup>116</sup> Article 1(f) (i) of the law no 14/98 of 18<sup>th</sup>/12/2008 establishing Rwanda Investment promotion agency

<sup>117</sup> Article law n<sup>o</sup>.40/2011 of 20/09/2011 establishing Collective Investment Schemes in Rwanda.

<sup>118</sup> Article 45 of the law no 26/2005 of 17/12/2005 on the investment and export promotion and facilitation in Rwanda.

<sup>119</sup> Article 24 of the EAC Common Market Protocol.

<sup>120</sup> Charles Furaha, Legal advisor in Prime Insurance Company Limited, Former Legal Advisor in Rwandan Capital Market Authority (CMA), Kigali, Interview conducted on 14<sup>th</sup> June 2015.



other from other states were invited<sup>121</sup>. Those two examples indicate that still there are some discriminatory treatment of investors according to the country they come from and to the country the capital is to be invested hindering the free movement of capital whereby some companies, individuals from one Partner States may be restricted or discriminated from participating in a certain market by use of capital controls and the by the ways the shares are offered to ones wishing to purchase them.

Another problem is the one of the overlapping membership<sup>122</sup>. There are Partner States which belong to more than one bloc. The example is the United Republic of Tanzania which is now the member of Southern African Development Community (SADAC). This has constituted a big challenge to the progress of our regional integration by the fact that the two blocs might have got different avenues of achieving their objectives.

### **3.5. The challenges from non-fulfillment of obligations resulting from Common Market Protocol by partner states**

As it has been highlighted the common market liberates markets and open up Rwandan firms to greater competition. Thus, there is a big concern on how policy makers can counterbalance the gains of increased competition from EAC liberalization, lower prices and more choice in a more dynamic environment, with the risk of being put out of business by more competitive firms<sup>123</sup>. Whilst we have seen above that historic data shows some evidence of economic convergence occurring in the EAC, there remains much disparity in terms of economic fundamentals. Much of the commitments in the CM Protocol are still to be implemented; indeed the full implementation of the earlier Customs Union Protocol is also essential for EAC convergence and full benefits to be realized as by now for example inflation rates and interest rates are not aligned, tax policies are not harmonized, and standards for trade in goods and services are not yet agreed<sup>124</sup>. The failures that are observed in the implementation of the free movement of capital in Rwanda as provided by Common Market Protocol results from non-completion of commitments made by states on the other freedoms enshrined in the Common Market Protocol such as free of services, right to the freedom of establishment and residence<sup>125</sup>. This means that, the free movement of capital cannot be fully ensured unless other rights as provided together under the common market are also realized since all those rights and freedoms are inter-related and complementary.

### **3.6. Effectiveness of Institutions Ensuring Compliance**

The institutions for settling disputes vary depending on parties involved in it as well as the subject matter of the dispute. On one hand, disputes between Partner States arising for the interpretation of the treaty are to be settled in accordance with the provisions of the treaty, meaning that, the shall be determined by the EACJ<sup>126</sup>. The treaty established EACJ as the judicial body which is vested with the duty to ensure the adherence to law in the interpretation, application and of compliance of the treaty<sup>127</sup>.

The findings from the MINEAC report of December 2012 suggested two following Points to consider for policy makers, a common Trade Policy with the effective framework underpinning must go far to create the necessary foundations of a strong and productive Common Market, and it is impossible to continue to deepen the country's integration if the initial foundations are not yet set<sup>128</sup>. The report also mentioned that, it is becoming more urgent for all sectors of Government to own and control the changing legislation and policy environment that the EAC is bringing and therefore to participate in their implementation.

On other hand, disputes regarding to the infringement of rights and liberalities of any person as recognized by the Protocol are resolved in accordance with the constitutions, national laws and administrative procedures of Partner States by the competent judicial, administrative or legislative authorities or any other competent authority and an individual shall have a right of redress even the infringement has been committed by persons acting in their official capacities<sup>129</sup>. This means that, all disputes having relations with the common market and with the free movement of capital in particular are excluded from the EACJ jurisdiction. However,

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<sup>121</sup> *Ibid.*

<sup>122</sup> K., Tushabe, Legal consultant, doing business national task force, EAC Common market Implementation Plan-Rwanda, 2014, p. 78.

<sup>123</sup> MINEAC, *Integration affairs*, Publication of the Ministry of East African Community, issue 4, December 2012, p. 49.

<sup>124</sup> E. Ntwali, State Attorney to ministry of Justice, Kigali, Interview conducted on 23<sup>rd</sup> June 2015.

<sup>125</sup> *Ibid.*

<sup>126</sup> Article 54 (1) of the Treaty for the Establishment of the East African Community that entered into force in July 2000.

<sup>127</sup> *Id.*, article 23 (1).

<sup>128</sup> MINEAC, *Op. cit.*, p. 50.

<sup>129</sup> Article 2 (a) (b) of the Common Market Protocol.

the national courts of Partner States may seek preliminary rulings before EACJ on any matter regarding to the interpretation and application of the Treaty and its Protocols.

Being asked about what could be the role of EACJ in the implementation of common market protocol, the officer in charge of EACJ Kigali sub- registry first mentioned; they haven't received a single case due to the lack jurisdiction of the court since of the powers that court could have in matter were given to national courts of partner states, non-participation of Rwandese in the EACJ affairs by the fact none being an individual or a national court requesting a certain service from the court<sup>130</sup>. Furthermore, the court does not have any role to play in terms of implementing Common Market Protocol and more specifically because the court lacks financial and administrative independence, being on an *ad hoc* basis, being unknown by people, and finally, national courts do not utilize the court by seeking preliminary rulings before it. In practice, it is somehow rare to find the courts mostly lower courts applying EAC laws in its judgments or lawyers and individuals relying on such laws while pleading in their cases before Rwandan domestic courts<sup>131</sup>. This indicates that the EAC laws remain in treaties and protocols without being used. In fact, there is a lack of effective institutions to ensure the enforcement of EAC laws and by the fact of the EAC common market generally and the free movement of capital specifically.

## V. GENERAL CONCLUSION AND RECOMMENDATIONS

This chapter presents the general conclusion of the study and recommendations made by the author for the better implementation of the Common Market and the free movement of capital in Rwanda as well as in East African Community as a whole.

### 5.1. General Conclusion

This paper entitled: *Legal challenges to the implementation of EAC Common Market Protocol: case of free movement of capital in Rwanda*, has investigated the legal challenges in the realization of free movement of capital under EAC Common Market Protocol but with much focus on Rwanda as a case study. It has been made clear that there has been and still remains a lot of work to do to ensure that Rwandan legal and institutional framework is in compliance with the Protocol for the Establishment of East African Community Common Market in facilitating the free movement of capital in Rwanda and in EAC generally. There are some laws which contain restrictions to the free movement of capital in Rwanda and whereby some institutions such as Central Bank of Rwanda have got an excessive power of intervening in financial market in Rwanda.

This work contains five chapters. The first chapter on the general overview of the EAC common market gives the origin and the evolution of the EAC since the time of colonial period, the collapse of it in 1967 due among other causes to unequal distribution of benefits and costs of the Community among the Partner States, lack of political and by the fact of not being people centered community, its revival in 1999 and how it stands today. The same chapter also dealt with different components of the EAC Common Market Protocol namely the free movement of five freedoms: services, labor, goods, persons and capital but also right of residence and establishment.

The second chapter shows the positive implications of Rwanda in the implementation of common market protocol: Case of free movement of capital focused on various things in terms of laws and institutions the government of Rwanda have been put in place to ensure the smooth implementation of the provisions of the EAC Treaty, Protocols and theirs Annexes. The present research reveals that, laws reforms were undertaken, the constitution was amended, the EAC law supremacy is recognized in Rwanda; and that the institutions such as MINEAC, MDAs are in place to oversee the implementation of commitments of Rwanda delivering from EAC Treaty, Common Market Protocol and the schedule for the removal of restrictions to the free movement of capital particularly. However, despite all those achievements, there are still some restrictions and challenges which hinder the free movement of capital in Rwanda.

The third chapter of this study discusses on negative implications in the implementation of Common Market Protocol and focused on the legal challenges hindering the free movement of capital in Rwanda. According to the research findings; the smooth free movement of capital in Rwanda is still hindered by various restrictions and challenges and following are among others: First, the restrictions on the free movement of capital based on the license requirement whereby an applicant wishing to participate in central security depository in Rwanda has to first obtain a license from Rwandan Central Bank which has the discretion to grant or not grant such license. The same applies to the applicant wishing to invest in the telecommunication sector since he or she has to first be authorized by Rwanda Utility Regulatory Agency (RURA); Second, restrictions to the free movement of capital based on the much powers given to the Central Bank of Rwanda in the money markets. According to

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<sup>130</sup> J. M. Nyarusingiza, Officer in charge of EACJ Kigali Sub- Registry, Kigali, Interview conducted on 23<sup>rd</sup> June 2015.

<sup>131</sup> Me E. Bizimana, Advocate at Rwanda Bar Association, Kigali, Interview conducted on 24<sup>th</sup> June 2015.

article 55 of the law governing Rwanda central bank, it has the power to limit some financial operations either aimed to bring in or to take out money in the country when it finds it necessary. Third, restrictions to the free movement of capital delivering from general exceptions and notification requirement. Article 25 (1) of the Common Market Protocol allows Partner States to adopt reasonable restrictions as long as they inform the Secretariat and other partner states. It has been evidenced that states including Rwanda have adopted some but none has informed the secretariat neither nor other Partner States about such measures. Fourth, restrictions to the free movement of capital based on the discrimination of investors. Article 45 of the law on the investment and export promotion and facilitation imposes much capital amount on Tanzanians investors compared to other investors from other EAC partner states; though, Tanzania is also a member of the EAC. Fifth, challenges to the free movement of capital resulting from non-completion of obligations resulting from Common Market protocol. In fact, all rights and freedoms as are provided by the protocol have connection. Since there are some pending issues that have not been realized in areas such free movement of services, right of residence and establishment; all those have affected negatively the free movement of capital in Rwanda. Sixth, lack of effective institutions to ensure the implementation of the free movement of capital. Leaving alone the institutions put in place at national suffering of their own problems such as financial and human means, the only one supra national judicial organ EACJ, does not have jurisdiction of settling disputes arising from Common Market since such jurisdiction is given to domestic courts of partner states. In fact, the mentioned challenges and many others that are generally observed at the community level have restricted the free movement of capital in Rwanda despite the effort made by the country.

## **VI. RECOMMENDATIONS**

This part contains various suggestions of what should be done in order to enhance the free movement of capital in Rwanda and in East African Community in whole. To ensure the free movement of capital in Rwanda and in East African Community, the following have to be done:

- The restrictions which are still found within domestic laws of Partner States including Rwanda have to be removed;
- The supra-financial organ has to be established at the community level to oversee all activities in relation with the free movement of capital and to counterweight the excessive powers bestowed to central banks of Partner States in financial markets in their respective countries;
- Heavy penalties should be introduced against a Partner States or an institution which infringe community law and fails to perform its obligations, since we have seen that there is no such penalties in place and that their absence affects the effectiveness of the community law;
- The use of the direct effect and direct applicability of community law as both principles are used within European Union, however the study is not suggesting that we do exactly what European Union does but it is obvious to us that that system needs some adjustments;
- Access of private litigants to East African Court of Justice has to be encouraged since the practice indicates that, the domestic courts of Partner States do not use effectively the East African Court of Justice in handling disputes submitted before them pertaining to the interpretation and application of East African Community law; and
- Lastly, the States have to be reminded about their commitments they made in regard of other rights and freedoms of the Common Market Protocol and be encouraged to fulfill them since their non-fulfillment affect, in one way to another, the free movement of capital.

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