Nationalistic Investment Policies a Hindrance to Greater FDI Flow: Case of Kenya and Uganda

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DOI: 10.29322/IJSRP.9.10.2019.p9402
http://dx.doi.org/10.29322/IJSRP.9.10.2019.p9402

Abstract- Foreign Direct Investment is an integral part of an open and effective international economic system and a major catalyst to development. Yet, benefits of FDI do not accrue automatically and evenly across countries, sectors, and local communities even within regional economic integration context. It is not different in the EAC region since its establishment in 1999. The re-establishment of the East African Community (EAC) created a larger regional market; therefore firms can be located in any EAC country to service this market. Although Kenya's investment policy has since 2001 facilitated a significant level of FDI flow into the Ugandan economy as a result of EAC economic protocol, it is unable to attract Ugandan FDI and lost FDI originating from non-EAC countries to Uganda. The skewed pattern of benefit in favor of Uganda would escalate FDI competition between the two countries and lead to non attainment of the envisaged regional economic integration unless there is mutual harmonization of investment policies between the two countries. The study used questionnaire and interviews with CEOs, commercial attaches, managers of Kenyan firms in Uganda, ministries, economists and financial experts to collect primary data while secondary data were collected using journals, documents, acts, legislations and regional investment protocols . Data were analyzed using descriptive statistics. Data were analysed using descriptive statistics such as frequencies and percentages and presented in form of tables, pie charts and narrations. The results of the study indicate that Kenya investment policy is quasi-liberal and restrictive on the other end with regard to FDI flow between Kenya and Uganda. This is due to lack of a BIT between Kenya and Uganda, thus, the FDI flow from Uganda into Kenya is negligible. This study recommends negotiations so that a bilateral investment treaty between Kenya is put in place. Such a BIT would be in line with EAC objectives of harmonizing investment policies and giving special preference to weaker partners.

Index Terms- Regional economic integration, Foreign direct Investment Flow (FDI), Bilateral Investment Treaties (BITs)

I. Introduction

A treaty establishing the new East African Community (EAC) was drafted in 1998 and was expected to be ratified in July 1999. The EAC Treaty established a single market and investment area for the region, with the main objectives of providing for free movement of capital and services, promotion of economic growth and development and attracting increasing flows of FDI. FDI has the potential to bring social and environmental benefits to host economies through the dissemination of good practices and technologies within MNEs, and through their subsequent spillovers to domestic enterprises. There is a risk, however, that foreign-owned enterprises could use FDI to "export" production no longer approved in their home countries. In this case, and especially where host-country authorities are keen to attract FDI, there would be a risk of a lowering or a freezing of regulatory standards. However, these economic benefits do not accrue evenly; this poses challenges to FDI flow between countries (UNCTAD, 2012).

Kenya imposes a large number of rules and regulations, compared to other African countries. Together with Uganda, they impose significantly more rules and regulations on their regional imports than do the other Sub-Saharan African countries (EAC, 2013). Rules and regulations are often imposed for legitimate reasons such as protecting domestic consumers from counterfeits and substandard procedures. However such measures can be overly burdensome in design, or well-designed but poorly implemented, unnecessarily constraining daily producers and traders. Export taxes impose costs and inhibit the development of regional chains and export diversification (World Bank Survey, 2009)

Kenya is East Africa's region least effective suitor in attracting FDI (UNCTAD, 2006). One, the principle of national treatment of FDI is not enshrined in the law; this means foreign investors are treated just like locals. Of concern is the Land Control Act, 1967, that forbids non-citizens from owning but can lease for 99 years land though the president has discretionary power over this matter (Giuliani, 2010). The processing of a lease takes 3 to 4 months. Kenya has negotiated Bilateral Investment treaties (BITs) only with German, Italy and Netherlands and the UK. Of these only the latter two have been ratified and come into force while Uganda has 11, Tanzania 10 and Egypt 88 BITs ratified. Most Kenya's FDI inflows are with developed nations and not with Uganda. Ugandan firms do not showcase in Kenyan economy because of stringent tax policy, administrative and regulatory requirements. There is no evidence of a bilateral investment agreement between Kenya and Uganda as is the case with Germany, Britain and the Netherlands. Further still, Kenya limits FDI flow into some sectors such as telecoms and requires high skilled personnel. Kenya's entry into Ugandan economy is due to its advanced economy and existence of a regional investment agreement within the EAC protocol. In conclusion, FDI flow between the two countries is skewed in favour of Uganda, therefore, this does not auger well for regional economic integration.

Kenya investment policy is prohibitive to FDI flow in some sectors but promotes outward FDI flow, and in particular in the service sector. But the policy does not encourage inward FDI flow into its economy from Uganda which in itself is a threat to regional economic integration. Further still, this policy has locked out Ugandan firm from its economy which does not auger for success of regional economic integration

II. Materials and Methods

The East African Community, re-established in 1999 created a larger regional market; therefore firms can be located in any EAC country to service this market. At the same time, EAC countries have increased investment incentives in order to attract FDI and, they believe this would increase jobs and exports (World Bank, 2013). Kenya is currently the second highest source of Foreign Direct Investment (FDI) in the region (EAC, 2011). Similarly, Kenyan banks have supported the financial integration agenda by expanding not only into the Ugandan market but also setting up operations in South Sudan, Mauritius, and the Democratic Republic of Congo (World Bank, 2013).

Although Kenya enjoys a significant investment advantage over Uganda due to generous capital recovery rules, it has been overtaken by its partner states in the recent years. An IMF (2006) report indicates that while Kenya and Tanzania continue to provide tax holidays to companies operating in their export processing zones (EPZs), Uganda eliminated tax holidays in 1997. According to Kimuyu (1999) Kenyan and Tanzanian companies operating in the EPZs are exempted for the first ten years from income tax and withholding tax on payments to non residents; after ten years, they pay a 25 percent corporate tax rate (compared with 30 percent for companies outside the EPZs). But does this mean Uganda's EAC partners are attracting more foreign investment (Evenctt, 2009)

To the contrary, Uganda has continued to attract an increasing volume of FDI, measured in terms of GDP, higher than Kenya though less than Tanzania where FDI increased sharply in late 1990s. On the other side, Kenya has been providing relatively more generous investment incentives, but this generosity failed to attract higher FDI inflows. Kenya's regional leadership in attracting FDI also disappeared as soon as Tanzania and Uganda started reforming their economies and opening up to foreign investors in the early 1990s, at a time when Kenya itself was suffering from economic stagnation (IMF, 2006). FDI inflows in 1996-2003 averaged $39 million a year, while inflows to Tanzania and Uganda surged to $280 million and $220 million, respectively, from negligible levels in the 1980s. However, increased competition over FDI and growing pressure to provide tax holidays and other investment incentives to attract investors could result in a "race-to-bottom" that would eventually hurt all EAC members. Left unchecked, such an uncoordinated contest could result in revenue loss, and hamper regional economic integration (Falvey, 2008). EAC's own experience supports the general conclusion that tax incentives are not the most important determinant of foreign investment (WTO, 2007). For example, Uganda abolished tax holidays in 1997; it has continued to attract an increasing volume of FDI, measured in terms of GDP, higher than Kenya though less than Tanzania where FDI increased sharply in late 1990s. On the other side, Kenya has been providing relatively more generous investment incentives, but this generosity failed to attract higher FDI inflow (IMF, 2006).

Although Kenya's investment policy has since 2001 facilitated a significant level of FDI flow into the Ugandan economy as a result of EAC economic protocol, it is unable to attract Ugandan FDI and lost FDI originating from non-EAC countries to Uganda. For example, in 2012, Uganda's foreign direct investment nearly doubled to $1.7 billion, up from $900 million in 2011, an increase driven largely by increased investment in the oil sector (Michell, 1999). This is evidence of skewed pattern of benefit in favour of Uganda which would escalate FDI competition between the two countries in the coming years. The landmark in government's effort to encourage foreign direct investment into the country came in 1991 when the investment code was passed and the Uganda Investment Authority established by an act of parliament. This made it very easy for both foreign and local investors to obtain investment licenses. The main purpose for the establishment of the Uganda Investment Authority (UIA) was to create a 'one-stop shop' for investors.

This continued skewed FDI flow will lead to non attainment of the envisaged regional economic integration unless there is mutual harmonization of investment policies between the two countries. Empirical data indicates that Kenya supermarket chains and banks dominate Uganda, and FDI flow outside EAC (Delhi, 2011). This means that Kenya's investment policies are locking out potential foreign investors from Uganda and from non-EAC countries. Therefore, this study proposes to investigate the contribution of Kenya's investment policy on interstate FDI flow between Kenya and Uganda.

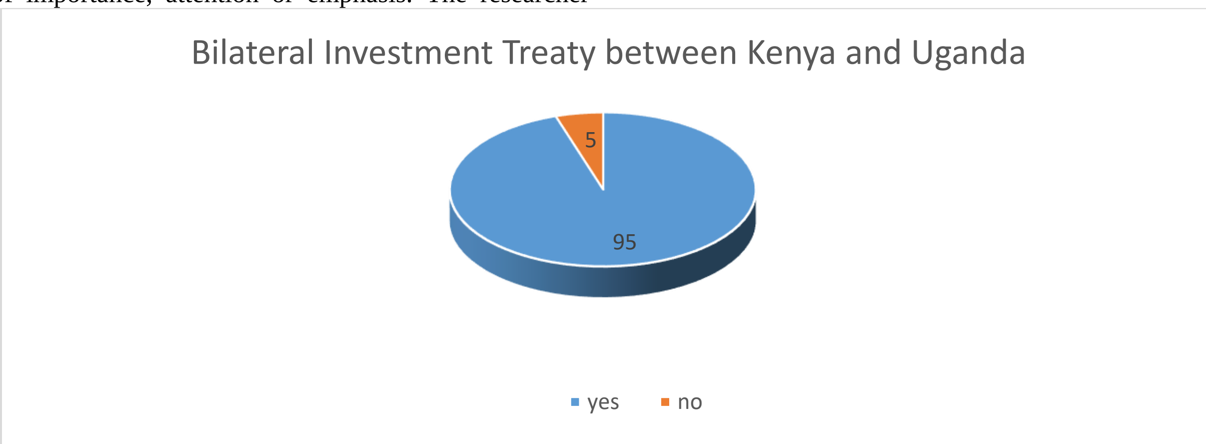
To gather data, there were 96 questionnaires which were administered to respondents in total. The researcher with the help of two research assistants administered structured questionnaires to gather information from 5 CEOs of Kenyan firms in Uganda, 1 CEO of Ugandan firm in Kenya (UMEME), 5 branch managers of Kenya firms in uganda, 1 operational manager of Ugandan firm in Kenya, 5 investment experts in ministries (EAC, foreign affairs, Trade and Industry, NSE, and KIA),1 commercial attaché in Kenya (Uganda Embassy) and 78 employees in both Kenyan and Ugandan firms in both countries. Secondly, the researcher used interview schedule. The researcher and research assistants spent at least 5 days in each study site to conduct interviews. Both an in-depth formal and informal interviews were done. The formal interviews were structured since they involved a set of questions of predetermined questions. The interview schedule was used with Investment experts and officers, commercial attaches, CEOs and employees of firms both in Kenya and Uganda

The research instruments were trial tested with regard to FDI flow between Kenya and Tanzania. These instruments were trial tested in a pilot survey conducted in May 2018 using 35 respondents to validate them. The researcher sourced secondary data by analysis of publications such as investment policy journals, investment related legislations and government documents (Kenya and Uganda Bureau of statistics).These documents were sourced from the ministry of Trade and Industry and other government agencies that deal with investment issues and integration

Quantitative data were analyzed using descriptive statistics. Quantitative data consisted of measuring numerical values from which description such as frequencies and percentages were made. The data were first entered into the computer for analysis using statistical package for social sciences SPSS Version 12. This generated frequencies and percentages which were used to discuss the findings.Qualitative data basically involved themes and content analysis. The frequency with which an idea or word or description appears was to interpret the importance, attention or emphasis. Content analysis examined the intensity with which certain words had been used. A classification system was developed to record the information in interpreting results. The frequency with which a symbol or data appeared showed the measure of importance, attention or emphasis. The researcher presented data findings in form of frequency tables, pie charts, bar graphs and narratives. There were factors that affected the results of the study. One key problem was language barrier in the interior parts of regions and suspicion of spying. To overcome these challenges the researcher used interpreters and hired research assistants who speak local languages to explain to respondents

III. Findings and Discussions

To find out if Kenya has Bilateral Investment Treaty with Uganda, the researcher asked directors and Managers of Kenyan and Ugandan firms, Commercial attaches, and investment officers in the Ministry of EAC. The following pie chart is a summary of the findings.



Bilateral Investment Treaty between Kenya-Uganda
Source: Field Data, 2018

The figure above indicates that (95%) of the respondents agreed that Kenya and Uganda do not have a bilateral investment Treaty with Uganda while (5%) agree. Seemingly, there is no bilateral investment agreement between the two countries. This informs the scenario where Ugandan investors' presence in Kenyan investment market is not felt.Contrary to this; Kenya has negotiated bilateral investment treaties (BITs) only with Germany, Italy, the Netherlands and the United Kingdom. Of these, only the latter two have been ratified and come into force. In contrast, Uganda has 11 BITs ratified or under negotiation, the United Republic of Tanzania 10 and Egypt 88. The provisions in the BITs are standard in that they provide for national treatment as regards management, maintenance, use, enjoyment or disposal of investment, most-favored-nation status and compensation for war, national emergency and other related losses. They also guarantee transfer rights and provide protection against arbitrary expropriation and prompt, adequate and effective compensation in the event of expropriation. The BITs usually bind the States to consent to international arbitration to ICSID if the investor requests it, and if local remedies have been ineffective after a set period of time (typically a few months).

As results indicate, even with other countries within or outside EAC, Kenya is yet to ratify BITs compared to Uganda. At this point, it could be concluded that Ugandan investment policy is open to foreign investors to Kenya's.

Findings indicate investment flows from the EAC Partner States accounted for 0.6 percent of the total investments into Kenya during the year 2015. In order to attract more investment, there is need for Kenya to harmonize her investment policies and laws to the region to provide for a Common Investment Area consistent with the EAC Treaty.

But the intra-EAC investment inflow to Uganda decreased by 23.5 percent to US$ 19.8 million in 2015 from US$ 60.4 million in 2014. The number of projects registered decreased to 13in 2015 from 17 in 2014, the bulk of which were registered by Kenyan investors. The following table is a summary of findings.

Kenya –Uganda investment flows, 2013-2015(US$ Million)

Partner states	Source	2013 No. of projects	value	2014 No. of projects	value	2015 No. of projects	Value
UGANDA	Kenya	14.0	64.8	16.0	67,0	11.9	17.1
KENYA	Uganda	00	00	2.0	0.9	7.0	7.2

Source: Partner states Investment Promotion Agencies, 2015

The table indicates that Kenya FDI flow ito Uganda total 41.9 projects from 2013 to 2015.These projects are valued at148 US million dollars within this period. Uganda FDI inflows in too kenya ecomomy totals to 9 projects which are valied at 8.1 million Us dollars. Kenya FDI inlows are eight times over from this statistics.This indicates skewed nature of FDI flow in fa vour of Uganda which does notaugur well for reguional economic integration.

Taxation policy could promote or restrict FDI flow. To find out how taxation affects FDI flow, the researcher analyzed Kenya Investment policy. The policy stipulates that foreign investors are obligated to pay certain taxes. But they could also benefit from tax incentives to encourage FDI flow. Thus, a range of taxes such as income, excise, the value added tax and other taxes apply to foreign investors. In the administration of Tax, VAT is charged in accordance with the provisions that a taxable supply is made by a registered person in Kenya, the importation of taxable good and supply of imported services (Republic of Kenya, 2004).

In all cases 16% of the taxable value of the taxable supply, the value of imported taxable good or the value of a supply of imported taxable services is charged. However in case of a zero rated supply, zero percent is charged.

The policy, however, stipulates that charitable bodies, churches, the military, the police and diplomatic organizations enjoyed tax exemptions and waivers when importing plant or farm inputs for use in production. But investors could apply for refunds if they fall in the bracket of businesses that provide zero-rated supplies and have incurred physical capital investment whose input tax exceeds Sh. 1,000,000 ($ 13, 00). The only challenge is that it takes an average between three and six months to process refund claims. This indeed is one major one major drawback to FDI flow in Kenya.

From this discussion, a range of taxes are detrimental to FDI flow. The VAT tax specifically makes doing business in Kenya difficult. Refund on the same is delayed that investors are negatively affected. The following section looks at corporate income tax that applies to all investors in Kenyan market.

To find out about corporate income tax, the researcher analyzed the Kenya Income Tax Act (1974, with subsequent amendments) which requires resident companies to pay income tax at a rate of 30 % on earnings regardless of sector of operation and ownership, while local branches of non-resident companies are taxed at a rate of 37.5 %. Thus, foreign investors are disadvantaged since they pay more and setting out business for new comers may be difficult.

But foreign investors in EPZ sector enjoy concessions on the corporate income tax rate. This also applies to companies newly listed on the Nairobi stock Exchange. These companies are taxed either 25% or 27% for five years from the year of listing if they float a minimum of 30% or 20% of their capital respectively. However, other firms could benefit from export subsidies and incentives under the .Manufacturing Under Bond Scheme on condition that they export their total output.

The researcher also surveyed the industry to find out which FDI sectors enjoy tax exemptions or waivers in Kenya. The researcher asked investment experts/officers in KIA, Ministry of the EAC, CMA and NSE to identify which sectors foreign investors from Uganda enjoy these tax exemptions. There were 20 respondents in total. Two questionnaires were not returned. The following table is the summary of the findings.

Table: Tax Exemptions in Kenyan Economy

Type of Sector		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	telecommunication	1	5.6	5.6	5.6
	Manufacturing	5	27.8	27.8	33.4
	EPZ	12	66.7	66.6	100
	Total	18	100.0	100.0	

Source: Field Data, 2018

The above table indicates that (66.7%) of the respondents agreed that foreign investors enjoy tax exemption in EPZ sector while (27.8%) agreed to manufacturing. (5.6%) of the respondents agreed that foreign investors in telecommunication enjoy tax exemptions. It was noted that foreign investors from Uganda do not engage in EPZ while their presence in other sectors is negligible.

These incentives are investment allowance of 100% on immovable fixed assets, a ten-year corporate tax holiday, income and withholding tax holiday for firms that produced for export. These firms may sell products on the domestic market but must pay normal duties and taxes plus a 2.5% surcharge on dutiable value. This means that firms that produced mainly for domestic consumption did not enjoy any of these incentives or subsidies (Republic of Kenya, 2009).The policy, therefore, seems not to recognize the importance of FDI flow to any given economy. The essence of FDI is to produce goods locally those which a country could have imported. The policy is stringent since it does not cater for foreign investors who produce goods for local consumption.

These tax incentives benefit sector such as EPZs. This sector is unique in that it is anchored on an agreement between Kenya and USA under the AGOA initiative. Some of these tax incentives include: 10-year corporate income tax holiday, followed by a 25% rate (compared to the standard 30%) for the next 10 years; 10-year exemption from all withholding taxes; exemption from import duties on machinery, raw materials, and inputs; exemption from stamp duty and VAT on raw materials, machinery and other inputs.

On the contrary, Uganda offers fewer tax incentives than either Tanzania or Kenya. But foreign investors enjoy tax incentives such as import duty and stamp duty exemptions for companies exporting their produce. The policy offers unlimited corporate income tax holidays for certain categories of sectors such as agro-processing companies, and provides a 10-year corporate income tax holiday for businesses. Thus, as the 2006 IMF report notes, Uganda attracts higher levels of FDI than Kenya due to a more favourable investment climate of generous investment incentives. The following table 8 indicate that Uganda received the largest FDI flows in the region in five years (2006-2010). The following table indicates FDI Flows in the Region for Period 2006-2010

Country	2006	2007	2008	2009	2010
Kenya	51	729	96	141	133
Rwanda	31	82	103	119	42
TZ	597	647	679	645	710
UG	644	792	729	816	848

Source: UN conference on Trade and Development, World Investment Report, 2011

The above table indicates that FDI flow into Uganda has increased even though it offers fewer tax incentives than other East African countries. This means that FDI flow is dependent on the overall investment climate and not just tax incentives. This result concurs with a study by the University of Nairobi (2010) which found that the main reasons for firms investing in Kenya are access to the local and regional market, political and economic stability, and favorable bilateral trade agreements. These are overall factors that contribute to reasons for FDI flow. In fact, fiscal concessions offered by EPZs were mentioned by only 1% of the businesses sampled in the study. The disparities in tax incentives within EAC region are indicative of competition for FDI attraction into their economies. This goes against the EAC aspiration on integration with purposes to establish deepen political, economic, social and cultural cooperation among states and aims to establish a common market, a monetary union and ultimately a political federation. The customs union regime should reduce harmful tax competition between partner states. This would end the habit of national governments setting their own tax rates in many areas.

Also, the researcher asked the investment experts in Ministries of EAC, Foreign Affairs and International Trade, KIA and commercial attaché, CEOs of Ugandan firms, Kenyan firms, managers of Ugandan and Kenyan firms to identify tax relief mechanisms that apply to foreign investors in Kenya. The number of respondents was 20. Two questionnaires were not returned. The following Table is a summary of the findings

Table: Tax Policy

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Tax allowances	1	5.6	5.6	5.6
	Tax holidays	5	27.8	27.8	33.4
	Tax exemptions	12	66.7	66.6	100
	Total	18	100.0	100.0	

Source: Field Data, 2018

Table above indicates that 3(37-5%) of the respondents agreed that foreign investors enjoy tax allowances while 4(50%) agreed that tax holidays are applied. 1 (10%) of the respondents argued that they also enjoyed tax exemption.

This result indicates that foreign investors from Uganda enjoy a conducive investment environment with regard to policy taxation just like local counterparts. This is as a result of tax concessions which include tax holidays, accelerated depreciation and exemption of investment income from the company income tax. For example, the export processing zones in Kenya, offer all investors a ten-year tax holiday, easy repatriation of profits and little regulation with regard to environment protection and labor standards. Table below compares Uganda and Kenya tax bands and tariffs.

Total Exemptions and Remissions granted by Kenya and Uganda for 2014 compared to 2015, US$ millions

Country	Tariff band	2011	2012	2013	2014	2015	% change 2014	% change 2015
UGANDA	0%	4,297.0	4,554.1	4,150.9	4,258.60	3,992.18	2.6	6.3
	2%	–	–	–	–	–	–	–
	4%	1.6	2.4	2.6	2.49	0.11	2.9	95.5
	6%	23.9	32.7	35.1	38.27	11.52	9.1	69.9
	10%	337.8	373.2	547.8	650.60	561.66	18.8	13.7
	25%	839.9	864.2	861.7	883.71	754.11	2.5	14.7
	>25%	130.7	216.2	219.4	239.86	208.53	9.3	13.1
	Total	5,630.9	6,042.8	5,817.5	6,073.53	5,528.12	4.4	9.0
KENYA	0%	9830.07	10,600.19	10,430.38	11,995.15	9,652.30	15.0	19.5
	10%	1,642.07	2,028.91	2,197.50	2,352.88	2,248.24	7.1	4.4
	25%	2,375.75	2,702.92	2,938.52	3,137.52	3,257.21	6.8	3.8
	>25%	797.30	894.81	844.63	920.64	842.70	9.0	8.5
	Total	14,646.30	16,226.84	16,411.03	18,406.19	16,000.44	12.2	13.1

Source**: Partner states' Revenue Authorities, 2016**

In as much as the policy promotes FDI flow in general, it is prohibitive since only exporting companies enjoy the mentioned tax incentives. A majority of Ugandan firms do not fall within this category. With this state of investment environment, the policy is unfavorable to investors from Uganda.

Therefore, financial and fiscal incentives are ineffective once other fundamental determinants of FDI are taken into account, undermining their function in FDI flow. This result concurs with Collier (1999) assertion that while current tax rates in Africa are not particularly high, their imposition is often arbitrary. He argues that there are so many temporary tax exemptions for new investors but that the tax burden for long-standing investors is high, thereby discouraging FDI flow. From this discussion, tax incentives may not achieve the intended purpose if the overall economic fundamentals are unfavorable. Kenya's tax policy is punitive which a discouragement to investors from Uganda. The lack of DDT between Kenya and Uganda means that Ugandan investors into Kenya pay double taxation on corporate income tax.

To find out about specific unfavorable taxes that apply to foreign investors from Uganda, the researcher analyzed Kenya investment policy. The policy stipulates that taxation, and more on what they perceive as a rather "aggressive" attitude of the Kenya Revenue Authorities (KRA) with respect to compliant tax payers, and the "punitive" levels of penalties in the event of delay in payments or minor mistakes in reporting. They often perceive KRA as expending too much effort on chasing existing taxpayers at the expense of its efforts to widen the tax base. They also raised concerns about delays in reimbursements of excess VAT payments and duty drawbacks, and the administration of customs (Republic of Kenya, 2004).

As already mentioned FDI provides positive net benefits to the host country. As a consequence, many countries provide a range of incentives to entice FDI. Incentives typically include tax and duty concessions and guarantees against nationalization. Materials and equipment imports, for example, are often exempt from import duties.

The researcher also asked the investment experts in Ministries of EAC, Foreign Affairs and International Trade, KIA and commercial attaché, CEOs of Ugandan firms, Kenyan firms, managers of Ugandan and Kenyan firms to identify tax relief mechanisms that apply to foreign investors in Kenya. The number of respondents was 20. Two questionnaires were not returned The following table below is a summary of the findings:

Table: Unfavorable Taxation

Taxes		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Corporate taxes	6	33.3	33.3	33.3
	Sales tax	5	27.7	27.8	61.1
	Stamp duty	1	5.5	5.6	66.7
	VAT	6	33.3	33.3	100
	Total	18	100.0	100.0	

Source: Field Data, 2018

The table indicates that (33.3%) of respondents agreed that corporate and VAT taxes are the most Unfavorable taxes to foreign investors from Uganda while (27.7%) of the respondents agreed that sales tax is a discouragement to investors. Besides tax and fiscal policies, non-economic policies also determine FDI flow between Kenya and Uganda.

To find out the specific administrative framework affecting FDI flow between Kenya and Uganda, the researcher further analysed the Kenya investment policy. The policy distinguishes between domestic and foreign investors. It requires the latter to apply to the newly established Kenya Investment Authority (KIA) for an Investment Certificate by stating that "a foreign investor shall not invest in Kenya unless it has been issued with an investment certificate (Republic of Kenya, 2004).

The Investment Promotion Policy (2004) requires that a foreign investor meets mandatory investment threshold of at least \$500,000 or the equivalent in another currency for a foreign investor to qualify to set up business in Kenya. This is before a certificate is issued. Secondly, "local content" requirements on foreign investments are a condition set for the same. With effect from 15/6/2016 the second and last part of the Companies Act 2015 came into force thus foreign companies seeking registration in Kenya are required to, under section 975 (20(b), ensure that at least at the time they are making application for registration at least 30 per cent of their shareholding is held by Kenyan citizens by birth. The 30 per cent local shareholding threshold however only applies in respect of branch office registrations in Kenya and does not apply to locally incorporated companies unless the company operates in specific regulated industries such as banking ,telecommunication, insurance and Mining. Yet under the same Act a foreign company that establishes a business in Kenya is required to apply to the register of companies for certificate of registration for what is commonly referred to as a branch. The local share holding requirement for foreign branch registration are unworkable as it is commercially unviable for a foreign company which has operations in many countries to cede 30 per cent of its shareholding to Kenyan citizen by birth in the country of origin where the foreign company is registered. Furthermore this requirement is not aligned to the government's investment policy which seeks to offer a liberalized economy to foreign investors.

Thus, the threshold on the amount to initially invest and at least 30% of shareholding by a Kenyan citizen by birth could be a hindrance to foreign investors from Uganda before they are issued by certificates and licenses. This is contrary to the legal frameworks for investment promotion in EAC as set out in several regional and national documents key among them EAC Development strategies (I-IV) and EAC Industrial Development

Strategy. The aim of the strategic policies is to promote both domestic and foreign investments through holistic approach to Infrastructural development, Industrial development and Public sector engagement.

To find out specific regulations or rules on local labour laws the researcher analysed the Labour Act (Republic of Kenya,)). But tthrough a Gazette Notice of July 2012, the Ministry of Immigration made changes in the immigration laws of Kenya that prohibit granting of work and residence permits to foreign workers if they are 35 years and younger and if they are not assured of monthly salary of US$2000 and more (Republic of Kenya,)

This age restriction is blind to the fact that a larger share (more than 60 percent) of the EAC population is youth below 35 years of age. The new rules have also locked out expatriates from employment in the medical, real estate, engineering, accountancy and legal professions. Incidentally, Kenya is among the countries in Africa with the least number of accountants, lawyers and engineers. The following table indicates a comparative period of acquiring a work permit in Kenya and Uganda.

Table: Period Taken to Acquire a Permit

Country	Number of Days
Kenya	6 to 9 months
Uganda	2 to 3 weeks

Source: Field Data, 2018

The above table indicates that it takes between 6-9 months to process work permit applications in Kenya compared to 2 to 3 weeks in Uganda. Thus, Kenya needs to relook at its labor laws, there have been several cases of denial of work permits or undue delays in processing of work permits that could have negative implications. This is an indication that the legislative reforms that ought to facilitate work permit acquisition by foreign workers in the country have not been matched by practice-change. Secondly, it appears the old habit of rent-seeking is still embedded in the new dispensation and this complicates the realization of benefits of labor policy reforms. Indirect barriers typically include bureaucratic and other informal impediments to foreign investment, such as ambiguous regulatory approval, delays in customs clearance, visas for expatriate workers, or weaknesses in the legal system.

To find out immigration and labour laws that affect FDI flow, the researcher asked employees of both Kenyan and Ugandan firms to identify foreign worker policies that hinder cross border movement of labour. The total number of respondents was 78. The table below is a summary of the findings.

Table: Immigration and Labor Regulations on Foreign Workers.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Work permits take long	37	47.4	47.4	47.4
	Work in specific sectors/skills	36	46.2	46.2	93.6
	Stringent labor laws	2	2.6	2.6	96.2
	Level of education	3	3.8	3.8	100.0
	Total	78	100.0	100.0	

Source: Field Data, 2018

The table indicates that (47.4%) of the respondents agree that work permits are a requirement and it takes long to acquire them while (46.2%) agree being restricted to certain sectors. On level of education, (3.8%) agree that it is an aspect that restricts foreign workers to work in either country while 2.6 agree to stringent labor laws.

Generally, work permits and restriction into certain sectors/skills are the biggest hindrance to foreign workers in either country. But stakeholders argued it takes long to acquire a work permit in Kenya than Uganda. Kenya restricts foreign workers in most sectors than Uganda also.

IV. Conclusions

FDI flow from Uganda or EAC region into Kenyan market is little. But FDI flow with developed world continues to grow due to bilateral investment agreement with Germany, Britain, USA and lately China. But Ugandan investment policy is open since it promotes more FDI flow in the recent past than Kenya. Uganda has ratified more BITs than Kenya in the recent past. In EAC region, intra-FDI flow is low with regard to Kenya since the policy seems to favor developed world foreign investors. Thus, despite the existence of an EAC protocol intra-EAC flow is still low; a scenario attributed to lack of BITs between partner states. For instance, there is no BIT between Kenya and Uganda in view of promoting investment in specific sectors in the spirit of EAC protocol. The results of the study also indicate that both fiscal and tax regulation with regard to investment of foreign firms from Uganda are Unfavorable. The policy requires a hefty initial capital of $500,000 with a range of applicable taxes. Although tax reliefs are available they defeat the purpose of FDI in the economy since firms that export produce benefit. It was found that as a result only EPZ sector, charitable organizations, churches and the military benefit from these tax exemptions. Administrative and regulatory framework on FDI flow are restrictive since foreign firms from Uganda need to get registered after acquiring an array of certificates and licensees to set up business. The timeframe of acquiring these licenses is long, tiring and cumbersome. This is due to bureaucracy around the process and many institutions involved in issuing them. Other regulations include work permits for foreign workers when such expertise lacks in Kenyan employment market. Beside this, the workers should be of thirty-five years of age and earn a salary of half a million and above. This indeed makes labor movement into Kenyan market difficult for workers from Uganda. Evidently there is a strong connection between investment policy and success of interstate FDI flow. The importance of regional investment agreements and bilateral investment treaties is to harmonize varied investment policies of states concerned with aim of increasing FDI flow between them. It is believed that FDI flow allows transfer of technology, capital flight, utilization of cheap resources, skills and access to bigger new markets. Such an occurrence translates into economic growth in the region. However, nation-states restrict FDI flow to certain sectors for a number of reasons. Some partner states protect specific sectors from competition because lack of comparative advantage in this sectors. Kenya investment policy is prohibitive to FDI flow in some sectors but promotes outward FDI flow, and in particular in the service sector. But the policy does not encourage inward FDI flow into its economy from Uganda which in itself is a threat to future regional economic integration. Further still, this policy has locked out Ugandan firm from its economy which does not auger for success of regional economic integration

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