



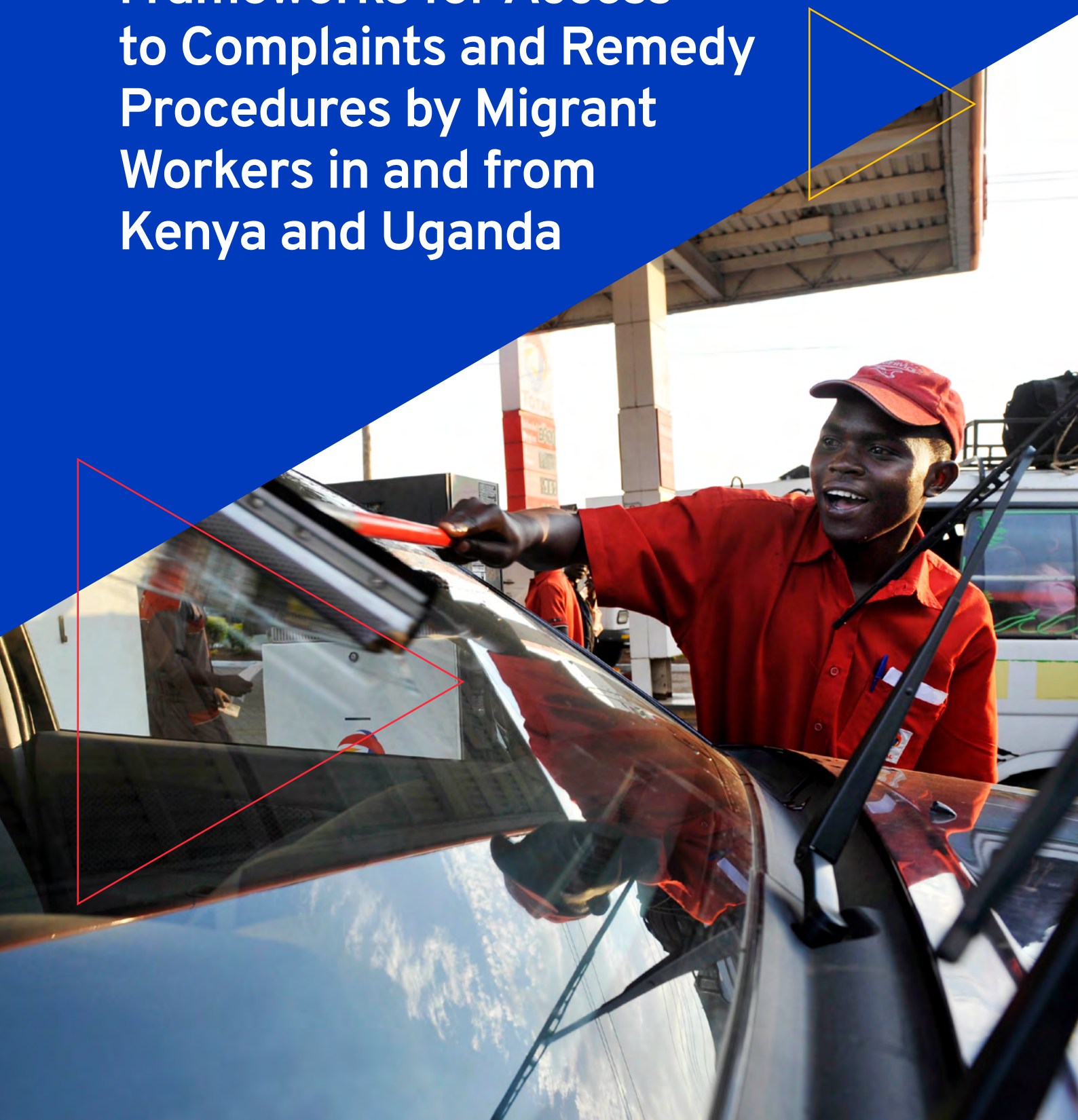
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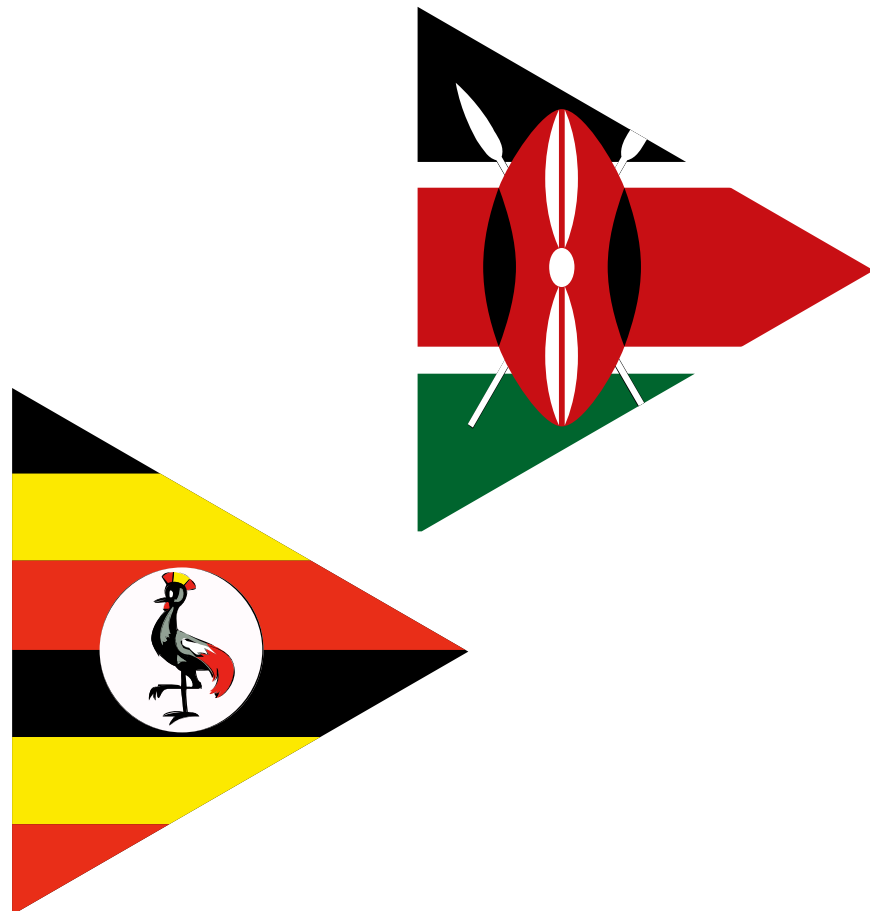


► Assessment of the Legal Frameworks for Access to Complaints and Remedy Procedures by Migrant Workers in and from Kenya and Uganda



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By Virginia A. Nelder



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► Foreword

Access to justice is a basic principle of the rule of law and a prerequisite for realising human and labour rights for all individuals. Without meaningful access to justice, people are unable to claim their rights, hold duty bearers accountable, or challenge violations that undermine dignity, safety and fairness. For the United Nations (UN), access to justice is enshrined within the Sustainable Development Goals (SDGs) and central to the commitment of leaving no one behind. This issue is further acknowledged as one of the fundamental elements governing migration in the UN Global Compact for Safe, Orderly and Regular Migration (GCM) Progress Declaration, calling on States ensure “safe and effective access to justice” for migrants, particularly those subjected to crime and violence, or rights violations.

The International Labour Organization (ILO), views access to justice as a cornerstone for protecting migrant workers’ rights, especially under its rights-based approach to labour migration governance. This approach ensures that all relevant international labour standards apply equally to migrant workers and nationals. Key ILO Conventions, including 1930 (No.29) on Forced Labour, 1957 (No.105) on the Abolition of Forced Labour, 1949 (No. 97) on Migration for Employment (Revised), 1975 (No. 143) on Migrant Workers (Supplementary Provisions) Convention, 1997 (No. 181) on Private Employment Agencies, 2011 (No. 189) on Domestic Workers, 2019 (No. 190) and on Violence and Harassment; set out robust protections for migrant workers, including those in irregular situations.

This assessment examines the legal and institutional frameworks in Uganda and Kenya, two major origin countries for migrant workers in the East and Horn of Africa region. It evaluates the extent to which their domestic systems uphold migrant workers’ rights to access justice and how these align with regional and international standards. Through desk research and stakeholder consultations, the report identifies strengths, gaps, and areas for legal procedural reform.

The ILO commissioned this study recognising the lived realities of many Kenyan and Ugandan migrant workers, particularly low-skilled workers, who experienced exploitation across their migration cycle. Common complaints include recruitment fees, deceptions about job conditions, retention of passports and personal documents, unsafe and abusive work environments, long working hours, restriction of freedom of movement, wage abuses (including illegal deductions, withholding and no-payment of wages), and instances of physical and various forms of sexual violence and abuse. In some cases, these violations amount to forced labour or human trafficking.

The findings of this report reveal that while both countries have legal frameworks in place that align with international standards, practical barriers persist. Migrant workers continue facing significant challenges in accessing justice, particularly when navigating complaint mechanisms, securing remedies, or overcoming systemic discrimination. Hence, this report, accompanying country-level policy briefs, identifies specific legal and operational deficiencies and provides actionable recommendations intended to improving access to justice systems and outcomes.

We hope the insights and findings in this assessment will support policymakers and other stakeholders in strengthening legal protections for migrant workers, based on the principle of non-discrimination, inclusivity, and accountability. Improved access to justice is not only a human rights imperative but also a strategic necessity for building fair, safe, and well-governed labour migration systems.

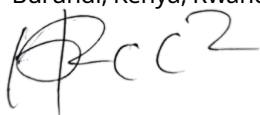
On behalf of the ILO, I extend our sincere appreciation to all stakeholders in Kenya and Uganda who contributed in this study, namely the rights holders – migrant workers and their families, the duty bearers – government institutions responsible for respecting, protecting and promoting the rights of the rights holders, and the implementers and supporters/allies – such as employer and worker organizations, and justice system actors – who support the rights holders and hold the duty bearers accountable. I am especially grateful to the returned migrant workers who shared their moving stories and experiences, to better inform the recommendations of this assessment. Lastly, special thanks go to the United Kingdom Government through the Foreign Commonwealth and Development Office (FCDO), for its continued support to the ILO’s Better regional migration management programme, under which this assessment was conducted.

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► Executive Summary

Abuses of migrant workers' rights occur in employment contexts worldwide and during all phases of migration. In the context of labour migration, access to justice fundamentally involves ensuring that migrant workers receive substantively equal protection and treatment under the law, without discrimination based on nationality, gender, age, socioeconomic status, or migration status. Access to justice does not solely mean that a migrant worker has a mechanism to complain about a violation of their rights; they must also know and understand that they possess a right, that it has been violated, and that there is a mechanism available to them to report the violation and seek redress. To this end, the mechanism must be accessible and capable of providing an appropriate and effective remedy in a timely manner.

The stories shared by migrant workers and their allies, however, demonstrate that access to justice for these workers is often elusive. The inability to secure justice affects not only the workers but also their families, communities, and society at large. It is the State's obligation to prevent and remedy such consequences through its domestic legal framework, which includes the laws, policies, institutions, programs, and procedures designed to identify and fulfill a State's legal obligations, ensuring that migrant workers can obtain effective redress for violations of their rights. Chapter one of this report outlines the context in which this study was undertaken, including a summary of the types of rights violations experienced by migrant workers in and from Kenya and Uganda, as well as the challenges they face in accessing justice, largely drawing on the narratives of the workers themselves, which are detailed in Annex I.

The purpose of this study is to review and assess the domestic legal frameworks in Uganda and Kenya regarding the respect, protection, and promotion of migrant workers' rights to access justice. The assessment of the domestic legal framework includes consideration of compliance with the international and regional normative framework dedicated to respecting and protecting migrant workers' rights. To this end, key informant interviews were conducted with the rights holders – migrant workers and their families; the duty-bearers – government institutions responsible for respecting, protecting, and promoting the rights of the rights holders; and the implementers and supporters/allies – such as employer and worker organizations, as well as justice system actors – who support the rights holders and hold the duty-bearers accountable. Chapters two, three, and four of this report outline the international and regional normative framework, the domestic legal frameworks, and the situational analysis respectively.

While a situational analysis of the domestic legal frameworks in Uganda and Kenya reveals that, by and large, these frameworks exist and comply with the international normative requirements, migrant workers in Kenya and Uganda, as well as Kenyan and Ugandan migrant workers, continue to experience rights violations and significant challenges in accessing justice for these grievances. Although the efforts of both the Kenyan and Ugandan governments to enhance access to justice by establishing systems and measures, collaborating both domestically and regionally, and negotiating Bilateral Labour Agreements (BLAs) with destination countries are commendable, they have yet to effectively remedy the violations faced by migrant workers. The findings of this report underscore a critical concern in reviewing and reforming any legal framework: implementation is a fundamental component of the adequacy and effectiveness of the laws, regulations, policies, and institutions that comprise the framework.

In addition to identifying the few deficiencies in the laws that require attention, the gap analysis and recommendations in Chapter Five of this report identify and attempt to address, with reference to best practices in other jurisdictions, the following implementation issues: insufficient knowledge and understanding of the rights of migrant workers, and the mechanisms and remedies that exist for accessing justice for violations of these rights; a lack of information sharing, coordination, collaboration, monitoring, and enforcement by duty-bearers; barriers to making and pursuing complaints; and inadequate institutional and financial capacity to effectively implement the laws and policies intended to provide access to justice and remedies

Ultimately, the report presents 19 recommendations, featuring various proposed actions in the following categories:

- Access to information (including sensitization of migrant workers and the public, training and capacity building for duty-bearers, disaggregated data collection, integrated information management, reporting, and coordination and collaboration among duty-bearers)
- Monitoring and enforcement of migrant workers' rights and the obligations of recruitment agencies and employers
- Access to complaint mechanisms
- Access to remedies
- Strengthening of bilateral labour agreements (BLAs); and enhanced funding and resource capacity



▶ 1

Introduction and Contextual Analysis



Migration is inevitable, and needs to be better governed in an integrated manner through comprehensive, human-rights based and gender-responsive national migration strategies and policies¹

► 1. Introduction

The purpose of this study is to review and assess the legal framework – including laws, policies, institutions, and procedures – designed to respect, protect, and promote migrant workers’ right to access justice for violations of their human rights. This analysis aims to provide evidence-based, country-specific recommendations for enhancing access to justice, including legal mechanisms and outcomes for migrant workers – especially low-skilled workers, who are often the most vulnerable – in and from Kenya and Uganda. The assessment of the legal framework will consider compliance with the international and regional normative framework that guides access to justice for violations of migrant workers’ rights. This includes examining gender responsiveness, accessibility (such as support services for accessing complaint procedures), and outcomes and enforcement, including compensation for workers and sanctions and penalties for violators.

1.1 Methodology

Data for this study was collected in two ways. First, a comprehensive desk review was conducted of the normative and legal frameworks, supplemented by relevant research, monitoring, and evaluation reports to support a situational analysis of the availability, access to, and effectiveness of mechanisms for redress related to the exploitation of, and abuses suffered by, migrant workers in and from Kenya and Uganda. Second, key informant interviews were held with relevant experts and duty-bearers (representatives of public institutions responsible for implementing the legal framework at the national level in origin and destination countries), non-state implementers (such as non-governmental organizations, community-based organizations, labour unions, employer organizations, and recruitment agencies that provide support to migrant workers), and rights holders – the migrant workers themselves. A total of 35 potential interviewees were identified, and letters of invitation were sent requesting interviews. Further requests were also made to several organizations for assistance in identifying migrant workers to interview.

Migrant workers who were interviewed shared their experiences, including any steps they took to access justice for the rights violations they suffered and their experiences with the justice process. The other respondents discussed their (or their institution/organization’s) role in relation to migrant workers, their understanding of the legal framework

¹ Refer to: African Union, *Migration Policy Framework for Africa and Plan of Action (2018-2030)*, at p.29. ‘Migration’ refers to the movement from one place to another, and a ‘migrant’ is defined as a person who moves from one country to another.

regulating labour migration, and how they support migrant workers' access to justice within that framework. They also expressed their views on any deficiencies or gaps in the legal framework and the challenges in its implementation that should be addressed to enhance migrant workers' access to justice.

1.2 Research Limitations

The key informant interviews occurred over three weeks, including one week of in-person interviews in both Kenya and Uganda, followed by a third week of virtual interviews with those the researcher could not meet in person due to limited time (5 days) in each country and interviewee availability. The number of interviews conducted was also constrained by the responses received to the invitations, despite follow-ups. Ultimately, 22 interviews were completed. As discussed in more detail in the findings, some public institutions did not respond or were unavailable, and therefore, their direct input was not obtained. A concerted effort was made to address this gap by referencing relevant monitoring and evaluation reports, but it may not fully capture the information that could have been obtained directly from the institutions themselves.

► 2. The Labour Migration Context

The term 'migrant worker' is defined in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* ('Migrant Workers' Convention') as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."² According to the most recent edition (2021) of the International Labour Organization (ILO)'s publication on global and regional estimates of international migrant workers, migrant workers are defined more broadly as "persons of working age present in the country of measurement who are ... international migrants who... were in the labour force of the country of their usual residence either in employment or in unemployment, and non-resident foreign workers [who] were not usual residents of the country but were present in the country and had labour attachment to the country." In 2019, there were 169 million workers who fit this definition.³ Female migrant workers comprised 41.5 per cent of the total. Approximately 13.7 million of the world's migrant workers were in Africa, and slightly over 24 million were in the Arab States.⁴ While African migrant workers migrate all over the world, in more recent years, research shows that African labour migration is primarily within Africa.⁵

The ILO estimates that of the migrant workers in Africa in 2019, approximately 12.5 million were in Sub-Saharan Africa and another 1.18 million were in North Africa. Of those in Sub-Saharan Africa, approximately 4.5 million (36 per cent) were women.⁶ Within the East and Horn of Africa Region, data from 2019 suggest that there were approximately 4.7 million migrant workers, of whom 2.5 million were male and 2.2 million were female, and within the East Africa Community (EAC) there were 2.7 million, of whom men comprised 1.4 million and women comprised 1.3 million. The majority of migrant workers in the EAC were over the age of 36 years.⁷ Many of these workers are low-skilled and are employed as

2 UN GA Res. 45/158 (18 December 1990), UNTS vol. 2220, p. 3 (entry into force 1 July 2003).

3 ILO, *Global Estimates on International Migrant Workers – Results and Methodology – Third edition* (Geneva: ILO, 2021), online: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_808935.pdf [accessed 29 April 2024] at p. 16-17 and 20.

4 *Ibid.* at p.21 and 30.

5 Kennedy Atong, Emmanuel Mayah, and Akhator Odigie, *Africa Labour Migration to the GCC States: The Case of Ghana, Kenya, Nigeria and Uganda* (ITUC-AFRICA, 2018), online: https://www.ituc-africa.org/IMG/pdf/ituc-africa_study-africa_labour_migration_to_the_gcc_states.pdf [accessed 8 January 2024], p.2.

6 ILO Global Estimates, n.3 at p.31 and 35.

7 Abebe, T. and G. Mukundi-Wachira (eds.), 2023. *The State of Migration in East and Horn of Africa Report 2022* (International Organization for Migration, Geneva), online: <https://publications.iom.int/books/state-migration-east-and-horn-africa-report-2022> [accessed 8 January 2024] at p.22, 23 and 54.

labourers, security guards and domestic workers.⁸ More recent figures published in a 2022 report by the International Organization for Migration ('IOM') on African migration indicate that the number of African migrant workers in other African countries has risen to over 21 million, with more than 7.7 million in the East and Horn of Africa Region.⁹ These statistics suggest that the trend of Africans migrating for work is increasing, particularly in the East and Horn of Africa Region.

2.1 Push/Pull Factors

The root causes of migration are complex. Numerous and interrelated push factors drive Africans to migrate in search of employment opportunities. These include poverty caused by high unemployment and low wages, poor governance and corruption, and inadequate or ineffective social protection systems. Pull factors, by contrast, are mainly the promise of “greener pastures” in the form of higher wages and access to social security. All of these factors are compounded in contexts of insecurity resulting from regional or internal conflict. In addition, family members and loved ones may play a role—either as dependants relying on financial support from abroad (a push factor),¹⁰ or as people already overseas sharing stories of opportunities and prosperity (a pull factor).¹¹

2.2 Women Migrant Workers

Labour migration—particularly that of low-skilled workers—is often gendered. As noted in the AU Migration Policy Framework for Africa, “who migrates, why, and their migration experience is affected by gender roles, relations and inequalities.”¹² Women migrant workers tend to be concentrated in the service and informal sectors, often in domestic work.¹³ Due to the nature of domestic work—typically performed within the employer’s household and often involving live-in arrangements—migrant domestic workers, who are primarily women, are less visible to the public than other workers. This invisibility increases their risk of discrimination, exploitative working conditions, and gender-based violence.¹⁴ Combined with other intersecting vulnerabilities, the isolation experienced by domestic workers creates structural barriers to seeking assistance when their rights are violated.¹⁵

2.3 Migrant Workers in Irregular Situations

Migrant workers who are in a destination country without legal residency or work authorization are referred to as ‘irregular’. Irregularity can occur in two different ways: either by entering the country unlawfully or by entering lawfully but working without authorization. This lack of authorization can be intentional (for example, through human smuggling or using forged documents), unintentional (such as a result of being unaware of the legal requirements for work authorization), or a consequence of overstaying a visa or leaving employment tied to their work authorization (for example, by escaping an exploitative or abusive job).¹⁶ Some migrant workers use irregular channels to go abroad quickly without

8 Kennedy Atong, n.5 at p.3. See also Abebe n.7 at p.22.

9 IOM, ‘New Agreements Foster Regional Cooperation on Migration for Sustainable Development and Migrant Workers Rights in the East and Horn of Africa’ (6 April 2022), online: <https://www.iom.int/news/new-agreements-foster-regional-co-operation-migration-sustainable-development-and-migrant-workers-rights-east-and-horn-africa> [accessed 21 January 2024].

10 Note that the ‘their’ pronoun is used in this report instead of ‘his/her’ in an effort to be inclusive and human rights responsive. The use of ‘their’ in particular applies to all gender identities unless the context or specific wording suggests otherwise.

11 African Common Position on Migration and Development (2006) at p.1.

12 AU Migration Policy Framework n.1 at p.77.

13 African Union Commission, AU Department for Social Affairs, *Strategic Framework 2020-2030 for the AU/ILO/IOM/UNECA Joint Programme on Labour Migration Governance for Development and Integration in Africa (JLMP)* (Addis Ababa, June 2020) at p.12.

14 ILO Labour Migration Branch, *Protecting the Rights of Migrant Workers in Irregular Situations and Addressing Irregular Labour Migration: A Compendium* (Geneva, 2021) at p. v.

15 ILO Labour Migration Branch, n.14 at p.48. See also Labour Migration Policy, n.122 at p.14.

16 ILO Fair Recruitment Initiative, *Discussion Paper: Fair Recruitment and Access to Justice for Migrant Workers* (2022) at p.13; ILO, *Migrant Workers In An Irregular Situation Through No Fault Of Their Own: Pathways and response options in the Arab States* (2017), online: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_568545.pdf [accessed 15 February 2024] at p.1.

complying with registration or training requirements, while others might be unaware they are using such channels due to misrepresentation or fraud by recruitment agents.¹⁷

Due to their undocumented status, it is challenging to determine how many migrant workers in irregular situations exist in any country. Irregularity is positively correlated with low-skilled and low-paid employment in the informal sector, creating a scenario where these migrant workers are particularly vulnerable to labour rights violations by employers, abuse and corruption by law enforcement, who tend to view irregular migrant workers as ‘illegal’ or ‘criminal,’ and discrimination and xenophobia from the public. Consequently, they live in perpetual fear of exposure, detention, and potential deportation. As a result, migrant workers in irregular situations are less likely to report violations of their rights compared to those in regular situations. However, irregularity does not mean that a migrant worker is not entitled to respect and protection of their human rights.¹⁸

Migrant workers who reside or work in a country without legal authorization are considered to be in an “irregular” situation. Irregularity can occur in two ways: by unlawfully entering a country or by entering lawfully but working without proper authorization. The latter may be intentional (for example, through human smuggling or the use of forged documents), unintentional (due to a lack of awareness about legal requirements), or a result of overstaying a visa or leaving an employer to whom their work authorization is tied—such as in cases of exploitative or abusive employment relationships.

2.4 Labour Migration Context in/from Uganda and Kenya

Labour migration within the EAC in 2019 saw Uganda hosting approximately 500,000 migrant workers and Kenya accommodating around 300,000. While many Ugandan workers migrate to Kenya for better wages,¹⁹ both Kenyans and Ugandans are also seeking opportunities outside the EAC for ‘greener pastures,’ with a significant number travelling to Gulf Cooperation Council (‘GCC’) states, including Saudi Arabia, the United Arab Emirates, and Qatar.

2.4.1 Uganda

According to the National Labour Force Survey conducted by the Uganda Bureau of Statistics in 2021, the total population of Uganda was estimated to be nearly 43 million people, of whom 51 per cent are female and 23 per cent have attained some secondary level of education. World Bank statistics²⁰ show that in 2019, 42.1 per cent of the population lived below the poverty line (US\$2.15 per day). Uganda’s working-age population (ages 14-64) was 23.5 million in 2021, of whom 35 per cent have attained some level of primary education, and ‘about ten per cent’ have no formal education. The majority of the working age population were ‘own-use production’ workers. The potential labour force was estimated at 28 per cent, or 4.4 million people, and the labour force participation rate was registered at 48 per cent (39 per cent female and 58 per cent male). The unemployment rate was recorded at 12 per cent.²¹

The National Employment Policy for Uganda: Increasing Decent Employment Opportunities and Labour Productivity for Socio-Economic Transformation (‘Employment Policy’), published by the Ministry of Gender, Labour and Social Development in April 2011, notes that over half of the workforce is female, three-quarters either has no formal schooling or only primary education, and over eighty per cent of the workforce resides in rural areas. Directly related to these factors are unemployment and poverty, and the Policy acknowledges that “labour is the only asset of the poor.” Significant percentages of the labour force are self-employed and/or engaged in informal employment. The lowest-paid workers are

17 ILO, Policy Brief: *Assessing complaints mechanisms and remedies for Cambodian migrant workers* (October 2022) at p.3-4.

18 ILO Fair Recruitment Initiative n.16 at 13; ILO Labour Migration Branch, n.14 at pp. iv. and v.; ILO, *Migrant Workers in an Irregular Situation* n.16 at 2 and 3; Laurie Berg, Bassina Farbenblum and Sarah Mehta, *Research and Policy Brief: Avenues for Exploited Migrant Workers to Remain in Their Country of Employment to Pursue Labour Remedies* (Migrant Justice Institute: April 2023) at p.4.

19 Abebe n.7 at p.53.

20 <https://data.worldbank.org/> [accessed 5 April 2024].

21 Uganda Bureau of Statistics 2021, *The National Labour Force Survey 2021 – Main Report (Kampala, Uganda)* at Executive Summary.

women, particularly female domestic workers.²² In this regard, the Employment Policy stresses that “any structural transformation in livelihoods necessitates some targeted interventions for women to access productive and decent employment.”²³

The Labour Force Survey provides data on ‘migration’, but it focuses on internal migration. However, Uganda is primarily a country of origin for migrant workers. Of the estimated 740,000 Ugandans abroad in 2017, about 45 per cent were in Kenya, 20 per cent in South Sudan, 13 per cent in Rwanda, 11 per cent in Europe, and 8 per cent in North America.²⁴ However, data is not publicly available (to the extent it may be collected) on outward labour migration specifically. The Employment Policy recognizes that the “social costs” experienced by Ugandan migrant workers include breach of contract, unsafe working conditions, and sexual harassment. It acknowledges that if these ‘costs’ are to be avoided, “measures to address these social costs and to promote emigration of Ugandans into jobs of higher remuneration are necessary.” The Employment Policy also discusses remittances, which were estimated to be US\$1,392 million in FY2007/08, and notes that the formalization of external labour migration contributes to increased remittances.²⁵

In 2021, an ILO labour market assessment collected data from 439 labour migrants in Uganda from the IGAD region, which includes Kenya, Somalia, Sudan, and Eritrea, out of which 386 were employed. Seventy-four per cent of the employed migrants worked in the informal sector, although 92 per cent were in medium to high-skilled occupations, including sales, services, skilled agriculture, and technical roles. Seventy-two per cent of employed migrant workers were long-term migrants (over six months) with regular status,²⁶ while 13 per cent had irregular status. Nearly half of the long-term migrants with irregular status were Kenyan. The assessment indicates that despite existing laws and agreements regarding freedom of movement for Kenyans and Ugandans between the two countries, the statistics suggest these workers either fail to comply with the requirements or are unaware of their rights. Additionally, the assessment highlights the apparent contradiction that slightly over half of the migrant workers in the formal sector were employed informally.²⁷

2.4.2 Kenya

As of 2022, Kenya’s population was 54,027,487 people.²⁸ with an almost even 50/50 proportional split between male and female. In 2021, 36.1 per cent of the population lived below the poverty line (US\$2.15 per day). As of 2019, slightly less than one quarter of both females (24.0 per cent) and males (24.7 per cent) had completed secondary education (Form 4).²⁹ In 2023, the labour force consisted of 25,501,846 people of working age (15+), with an estimated participation rate of 72.6 per cent for men and 72 per cent for women. Unemployment was estimated at 5.6 per cent, and net migration was -10,000 in 2023.³⁰

Kenya is a destination country for both labour migrants and refugees³¹ primarily from African countries, particularly East Africa. Refugees are allowed to work after obtaining a free work permit; however, stakeholders interviewed for this project noted that there are barriers to acquiring one, and most refugees – especially in Nairobi – work without this authorization. Data on migrant workers legally residing in Kenya is not publicly available.

Kenya is also a country of origin for migrant workers. As of early 2023, Kenya was estimated to have ‘close

22 See: <https://www.ilo.org/ilo-employment-policy-job-creation-livelihoods-department/areas-work/youth-employment-programme/youthpol-ilos-database-youth-employment-policies-and-legislation#:~:text=YouthPOL%20is%20an%20on%2Dline,policy%20responses%20for%20youth%20employment>. at pp.3, 4, 7 and 8. Note all terms used and statistics referenced in the policy and noted in this report are *as of the date of the policy*, i.e., 2011.

23 At p.17. In this respect one of the Policy’s strategies is to promote the collection and dissemination of improved disaggregated data and statistics, see p.32 at 7.9.

24 ILO, *Labour Market Assessment with a Focus on Migrant Workers from The IGAD Region: Uganda Country Report (2021)* at p.18.

25 Uganda Employment Policy, n.22 at p.11.

26 From Sudan, Somalia and Eritrea.

27 ILO Uganda Country Report, n.24 at pp.25, 26, 29 and 30.

28 <https://data.worldbank.org/> [accessed 5 April 2024].

29 Kenya National Bureau of Statistics, *2019 Kenya Population and Housing Census Data Tables – Education at a Glance*.

30 n.24.

31 Kenya is the fourth largest refugee hosting country in Africa. The UNHCR defines ‘refugee’ as a person who has fled their country to escape conflict, violence or persecution and has sought safety in another country.

to 4 million migrant workers spread across the globe, including in Asia, Latin America and the Caribbean, Oceania, Canada, and Australia.³² Kenyan women primarily migrate to the Middle East/GCC countries as domestic workers.³³ On Labour Day (1 May) in 2023, President Ruto announced that Kenya would ratify the *Domestic Workers Convention, 2011*,³⁴ but, as of the writing of this report, this has not been reflected in the NORMLEX Information System on International Labour Standards.³⁵

2.4.3 Uganda and Kenya as Countries of Origin to the GCC States

An increasing number of Ugandans are in the Middle East working as private security and domestic workers.³⁶ A study on African labour migration to the GCC States found that the growing number of Ugandan girls in the GCC States can be linked to bilateral labour agreements ('BLAs') with Saudi Arabia, the UAE, and Qatar. These agreements have been exploited by human trafficking syndicates posing as recruitment agencies.³⁷ A news article from 2017 references a parliamentary committee inquiry into the conditions of Ugandan migrant workers in the GCC countries after it was reported that 48 Ugandans died in the UAE between January and August, 35 of whom had committed suicide. An unnamed representative of an association for foreign recruitment agencies is quoted as stating that 65,000 Ugandans were working in the Middle East as of October 2017.³⁸ The parliamentary committee report led to a ban on labour externalization,³⁹ which was lifted after negotiating BLAs with the UAE, Jordan, and Saudi Arabia.⁴⁰

Kenyan migrant workers primarily move to the Middle East and GCC countries for low-skilled jobs, including domestic work, cleaning, construction, hospitality services, security, and taxi driving.⁴¹ One study indicated that the factors pushing Kenyan labour migrants to the GCC include "high youth unemployment, religious factors, low-paying jobs, dubious activities of private recruiters, and a lack of information within Kenyan society," along with the similarities between Kiswahili (one of Kenya's official languages) and Arabic.⁴² Although a ban on "labour export"⁴³ was implemented in 2014 due to reports of labour rights violations, it has since been lifted, and Kenya now has BLAs with Saudi Arabia, Qatar, the United Arab Emirates, and Oman in the GCC.

► 3. Violations of Migrant Workers' Rights

Exploitation, discrimination, and violence against migrant workers occur in various ways, including exorbitant (and unlawful) fees, unfair recruitment practices, contract substitutions, confiscation

32 Republic of Kenya, *Kenya Labour Migration: Trends, Challenges, Management and Potential Areas for Cooperation*, presentation by Eng. Peter K. Tum, O.G.W., Principal Secretary, State Department for Labour to the Regional Ministerial Forum on Harmonizing Labour Migration Policies in the East and Horn of Africa (20 January 2019) [*Kenya Labour Migration Trends*] at p.3.

33 Labour Migration Policy, *infra* n. 127 at p.14.

34 Kamau Maichuhie, *Abuse and Dignity: A Tale of Two Worlds for Domestic Workers* (16 June 2023), online: Nation Media Group, <https://nation.africa/kenya/news/gender/abuse-and-dignity-a-tale-of-two-worlds-for-domestic-workers-4271480> [accessed 9 January 2024].

35 See https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460 [accessed 12 May 2024].

36 ILO Uganda Country Report, n.24 at pp.18 and 24.

37 Kennedy Atong, n.5 at p.45.

38 Robert Cusack, 'Thirty-five Ugandan workers commit suicide in just 8 months in UAE amid 'appalling conditions'' (26 October 2017), online: <https://www.newarab.com/features/ugandan-workers-committing-suicide-uae-alarming-rate> Note that attempts to obtain the Parliamentary report were unsuccessful, however it was also referenced in Kennedy Atong, n.5 at p.4.

39 'Labour externalization' and 'externalization of employment' are terms used by the government and other stakeholders in Uganda to refer to outward labour migration.

40 ILO Uganda Country Report, n.24.

41 International Labour Organization, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report For Kenya (2020)* at pp.13 and 14.

42 Kennedy Atong, n.5 at p.42. See also *Kenya Labour Migration Trends*, n.32 at pp. 2 and 3.

43 'Labour export' is the term used by the government and other stakeholders in Kenya to refer to outward labour migration.

of identity documents, movement restrictions, overworking with insufficient rest periods, poor living conditions, wage theft, conditions resembling forced labour or slavery, physical abuse, and sexual and gender-based violence.⁴⁴

Abuses of migrant workers' rights – specifically labour rights, but also human rights more broadly⁴⁵ – occur in employment contexts around the world and during all phases of migration. When violations of workers' rights happen in the destination country, they often go unreported due to fear of losing employment and, consequently, residency in the country, which can lead to deportation.⁴⁶ Female migrant workers, particularly those in irregular situations, are especially vulnerable to exploitation and abuse as they often work as domestic workers in the homes of their employers, where their contact with the outside world may be limited.

While numerous media reports, government publications, and research papers document the various violations of migrant workers' rights, both generally and specifically for those from Kenya and Uganda, a fundamental aspect of access to justice remains the ability for migrant workers whose rights have been violated to raise their grievances and be heard. This report, therefore, aims to provide a platform for migrant workers to share their stories in their own words.⁴⁷ Accordingly, these stories are included in Annex I.

Many documented cases of violations of Kenyan and Ugandan migrant workers' rights have occurred in GCC states⁴⁸ and are often tied to the '*kafala*' system of sponsorship. This means that a migrant worker's residency status, work permit, employment, ability to open a bank account, standing in legal proceedings, and freedom to move within and leave the country are linked to a specific employer who is their '*kafeel*' or sponsor. This level of control, along with other factors such as culture and xenophobia, creates a significant power imbalance that leads to exploitation and abuse and has been described by many as a form of modern slavery.⁴⁹ Several GCC states have recently announced the replacement of the *kafala* system with a new framework that will allow for free entry and exit from the country and the right to choose an employer freely.⁵⁰

Migrant workers who escape abusive situations or whose employment is terminated prematurely for any reason (and who, therefore, become irregular) often find themselves in immigration detention, frequently for extended periods, and are then deported back to their country of origin. This process can have profoundly negative impacts on the health and well-being of migrant workers.⁵¹ The fear of becoming irregular and facing deportation poses a significant barrier to leaving and reporting abusive or exploitative situations.⁵²

3.1 Access to Justice for Rights Violations

It may be trite to assert that access to justice is a basic human right, but what does it truly mean? In the context of labour migration, access to justice fundamentally involves ensuring that migrant workers – whether emigrants or immigrant⁵³ – have substantively equal protection of the law and treatment under

44 African Union Commission, n.13 at p.12.

45 Labour rights – relating to terms and conditions of employment, including obtaining and leaving employment – are human rights.

46 Laurie Berg, Bassina Farbenblum and Sarah Mehta, n.18 at p.4.

47 The researcher would like to express profound gratitude and respect for the migrant workers who shared their stories for this project, and hopes that the outcome is, at least in some small way, helping their voices to be heard.

48 Kennedy Atong, n.5 at p.16.

49 African Union Commission n.13 at p.12; Kennedy Atong, n.5 at pp.4 and 38; The Commission on Administrative Justice (Office of the Ombudsman), *A Report on Systemic Investigation into the Plight of Kenya Migrant Domestic Workers in the Kingdom of Saudi Arabia* (September 2022) [CAJ Report] at pp.3 and 4. See also Labour Migration Policy, n.125 at p.13.

50 Michal Rutkowski and Johannes Koettl, *Saudi Arabia Announces Major Reforms for its Migrant Workers* (18 December 2020), online: <https://blogs.worldbank.org/en/peoplemove/saudi-arabia-announces-major-reforms-its-migrant-workers> [accessed 6 April 2024].

51 Abebe n.7 at p.113.

52 *Migrant Workers In An Irregular Situation* n.16 at p.2.

53 For the purpose of this report, an 'emigrant' refers to a person who leaves their country of origin to reside (lawfully or otherwise) in another country, while an 'immigrant' refers to a person residing (lawfully or otherwise) in a country that is not their country of origin.

the law, without discrimination on the basis of (among other grounds) nationality, gender, age, disability, socioeconomic status, and irregularity. Substantively equal protection and treatment – distinct from formally equal protection and treatment, which ensures the same legal provisions and procedures apply to all persons – means that extra measures must be taken to support a person or group that is vulnerable in relation to the majority.

Access to justice does not solely mean that a migrant worker can report a violation of their rights. First, a migrant worker must know and understand their rights, recognize when those rights have been violated, and be aware of the mechanisms available to file a complaint and seek redress. This indicates that access to information is a crucial prerequisite for access to justice. Second, not only must a mechanism exist, but the migrant worker must also be able to utilize it. This means it must be both physically and financially accessible, and the worker must be able to comprehend the process or receive the necessary assistance to navigate it, such as support from a union representative and/or legal counsel, and an interpreter if the proceedings are conducted in a language that the worker does not understand. Third, the mechanism must be capable of providing a remedy that is both appropriate and effective in a timely manner. Mechanisms for accessing justice regarding violations of workers' rights can be formal or informal and include workplace-based grievance procedures, state-based non-judicial mechanisms like informal conciliation or formal mediation by a labour officer, as well as state-based judicial mechanisms in the form of labour tribunals or courts.

Access to justice for migrant workers, however, is often elusive, if not entirely absent. If a migrant worker possesses sufficient information and understanding to decide to seek justice- which is rare even among the broader population, let alone within a group that often has little to no formal education- there are numerous emotional, physical, financial, legal, and procedural barriers in place. Experiencing rights violations, particularly in the form of physical, psychological, or sexual abuse, as well as financial exploitation, adversely affects a migrant worker's well-being. This trauma, coupled with the potential negative repercussions of filing a complaint, frequently acts as a complete barrier to seeking justice. A migrant worker who files a complaint (or even threatens to) against their employer becomes vulnerable to intimidation and possible retaliation, such as further physical, emotional, and/or financial abuse, being terminated if still employed, or having their visa or residence permit revoked by the employer. Additionally, there is the possibility of facing discrimination and secondary victimization by labour, police, immigration, and even consular authorities, who may blame the migrant worker or react in ways that exacerbate their trauma. Migrant workers who must leave the host country when their contract ends may find themselves unable, either legally or financially, to remain for the duration of the complaint proceedings, even if they manage to file a complaint.

For the most part, courts and labour offices where formal complaints are lodged and adjudicated are located in urban centres, which may be physically inaccessible for a migrant worker employed or living in a rural or remote area. This also poses a barrier to obtaining consular assistance and to joining and receiving support from labour unions. Furthermore, complaint mechanisms are inherently legal, even if informal, and navigating the process can be complicated when, for example, a complaint must be in writing, and the complainant is required to provide evidence to support their case. This challenge becomes more pronounced when the proceedings are in a language that the migrant worker does not speak fluently. Every migrant worker whose rights have been violated should have access to legal assistance, but lawyers can be expensive, and often legal aid regimes are either non-existent or do not extend to non-citizens. Additionally, systemic delays caused by insufficient capacity and resources for investigating, processing, and adjudicating complaints can lead to fatigue, causing the migrant worker to feel that no progress is being made and giving up on seeing the matter through to resolution. As the saying goes, 'justice delayed is justice denied.' All of these challenges can place pressure on the migrant worker – who in many cases has gone abroad to financially support their family – to settle for less than what they are entitled to, meaning that the remedy achieved is not adequate concerning the harm suffered. Finally, in the few instances where a migrant worker is granted a remedy, it is usually the worker's responsibility to take the required action to enforce the labour officer's or court's decision, another barrier that can delay or ultimately deny justice.

The inability to access justice affects not only the worker but also extends to their family, community, and society at large. When employers can evade accountability for exploiting and abusing their workers, it results in negative consequences for the broader business and labour environment, as well as the rule



of law.⁵⁴ It is the State's obligation to prevent these consequences by ensuring that migrant workers whose human rights have been violated can seek justice. This requires the proactive identification and resolution of all barriers and challenges, ensuring that the legal framework – comprising the laws, policies, institutions, and procedures for addressing violations of workers' rights – not only exists but is also effectively implemented.

⁵⁴ Bassina Farbenblum and Laurie Berg, *Migrant Workers' Access to Justice for Wage Theft: A Global Study of Promising Initiatives* (Migrant Justice Institute, 2021) at p.12.

▶ 2

The Normative Framework for Access to Justice for Violations of Migrant Workers' Rights



► A. International Framework

The international normative framework comprises the primary international human rights instruments that are not specific to labour, the ILO's conventions which constitute the 'international labour standards', and other international agreements that outline goals and strategies to guide States in implementing a specific category of norms or norms related to a particular theme or issue. International conventions and agreements are binding only on the State Parties that sign and/or ratify them and contain an accountability mechanism to enforce compliance. However, some norms are so prevalent across the international human rights framework that they can be considered general principles of international law – for example, the principles of equality and non-discrimination – which should be respected and promoted within domestic legal frameworks, regardless of whether States are specifically bound to any particular treaty. Some general principles of international law are accepted and recognized by the entire international community to the extent that they are viewed as having peremptory (*jus cogens*) status, meaning they cannot be abrogated or limited under any circumstances. Two examples of peremptory norms are the prohibitions against slavery and human trafficking.

1. International Human Rights Instruments

The first overarching instrument that represents universal acceptance of its norms and, therefore, contains general principles of international law that ought to be respected and promoted by all States is the *Universal Declaration of Human Rights* ('UDHR'), which was proclaimed by the United Nations General Assembly on 10 December 1948. The Preamble of the UDHR eloquently explains its purpose and meaning, stating that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world" and mandating that "human rights should be protected by the rule of law."⁵⁵ The fundamental human rights in the UDHR that are directly relevant to the rights of migrant workers are reflected in all the other international human rights conventions, such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Social, Cultural and Economic Rights*, establishing norms accepted as general principles of international law. They are:

- Non-discrimination and equality before and under the law
- Recognition as a person
- Personal security, integrity, well-being, and privacy
- Freedom of person and of movement
- The right to work
- The right to access justice

⁵⁵ In other words, all institutions and people in the international community, including governments and other leaders, regardless of their status or power in society, should be accountable to the same human rights norms. In this respect, Article 28 of the Universal Declaration of Human Rights provides that, "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

2. International Labour Standards

With respect to international labour standards ('ILS'), such as the UDHR, the ILO's *Declaration on Fundamental Principles and Rights at Work* also outlines the norms accepted as general principles of international labour law. In this context, the *Declaration* clarifies that all ILO Member States,⁵⁶ even those who have not ratified the specific ILO Conventions, have an obligation arising from their membership in the ILO, "to respect, promote, and realize, in good faith ... the principles concerning the fundamental rights which are the subject of those Conventions." While, in principle, most international labour standards apply to migrant workers, the fundamental principles in the *Declaration* that are especially pertinent to migrant workers include: the elimination of all forms of forced or compulsory labour, the elimination of discrimination in respect of employment and occupation, and the rights to freedom of association and to a safe and healthy working environment.

The specific norms derived from these fundamental principles that collectively establish the international labour standards relevant to migrant workers are categorized and outlined below. The 'Migrant Workers Convention' acknowledges the distinction between migrant workers in regular and irregular circumstances, noting in the Preamble that "the human problems associated with migration are even more serious in the case of irregular migration and ... appropriate action should be encouraged in order to prevent ... trafficking in migrant workers."⁵⁷ Reflecting the intent that the labour rights of migrant workers should be recognized and safeguarded as general principles of international labour law, the Preamble of the 'Migrant Workers Convention' also asserts that "the rights of migrant workers and members of their families ... require appropriate international protection."

All of these international labour standards are reflected in the various ILO Conventions that are either directly or indirectly specific to migrant workers and that are set out in the table below, with their status of acceptance by Kenya and Uganda, indicating whether they are binding or non-binding, but still persuasive.

► **Table 1: International labour standards**

Name of Instrument	Signature/Ratification	
	Kenya	Uganda
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Not signed or ratified	Acceded on 14 November 2001 (not signed)
Convention No. 97 - Migration for Employment Convention (Revised), 1949	Ratified 30 Nov 1965	Ratified 30 Nov 1965
Convention No. 143 - Migrant Workers (Supplementary Provisions) Convention, 1975	Ratified 9 Apr 1979	Ratified 31 Mar 1978
Convention No. 189 - Domestic Workers Convention, 2011 ⁵⁸	Not ratified	Not ratified
Convention No. 95 - Protection of Wages	Not ratified	Ratified 4 Jun 1963
Convention No. 181 - Private Employment Agencies Convention	Not ratified	Not ratified
Protocol of 2014 to the Forced Labour Convention, 1930	Not ratified	Not ratified
Convention No. 111 - Discrimination (Employment and Occupation) Convention, 1958	Ratified 7 May 2001	Ratified 2 Jun 2005
Convention No. 190 - Violence and Harassment Convention, 2019	Not ratified	Ratified 7 Aug 2023 but not yet in force

56 Most relevant to this report are the following members (and their date of membership): Kenya (13.01.1964); Uganda (25.03.1963); Qatar (25.04.1972); Saudi Arabia (12.01.1976); United Arab Emirates (25.04.1972). For a full membership list see https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11003:0::NO::P11003_COUNTRY_SORT:2

57 Article 5 clarifies that migrant workers and their family members are regarded as in a regular situation if they are authorized by law or international agreement to enter, stay, and engage in paid work in the State of employment. Conversely, they are considered in an irregular situation if they do not fulfill this requirement.

58 Although neither Kenya nor Uganda, nor any GCC States where most Kenyan and Ugandan migrant domestic workers outside of the EAC are located, has ratified the *Domestic Workers Convention, 2011*, the provisions applicable to domestic workers, in addition to the aforementioned international labour standards, include the responsibility of State Parties to ensure a safe and healthy working environment for domestic workers and provide effective protection against all forms of abuse, harassment, and violence. Domestic workers living in the household are not required to remain in the household or with household members during their periods of rest or leave. States are accountable for regulating and monitoring recruitment agencies that place domestic workers and are required to develop and implement measures for labour inspection, enforcement, and penalties tailored to the unique characteristics of domestic work.

2.1 Application of ILS to Migrant Workers and Members of their Families

The scope of ILO Conventions on migrant workers applies not only to the individual migrant worker but also to their family members. Therefore, the term 'migrant worker' used in the remainder of this part includes, unless specifically noted otherwise, the migrant worker's family members as well.

The rights of migrant workers apply regardless of sex, race, colour, language, religion, political or other opinion, ethnic origin, nationality, age, economic status, or marital status. Furthermore, these rights are upheld throughout the entire migration process, including preparation, departure, transit, the full duration of stay in the country of employment, and upon return to the country of origin or usual residence.

2.2 Freedom of Movement

Migrant workers are free to leave any State and have the right to enter and remain in their country or countries of citizenship at any time. No migrant worker may be arrested or detained except in accordance with the law. In such cases, the migrant worker may request that the consular or diplomatic authorities of their state of origin be informed without delay of the arrest or detention and the reasons for it. They may also communicate freely with those authorities, including to arrange for legal representation. No migrant worker may be imprisoned, deprived of their residence or work permit, or expelled from a country solely because they failed to fulfill a contractual obligation, unless that obligation is the basis for the authorization or permit.

Migrant workers shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their employment. Migrant workers have the right to seek alternative employment, except where the authorization of residence is tied to the specific contract of employment. Migrant workers may be expelled from a State only as a result of a lawful decision taken by the competent authority, and before such decision is taken the migrant worker has the right to give reasons why they should not be expelled, and to have their case reviewed by the competent authority. Expulsion does not deprive a migrant worker of wages and other entitlements due.

States that are parties to the Migrant Workers Convention must take measures to ensure that a migrant worker's irregular status does not continue, particularly by considering the possibility of regularizing the situation of an irregular migrant worker.

2.3 Security of Person

Torture, and cruel, inhuman, or degrading treatment or punishment against migrant workers is prohibited. Migrant workers have the right to be free from arbitrary or unlawful interference with their privacy, as well as from arbitrary deprivation of their property. They are entitled to effective protection against violence, physical injury, threats, and intimidation, whether by public officials or by private individuals, groups, or institutions. Migrant workers deprived of their liberty must be treated with humanity and respect for their inherent dignity, just like nationals of those States in similar situations.

The *Protocol of 2014 to the Forced Labour Convention, 1930*, requires States Parties to educate and inform people, especially those deemed particularly vulnerable, to prevent them from becoming victims of forced or compulsory labour. Similarly, it mandates educating and informing employers to prevent their involvement in forced or compulsory labour practices.

The *Violence and Harassment Convention, 2019*, defines 'violence and harassment' in the world of work as "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual, or economic harm." 'Gender-based violence and harassment' refers to violence and harassment directed at individuals because of their sex or gender. The Convention applies to all sectors of both the formal and informal economy. Member States to the Convention are required to adopt a legal framework that ensures the right to equality and non-discrimination and protects workers in sectors, occupations, and work arrangements that are particularly exposed to violence and harassment, especially due to gender, such as domestic workers. This legal framework should include easy access to gender-responsive procedures and mechanisms for safe, fair, and effective reporting and dispute resolution, both at the

workplace and externally. It should also provide access to legal, social, medical, and administrative support measures for complainants, as well as appropriate and effective remedies for survivors and sanctions for perpetrators.

2.4 Equality with Nationals in Respect of Employment

Migrant workers are entitled to equal treatment with nationals of the host State regarding their terms and conditions of work. This includes minimum wages, work hours, weekly rest, safety, health, social security, trade union membership, termination of employment, and access to justice. Host country governments must ensure that migrant workers are not deprived of these rights due to irregularities. Additionally, migrant workers have the right to seek assistance from any trade union and to receive the same protections against termination and unemployment as nationals of the host state.

2.5 Wages

Workers' wages should be paid regularly in legal tender. Deductions from wages are permitted only to the extent allowed by national laws, which must not include any payments intended for obtaining employment. Upon termination of an employment contract, all due wages must be paid within a reasonable timeframe.

2.6 Access to Information

Migrant workers have the right to be informed by their State of origin and/or the State of employment, as applicable, about their rights as protected by international labour standards, bilateral labour agreements (BLAs), and national laws, as well as their rights and obligations under the law. They also have the right to receive information that enables compliance with the law. This information should be provided free of charge and, whenever possible, in a language they can understand, proactively and without a request. Migrant workers in regular situations have the right to be informed of all conditions related to their admission to the employment country, along with details regarding their stay and employment in the destination country.

2.7 Access to Justice

Migrant workers are entitled to the protection and assistance of the consular or diplomatic authorities of their State of origin, or of a State representing the interests of their State of origin, whenever their rights as migrant workers are violated. If a migrant worker claims that the terms of the employment contract have been violated by the employer, they have the right to bring a case before the competent authorities of the State of employment, just like workers who are nationals.

Migrant workers have the right to a fair and public hearing before a competent, independent, and impartial tribunal or court. Aspects of a fair hearing include the rights to know the case against them and have sufficient time to prepare a defence; to defend themselves in person or through legal representation of their choosing, along with being informed of this right; to receive free interpretation if they cannot understand the language; and to not be compelled to confess guilt.

Any person whose rights or freedoms are violated – including by a public official – is entitled to have their claim reviewed and decided and has the right to enforcement of an effective remedy.

State Parties to the *Private Employment Agencies Convention* must ensure adequate protection for migrant workers recruited or placed in their territory by private employment agencies and prevent any abuses, including establishing legal provisions for penalties. Procedures should be in place to investigate migrant workers' complaints regarding the activities of private employment agencies.

Similarly, State Parties to the 2014 *Protocol of the Forced Labour Convention, 1930* must implement effective measures to provide survivors of forced or compulsory labour⁵⁹ – irrespective of their presence or legal status in the State – with protection and access to suitable and effective remedies, including compensation, and to penalize the perpetrators.

3. International Policy

3.1 ILO Recommendations

The ILO issues recommendations to supplement and inform the Conventions mentioned above. While States are not legally obligated to comply, these recommendations represent best practices that should guide the implementation of their obligations under the Conventions. These Recommendations include: *Recommendation No. 86 - Migration for Employment Recommendation (Revised), 1949*; *Recommendation No. 151 - Migrant Workers Recommendation, 1975*; *Recommendation No. 100 - Protection of Migrant Workers (underdeveloped countries) Recommendations*; *Recommendation No. 198 - Employment Relationship Recommendation*; and *Recommendation No. 203 - Forced Labour (Supplementary Measures) Recommendation, 2014*. Below are the recommended actions that ILO Member States should take to fulfill their obligations to protect the labour and human rights of migrant workers, including access to justice for violations of those rights:

- ILO Members should establish clear guidelines to address the gender dimension of occupations and sectors where women are predominantly employed, particularly where there is a high proportion of disguised employment relationships, such as among domestic workers.
- ILO Members should implement preventive measures, such as targeted sensitization campaigns, including pre-departure training and orientation for migrant workers, to help them access assistance when needed. This should include information and advice about their legal rights and available services, presented in a language they can understand.
- ILO Members should guarantee effective access to “appropriate, speedy, inexpensive, fair, and efficient procedures and mechanisms” for examining complaints regarding violations of the principles of job security, equal pay for equal work, and the right to adequate work and living conditions. Furthermore, they must ensure that non-compliant practices are rectified, enabling migrant workers to obtain effective remedies, including compensation for personal and material damages.
- A migrant worker who has been paid less than the minimum wage should be entitled to claim and recover the amount they were underpaid. Deductions for the reimbursement of loss or damage to the employer’s property should only be permitted when the worker is demonstrably responsible, and the amount deducted must not exceed the actual loss or damage incurred.
- Migrant workers should have the same rights to legal assistance as national workers and the option to receive help from an interpreter, preferably at no cost.
- Migrant workers should be given time in the country of employment to participate in legal proceedings, during which they must be authorized to stay in the country and access the labour market.
- If a migrant worker has left the country of employment, ILO Members should ensure that the migrant worker can access appropriate administrative, civil, and criminal remedies in the member state, regardless of their presence or legal status in the country.
- Individuals responsible for resolving labour disputes and enforcing labour laws should receive training in relevant international labour standards.
- States should negotiate BLAs that clearly outline the methods for applying the principles established in the *Migration for Employment Convention*.
- States should collect information and data for the purpose of monitoring the implementation of measures concerning the employment relationship, considering the gendered dimensions.

59 ‘Forced or compulsory labour’ is defined as “all work or service exacted from any person under the threat of any penalty and for which the person has not volunteered,” excluding mandatory military service according to the country’s laws and penal sanctions.

The ILO's *Multilateral Framework on Labour Migration, Non-binding Principles and Guidelines for a Rights-based Approach to Labour Migration* emphasizes that the human rights of migrant workers must be protected regardless of their migration status. Practical effect should be given to this principle through effective monitoring of compliance with contracts and other rights in workplaces where migrant workers are employed. Those responsible for violating these rights should face effective sanctions and penalties.⁶⁰ Principle VII on 'Migration Process' highlights measures such as effective consular services, ideally with both female and male staff, to provide information and assistance to women and men migrant workers, as well as a welfare fund to assist migrant workers in cases of illness, injury, or abuse. Consideration should also be given to requiring recruitment agencies to have insurance or provide a bond to compensate migrant workers for monetary losses resulting from the agency's failure to meet its obligations to them.⁶¹

Finally, the ILO's *General Principles and Operational Guidelines for Fair Recruitment* advise governments to implement specific measures against abusive and fraudulent recruitment practices by ensuring that employment contracts are enforceable regardless of migration status and presence within the jurisdiction. Migrant workers should have access to comprehensive and accurate information regarding their rights in the recruitment process and in employment, as well as access to free or affordable grievance and dispute resolution mechanisms that offer effective and appropriate remedies for violations of these rights, without fear of reprisal, detention, or deportation.⁶² Governments should develop effective policies, legislation, and regulations and implement this legal framework by investigating, punishing, and providing redress for violations, including holding employers and recruitment agencies jointly and individually accountable for compensating workers. Complaint mechanisms should be timely and accessible to migrant workers across borders.⁶³

3.2 Global Compact for Safe, Orderly and Regular Migration

The *Global Compact for Safe, Orderly and Regular Migration* (11 July 2018) ('Global Compact') is a non-legally binding framework for international cooperation aimed at addressing migration in all its dimensions while upholding state sovereignty.⁶⁴ This framework contains objectives such as the collection and disaggregation of data to provide an evidential basis for policy formulation, the facilitation of fair recruitment, the promotion of decent work, enhancement of consular assistance and protection, and using immigration detention as a last resort.⁶⁵ Migrants must receive targeted, gender-responsive, accessible, and comprehensive information and legal guidance on their rights and obligations, including instructions on how to access justice by filing complaints about rights violations.⁶⁶ The capacities of labour inspectors and other authorities should be enhanced to effectively regulate and monitor the recruitment sector and enforce decent work norms, ensuring that migrant workers have access to gender-responsive mechanisms, regardless of whether they are in the country of origin or destination. Independent legal assistance and representation in legal proceedings should be provided at no cost or at an affordable rate. Additionally, the capacity of consular authorities to identify situations of vulnerability and abuse and take gender-responsive action should be bolstered, with consular officials working alongside local authorities and other stakeholders to identify, refer, and assist migrant workers, including through the provision of legal aid.⁶⁷

60 (Geneva: ILO, 2006) [ILO *Multilateral Framework*] at pp.8 and 10.

61 At pp.12 and 13.

62 International Labour Office, Fundamental Principles and Rights at Work Branch, Labour Migration Branch, *General Principles and Operational Guidelines for Fair Recruitment & Definition of Recruitment Fees and Related Costs* (Geneva: ILO, 2019), at pp.13, 14, 16 and 17.

63 At pp.15, 16 and 17.

64 At paras. 4 and 7.

65 At para. 16.

66 At para. 19(d).

67 At paras. 22, 23(g) and (k), and 30(d).



3.3 Guiding Principles on Business and Human Rights

The *Guiding Principles on Business and Human Rights* apply to all States and business enterprises, regardless of location, sector, ownership, or size. They are grounded in the recognition of the need for appropriate and effective remedies for violations of rights and obligations.⁶⁸ The *Guiding Principles* clarify that states have a duty to protect against human rights abuses by third parties within their jurisdiction by implementing effective policies, legislation, regulations, and adjudication to prevent, investigate, punish, and provide redress for such abuses. This legal framework for access to justice must ensure equality before the law and fairness in its application, while also providing for transparency and accountability.⁶⁹ Additionally, and critically, survivors and victims of human rights violations by businesses must be able to obtain effective remedies that redress the harms suffered, including restitution, rehabilitation, compensation (both financial and non-monetary), sanctions against offenders, and protection from re-victimization. Survivors and the public must be made aware of the mechanisms that provide remedies, understand how to access them, and receive assistance, including financial and legal support.⁷⁰ States should ensure these mechanisms are accessible by addressing legal and practical barriers, such as lack of awareness that the mechanism exists, standing, limitation periods, cost, physical distance, language, power imbalances between the parties, and lack of training and capacity among judicial officials. These barriers also have gender and socio-economic dimensions that require particular attention and measures to address them.⁷¹

⁶⁸ UN OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN: New York and Geneva, 2011) at pp. iv and 1.

⁶⁹ At p.3.

⁷⁰ At p.27.

⁷¹ At p.28, 30, 31 and 33-35.

► B. Regional Framework

1. African Common Position on Migration and Development

The African Common Position (2006) ('ACP') acknowledges that the root causes of migration are numerous and complex, including poor socioeconomic conditions, poverty, lack of opportunity, inadequate governance, and corruption, as well as the real or perceived possibility of a better life elsewhere. These factors are exacerbated by rapid population growth and a lack of resources to support it.⁷² The ACP's Preamble expresses concern that "the emphasis on addressing illegal or irregular migration has primarily focused on security considerations." The ACP emphasizes that comprehensive and balanced migration management – encompassing the management of irregular migration – requires the protection of migrants' human rights through the ratification and enforcement of relevant international and African human rights instruments. Additionally, it recognizes that migration is increasingly feminized, necessitating particular attention to protect the labour and human rights of women migrants, especially those most vulnerable to exploitation, such as domestic workers.⁷³ Recommendations for action at the national level include implementing preventive awareness and sensitization campaigns, collecting data, and enhancing mechanisms to combat trafficking. At the continental level, the ACP suggests developing bilateral and regional cooperation agreements and promoting adherence to regional and international human rights instruments that protect migrants.⁷⁴

2. AU Migration Policy Framework for Africa and Plan of Action

The AU Migration Policy Framework for Africa and Plan of Action (2018-2030) ('MPFA') makes policy recommendations for consideration by AU Member States and Regional Economic Communities ('RECs'), including: developing evidence-based policies through a 'whole-of-government' approach; ensuring access to accurate, understandable, and gender-responsive information on terms and conditions of work, as well as access to legal advice and remedies in cases of violations; and establishing effective complaints mechanisms. It is crucial that migrant workers – particularly female and vulnerable migrants such as domestic workers, irregular migrants, and trafficked or smuggled migrants – have access to these mechanisms, receive legal assistance during the process, and can obtain effective remedies without fear of expulsion.⁷⁵ Migrants detained by authorities must be treated humanely, regardless of their immigration status, and provided with gender-responsive protections, which include access to consular assistance, legal assistance, interpretation services, and the right to challenge arbitrary detention and expulsion.⁷⁶ Regarding return and readmission, the MPFA recommends that States "ensure that involuntary return, deportation, removal, and readmission are ordered only after all judicial options have been exhausted, and that each case is treated individually, with due process and access to justice in accordance with international law, considering the gender-related circumstances, family unity, and the risks of human rights violations in the country of origin, transit, and destination."⁷⁷

⁷² At p.1.

⁷³ At pp.4-7.

⁷⁴ At pp.9-12.

⁷⁵ At p.30, 35, 48 and 77.

⁷⁶ At p.72.

⁷⁷ At p.54.

3. Strategic Framework 2020-2030 for the AU/ILO/IOM/UNECA Joint Programme on Labour Migration Governance for Development and Integration in Africa

The Joint Programme on Labour Migration Governance for Development and Integration in Africa ('JLMP') is dedicated to implementing the AU Assembly of Heads of States and Governments' Declaration and Plan of Action on Employment, Poverty Eradication, and Inclusive Development adopted in 2015. The Strategic Framework focuses on accountability to the beneficiaries of the JLMP – migrant workers and their families – for results.⁷⁸ The theory of change for the JLMP is, "if policy and legislative frameworks on labour migration and labour mobility are strengthened, adopted and enacted in line with regional and international human rights and labour standards and Governments provide resources for implementation ... and if institutions and organizations that implement policies and legislation have the commitment, capacity and are accountable in meeting their obligations ... and if sex and age disaggregated, quality data on labour migration are collected, analysed, and used to inform laws, policies, and programmes ... then migrant workers and their families will see improvements in their overall social and economic well-being and ultimately contribute to growth and integrated sustainable development of the African Continent"⁷⁹ The operational component of the JLMP addresses decent work for migrant workers and emphasizes the importance of labour migration data collection for protecting workers' rights.⁸⁰ The priority strategies of strategic objective 2 related to decent work include strengthening opportunities for migrant workers to access justice for violations of their rights.⁸¹

4. Agreement Establishing the African Continental Free Trade Area

The objectives of the Agreement Establishing the African Continental Free Trade Area ('AfCFTA') include deepening economic integration on the African continent and creating a single liberalized market for trade in services. Objectives include, 'progressively liberalizing trade in services on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services.' For the purpose of protecting is to progressively liberalize the rights of labour migrants. Article 20 of the Protocol on Trade in Services⁸² states that, subject to certain qualifications, "each State Party shall accord to services and service suppliers of any other State Party treatment no less favourable than that it accords to its own like services and service suppliers."

5. Protocol on the Establishment of the East African Community Common Market

Article 104 of the *Treaty for the Establishment of the East African Community* requires Partner States⁸³ to implement measures to ensure the free movement of persons, labour and services. Accordingly, the *Protocol on the Establishment of the East African Community Common Market*⁸⁴ provides for the free movement of individuals, labour, and services, as well as the right to residence. Regarding the free movement of persons and labour (Part D of the *Protocol*), Article 10 stipulates that Partner States must allow the free movement of workers who are citizens of other Partner States, as well as non-discrimination based on nationality concerning employment, remuneration, and other working conditions. Nationals of Partner States are entitled to seek employment and reside in the territory of another Partner State

⁷⁸ African Union Commission, n.13 at p.9.

⁷⁹ At pp.45-46.

⁸⁰ At pp.12 and 28.

⁸¹ At p.32.

⁸² "Trade in services" means "the supply of service [...] by a service supplier of one State Party, through the presence of natural persons of a State Party in the territory of any other State Party." (see Article 1).

⁸³ The current Partner States are the Republic of Burundi, the Democratic Republic of the Congo, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, and the Republic of South Sudan.

⁸⁴ See <https://www.eac.int/immigration>

for employment purposes “without any discrimination. “Concerning the rights of establishment and residence (Part E of the *Protocol*), Article 13 states that the right of establishment allows nationals of a Partner State to engage in and pursue economic activities as self-employed individuals in the territory of another Partner State.

6. *Protocol on Free Movement of Persons in the IGAD Region*

Article 7(b) of the *Agreement Establishing IGAD* requires Member States of the Inter-Governmental Authority on Development (IGAD) to harmonize their policies regarding the free movement of persons. Consequently, the *Protocol on Free Movement of Persons in the IGAD Region* aims to facilitate the progressive realization of free movement and the rights of establishment and residence for citizens of IGAD Member States in other Member States. Citizens of Member States have the right to enter, exit, stay, and move freely within other Member States, be accompanied or joined by their dependents, and apply for employment, accept job offers, and conclude employment contracts in other Member States. Workers and self-employed individuals from Member States may engage in economic activities such as business, trade, service, profession, or self-employment in the territory of another Member State, in accordance with the national laws of the host Member State. A Member State is required to provide the same assistance for obtaining employment to nationals of other Member States as it provides to its own nationals and to protect migrant workers from unfair recruitment practices, including those by private recruitment agencies.

7. *Djibouti Declaration on Labour, Employment and Labour Migration in the IGAD Region*

The *Djibouti Declaration on Labour, Employment, and Labour Migration in the IGAD Region* was signed on 21 October 2021 by the Ministers of Labour and Employment of the IGAD Member States to address the concern of inadequate capacities of IGAD Member States’ labour market institutions for effective governance of labour, employment, and labour migration, and to ensure compliance with ILO International Labour Standards.⁸⁵ The Parties’ commitments to this end include developing a Plan of Action to implement the Declaration, ratifying and implementing the ILO conventions, ensuring that domestic legal frameworks on labour migration align with international labour standards, implementing the objectives of the Global Compact, promoting alternative dispute resolution mechanisms, and strengthening gender mainstreaming in legislation, policies, and programmes.

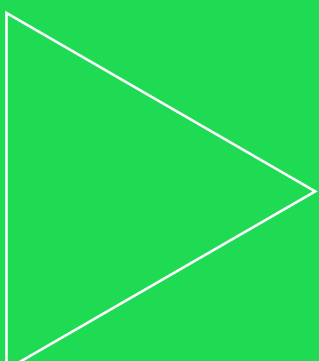
⁸⁵ IGAD Members are Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan, and Uganda.



▶ 3

Domestic Legal Frameworks





The domestic legal framework for access to justice includes the laws, policies, institutions, programs, and procedures that together function – or are designed to function – to identify and fulfill a State’s legal obligations to ensure that migrant workers can obtain effective redress for violations of their rights. Every domestic legal framework begins with the State’s Constitution, which clarifies how and to what extent the international and regional normative framework outlined in Chapter II applies within the domestic legal structure, and contains statements of rights and principles that serve as the foundation for all other laws, policies, institutions, and processes that implement the State’s obligations to respect, protect, and promote migrant workers’ rights.

► A. UGANDA

1. *Constitution of the Republic of Uganda*

The 1995 *Constitution of the Republic of Uganda* stipulates that Uganda’s foreign policy objectives shall be grounded in respect for international law and treaty obligations. The State is mandated to promote regional and pan-African economic cooperation and integration. Ugandans possess the right to social and economic development, and consequently, the State is obligated to ensure that all Ugandans have the right, opportunity, and access to work. All individuals are guaranteed protection from slavery, servitude, and forced labour, and every person in Uganda is entitled to practice his or her profession and to pursue any lawful occupation, trade, or business. The term ‘every person’ encompasses non-citizens. Workers hold the right to join a union. Every Ugandan retains the right to leave and return to Uganda. The State is tasked with safeguarding the rights of women and providing the necessary opportunities for women to achieve their rights, including equal opportunities with men in economic endeavours. Regarding access to justice for violations of constitutional rights, Article 50 asserts that any person – indeed, any person, including migrant workers, regardless of their status – may seek redress, including compensation, through the courts.

2. Legislation and Policy

2.1 Rights and Obligations vis-à-vis Employment in Uganda

The *Employment Act, 2006* regulates internal employment⁸⁶ and specifically references migrant workers in Uganda, defined as any person who migrates from one country to another for work and includes anyone regularly admitted as a migrant worker. The use of the term ‘includes’ indicates that the definition is not limited to ‘regularly admitted’ migrant workers, thus also encompassing others covers irregular migrant workers. The definition of employee - any person who has entered

⁸⁶ Section 3(5) excludes employment outside of Uganda from the Act’s scope in most circumstances.

into a contract of service - is also broad enough to cover both regular and irregular migrant workers, and section 3 further extends the scope of the law to 'all employees' within Uganda subject to specific exclusions that do not include domestic workers who are covered. The *Act* prohibits discrimination in employment on the basis of 'national extraction', and mandates that labour officers and the Industrial Court promote and guarantee 'equality of opportunity' in employment for regular⁸⁷ migrant workers and their families. Despite this, an additional provision permits the Minister of labour to 'limit the range of jobs' available to migrant workers.

The section of Uganda's Employment Policy regarding Kenyan/Ugandan migrant workers states that "data on immigrant workers are hardly accessible," resulting in working conditions for these workers that are 'difficult to regulate.' These conditions include 'very poor' terms of employment, attributed to 'inadequate coordination' among the relevant government agencies, including labour and immigration administration.⁸⁸ The objectives of the Employment Policy are to "promote and protect the rights and interests of workers in accordance with existing labour laws and fundamental labour standards." Its guiding principles include compliance with labour standards (including ILO conventions), affirmative action, and the promotion of gender equality.⁸⁹

The *Employment Act, 2006* affirms that male and female employees are entitled to equal pay for work of equal value – meaning that a man and a woman in the same or equivalent job are entitled to be paid the same amount – and to protection against other forms of discrimination based on sex.⁹⁰ Any provision of an employment contract, whether written or oral, that attempts to override or omit any part of the law to the detriment of the employee is illegal and void.⁹¹ Contracts may not be transferred from one employer to another without the employee's consent. If a contract is in a language that the employee does not understand, it must be attested to by a labour officer or magistrate. However, the absence of such attestation does not prevent the employee from complaining that their rights under the contract have been violated.

Employers are required by the *Employment Act, 2006* to repatriate any worker and their family, as applicable, who is employed more than one hundred kilometres from the worker's home at the end of the contract and upon contract termination, except when termination is due to a breach of the contract.

2.2 Rights and Obligations vis-à-vis Labour Migration

Regarding the "externalization of labour," Uganda's Employment Policy outlines several strategies, including strengthening the department responsible for regulating and monitoring recruitment agencies, developing guidelines for these agencies, ensuring the protection of the rights of Ugandan migrant workers, establishing Bilateral Labour Agreements with destination countries, and creating a fund to assist Ugandans seeking employment abroad.⁹²

Recruitment and placement of Ugandans for employment abroad is regulated by the *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2021*, under the *Employment Act, 2006*. The *Regulations* were originally adopted in 2005, but were recently revised in 2021. One of the stated objectives of the *Regulations* is "to uphold the dignity and rights of migrant workers by prescribing the appropriate terms and conditions of their employment." These regulations apply only to the recruitment and placement of Ugandan migrant workers seeking employment abroad.⁹³

87 "Lawfully within the territory of Uganda."

88 *National Employment Policy for Uganda*, n. 22 at p.12. Three of the Policy strategies to address these concerns are: improving data collection related to the effects of migration on employment; registering immigrant workers; and developing guidance on 'importation' of labour with a view to 'minimising the adverse impact' on employment of East Africans. See pp.27 and 31.

89 At pp.24 and 25.

90 It is important to note that sexual harassment or abuse of any individual concerning employment or in the work environment is explicitly prohibited under the *Employment (Sexual Harassment) Regulations, 2012*. Complaints may be filed with a labour officer, who is mandated to investigate and resolve the complaint. If the issue is not resolved through this process, it must then be referred to the Industrial Court. A complainant is protected against retaliation for filing a complaint.

91 Sections 4, 25 and 27(1)).

92 *National Employment Policy for Uganda*, n. 22 at p.32. Note that no reference to any such specific fund for facilitating Ugandan migrant workers was found elsewhere, nor did any of the stakeholders mention the availability of such a fund.

93 Rs. 2 and 3.

i. Regulation of Ugandan Recruitment Agencies

Part II of the *Regulations* covers recruitment agencies, and requires them to be Ugandan companies⁹⁴ is registered in Uganda and licensed by the Ministry of Labour. One of the conditions for obtaining a licence is a bank guarantee of one hundred million Uganda Shillings, which is approximately equivalent to US\$25,000 at the time of writing this report. An applicant for a recruitment licence must also provide a legally binding commitment to: offer pre-departure orientation; ensure that contracts of employment comply with laws and applicable international labour standards, and 'guarantee' compliance; inform migrant workers of their rights and duties under the contract and facilitate their ability to 'examine' the contract before signing; and "be fully responsible for all claims and liabilities that may arise from the use of the licence," including those related to its 'employees and representatives' concerning recruitment and placement.⁹⁵ From an access to justice perspective, it is unclear whether the Ugandan recruitment agency's liability for its 'representatives' extends to actions taken by the partner recruitment agency abroad. However, it is clear from the definition of 'recruitment and placement' that it pertains only to procuring and hiring migrant workers, and does not encompass the actions of any employer or the working conditions of the worker.⁹⁶

It is interesting to note that the former (2005) version of the *Regulations* specifically required a Ugandan recruitment agency to "ensure that workers deployed overseas are adequately protected and that their interests and well-being are promoted." It also provided that the Ugandan agency is "liable for any and all violations of the contract," but this comprehensive protection and liability have been removed from the new (2021) version of the *Regulations*.⁹⁷

The Minister of Labour may suspend a Ugandan recruitment agency's licence if it finds that a migrant worker has been exploited and may revoke the licence in situations that include instructing a worker to leave their employment for another job when the worker has not complained, altering or modifying a contract after it has been approved by the Ministry, falsifying travel documents, withholding a worker's salary or remittances 'without justification,' and coercing a worker to accept conditions that are not in their best interests or are harmful. It should be noted that suspending or revoking a licence is discretionary, even in exploitative or illegal circumstances.⁹⁸

ii. Regulation of Foreign Recruitment Agencies

Part IV of the *Regulations* applies to recruitment agencies abroad and requires them to be accredited by a Ugandan Mission abroad and to only recruit Ugandan migrant workers through a Ugandan recruitment agency. An application by a foreign agency for accreditation must include proof of a complaints mechanism, and the name of the officer responsible for handling complaints "who shall preferably be a Ugandan." The agency's offices and accommodation centres that must be inspected by the Ugandan Mission prior to accreditation, which, if granted, is valid for two years and may then be renewed upon another inspection. An agency's accreditation may be revoked if it charges any fee before securing a contract for a worker or charges any fee exceeding the allowable amount, as well as if it obstructs an inspection by the Ugandan Mission.⁹⁹ It is notable that revocation in these circumstances – which, in any event, do not include any violations of the worker's rights other than charging a fee to the worker before obtaining a contract for them – is discretionary, not mandatory.

94 All directors and shareholders must be Ugandan.

95 Rs. 4-7.

96 See Part IV below however regarding the regulation of foreign recruitment agencies.

97 It is also notable that the former version of the *Regulations* – which are now no longer in effect – is the only version easily found and available for free online, including on the Uganda Legal Information Institute database of Ugandan laws. An online search does not reveal the current version (except for a summary) of the *Regulations* unless the 2021 date is specifically included in the search criteria, and even then, a subscription to the content provider must be paid before it can be accessed.

98 Rs. 13 and 14. Recruitment agencies may face prosecution under R.38 for offences such as misleading a migrant worker about the terms and conditions of employment, substituting a contract, and charging fees in violation of the law. If convicted, they may be imprisoned for up to five years.

99 R. 17. Rs. 25 and 26 state that a foreign recruitment agency must bear all costs associated with the recruitment and placement of domestic workers. Other workers may incur a fee charged by the Ugandan recruitment agency to cover placement costs, which includes trade testing, pre-departure orientation, medical examinations and vaccinations, and obtaining a passport and visa, after the worker has signed an employment contract.

iii. Regulation of Recruitment and Placement of Ugandan Migrant Workers

Part V of the *Regulations* mandates that 'job orders' advertising opportunities abroad must be submitted by the foreign recruitment agency for verification by the Ugandan Mission abroad before proceeding for approval by the Ugandan Ministry of Labour. An application for approval of a job order must include a 'template' of the employment contract, which should ensure that the worker is entitled to regular wages and overtime, medical treatment, and compensation for any injury sustained in the workplace, dismissal of the worker only for 'just cause',¹⁰⁰ and that in the event of a worker's death, the employer will arrange for repatriation of their remains and property.¹⁰¹ Migrant workers must be cleared by the Ministry of Labour prior to leaving Uganda by submitting a copy of the worker's passport and employment contract, along with a report on the worker's pre-departure orientation.¹⁰² Additionally, migrant workers are required to take a 'trade test' at the Directorate of Industrial Training.¹⁰³ Any migrant worker who secures employment abroad without the involvement of a licensed Ugandan recruitment agency must obtain clearance from the Ministry of Labour.

2.3 Access to Justice for Violations of Employment and Labour Migration Rights

The *Employment Act* of 2006, which applies to the employment of migrant workers in Uganda, empowers labour officers to secure the protection of workers and enforce their rights at work. It also allows them to advise employers and employees on how to comply with the law. Labour officers have the authority to receive, investigate, and settle complaints through means such as conciliation, arbitration, or adjudication, or other appropriate methods agreed upon by the employer and employee, and they are specifically required to involve the relevant union at the workplace. An employee can file a complaint regarding an employer's refusal or failure to pay wages; in such cases, a labour officer can terminate the contract and order the employer to pay the owed wages. Intentionally recording inaccurate or deficient information in an employee's service record is a criminal offence, and any resulting loss suffered by an employee may be compensated. Employees may also approach a labour officer in cases of unfair termination. Workers are entitled to be represented by a lawyer or a union during proceedings before the labour officer, and they may receive compensation for unfair termination in addition to any other remedy that restores the employee to their rightful position if an employer is found to breach the employment contract. A labour officer has the discretion to initiate and prosecute civil or criminal proceedings in the Industrial Court.¹⁰⁴

The *Employment Act, 2006* contains two offences related specifically to the employment of migrant workers in Uganda. First, it is an offence for a person to employ someone who is unlawfully in Uganda, meaning that employers must ensure non-citizen workers possess the required residence or work permits. Second, it is an offence for any person to organize or assist another individual in the illicit or clandestine movement of migrants for work into or out of Uganda. This applies to recruitment agencies, which must be licensed by the Commissioner for Labour for both internal and external recruitment; however, recruitment of domestic workers is excluded from this requirement.

The *Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012* require a labour officer to refer a labour dispute to the Industrial Court at the request of any party involved if the dispute remains unresolved for more than eight weeks after receiving a complaint. Anyone dissatisfied with a decision made by a labour officer in resolving a complaint may appeal to the Industrial Court.

¹⁰⁰ In the employment context just cause means that an employee has violated the employment contract through some kind of misconduct.

¹⁰¹ R. 21.

¹⁰² R.29 requires that pre-departure orientation be for no less than 14 days, conducted by an organization accredited by the Ministry of Labour, and approved by the Ministry at least seven days in advance. A list of the migrant workers' names, ages, sex and countries of placement must be submitted with the request for approval.

¹⁰³ Rs. 23 and 24.

¹⁰⁴ Sections 12, 13, 14 16, 45, 47, 70, 71, 72, 78 and 93. Note also that compensation for a workplace injury or death may be ordered by a labour officer in accordance with the *Workers Compensation Act* (Cap225), specifically including in respect of a migrant worker who is outside Uganda (see s.36).

Anyone who refuses to comply with a decision of the court can face penalties, including a fine or imprisonment.¹⁰⁵

The *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2021*, provide for any Ugandan migrant worker who is unhappy with an 'action or decision' of a Ugandan recruitment agency to submit a complaint in writing to the Ministry of Labour. The Ministry must then 'summon' the complainant and the recruitment agency and attempt to resolve the matter. If it is not resolved, the complainant must be advised to 'seek redress' from a court. The bank guarantee submitted with the recruitment agency's application for a licence must be used to 'clear any claims' arising from a complaint. It is important to underscore that complaints may only be filed about the actions of a Ugandan recruitment agency (i.e., not the actions of a foreign recruitment agency or an employer, including any exploitation involving forced labour and sexual abuse), and the bank guarantee may solely be used to compensate for the Ugandan agency's actions. Furthermore, from the wording of the regulation, it appears that the worker must travel in person to the Ministry after filing a complaint, and there is no provision for a migrant worker to have translation or representation by anyone, including a lawyer or a trade union, either before the Ministry or in court.

The *Prevention of Trafficking in Persons Act, 2009* is the sole substantive law that provides access to justice for migrant workers in and from Uganda. It criminalizes trafficking in persons, which encompasses the recruitment, hiring, and transfer of any individual 'through force or other forms of coercion' for the purposes of forced labour, slavery, or involuntary servitude. The consent of a trafficking victim is irrelevant. It also criminalizes 'aggravated trafficking,' where the offence is committed by a 'syndicate' that 'organizes or facilitates' the sending of a person for the purpose of the "removal of any body part or organ," if the victim becomes "a person of unsound mind" and/or "suffers mutilation." The punishment upon conviction for trafficking is imprisonment for fifteen years, while for aggravated trafficking, it is life imprisonment. If the offence is committed by a company (such as a recruitment agency), it may also face fines and could be closed, deregistered, and/or disqualified from conducting recruitment activities.

Similarly, any individual who "recruits, transports, transfers, harbours, provides, or receives a person for domestic or overseas employment, training, or apprenticeship with the intention of trafficking" also commits an offence. The penalty includes imprisonment for five years, a fine, or both imprisonment and a fine. Furthermore, any person found guilty of these crimes must pay restitution for the costs of medical and psychological treatment, physical and occupational therapy, rehabilitation, transportation, temporary housing, childcare, and for 're-integration into society' to the victim or anyone who incurred such expenses on the victim's behalf. Additionally, they may also be ordered to pay compensation to the victim for physical injury, emotional distress, pain and suffering, and loss or damage.¹⁰⁶

Every member of the community who is aware of trafficking has a legal duty to report it to the police, and failure to do so is an offence for which the community member may be imprisoned for six months. Interestingly, hiring a victim of trafficking is illegal if the employer knows that the person has been trafficked, and the penalty is imprisonment for ten years. A foreign employer or recruitment agency can be prosecuted for these crimes against a Ugandan victim if the Attorney General consents to such prosecution in Uganda, provided that the employer or recruitment agency has not been prosecuted for the crime in another country. A non-Ugandan national may be extradited for this purpose.¹⁰⁷

The *Prevention of Trafficking in Persons Act* also provides protections for victims of trafficking, including health and social services, medical care, counseling and psychological assistance, safe and appropriate accommodation, and 'material assistance' to be provided by the government. A victim is also entitled to be informed about the different stages of any proceedings, and about her/his rights which include having "his or her views and concerns to be presented and considered at the appropriate stages of the proceedings." A victim of trafficking is entitled to repatriation by the government. If repatriation is "likely to expose the victim to greater risks or to compromise his or her safety," a foreign victim in Uganda may have their residency and/or work permit extended and may receive 'maintenance' to facilitate their role as a witness in court proceedings against the trafficker. In the case of a Ugandan victim abroad, the

¹⁰⁵ Sections 3, 8, 22 and 24.

¹⁰⁶ Sections 15 and 16.

¹⁰⁷ Sections 19 and 20.

Ugandan government may similarly negotiate with the government of the destination country for an extension of the victim's residency and for maintenance, once it is proven that the victim is a citizen or permanent resident of Uganda. These protections are available to all victims, regardless of nationality or gender, and regardless of whether they are in Uganda or have left the country.¹⁰⁸

Finally, although there is no specific law governing the provision of government-funded legal aid in Uganda,¹⁰⁹ Section 15 of the *Advocates Act* (Cap 267) mandates that every advocate provide *pro bono* (free) legal services to 'indigent persons' when requested by the Law Council, or alternatively, pay a fee instead of providing free services. Failure to comply with this section results in the refusal to issue or renew the practicing licence of the advocate.

3. Institutional Framework and Implementation

The External Employment Unit ('EEU') in the Ministry of Gender, Labour and Social Development ('MGLSD') is responsible for registration and management of external recruitment agencies and Ugandan migrant workers. Its online¹¹⁰ External Employment Management Information System ('EEMIS') contains a list of registered recruitment agencies in destination countries, with their registered status and their contact information.¹¹¹ Recruitment agencies and Ugandan job seekers can create accounts to utilize the EEMIS.¹¹² Additionally, there is a searchable job portal for job seekers that provides information on the destination country, the Ugandan recruitment agency (including its registration information and contact details), job title, and a summary of the job description.¹¹³ Finally, there is an inquiry form and a Support Portal that allows individuals seeking assistance to raise a ticket.¹¹⁴

4. Access to Justice Provisions in Ugandan BLAs

Three of Uganda's BLAs were provided by the MGLSD and reviewed for this research: the BLA with the Kingdom of Jordan, signed on 8 Nov 2016 and valid for 5 years (renewable)¹¹⁵ ('Jordan BLA'); the revised BLA with the Kingdom of Saudi Arabia regarding domestic workers, dated 29 March 2023 and valid for 5 years (renewable) ('KSA BLA'); and the MOU with the UAE on the 'Manpower and Domestic Worker Protocol,' signed on 26 June 2019 for a four-year term (renewable) ('UAE MOU'). Additionally, on 2 April 2024, the MGLSD announced on X (formerly Twitter) that the Minister of Gender, Labour, and Social Development Hon. Betty Amongi Akena has signed a new BLA with the State of Qatar that "emphasizes protection of rights and welfare of Ugandan migrant workers." This BLA has not been made publicly available, by the time this report was finalized, and has therefore not been reviewed.

The following are the access to justice mechanisms outlined in the agreements of Jordan, Saudi Arabia, and the UAE.

¹⁰⁸ Sections 11, 12, 14 and 17.

¹⁰⁹ Note that there are *Advocates (Legal Aid to Indigent Persons) Regulations, 2007* that provide for a system of legal aid provided by 'legal aid providers', which is not government funded, nor is legal aid required to be entirely free for the indigent person, but they do not appear to be in force.

¹¹⁰ It is notable that the Ugandan Labour Force Survey found that only 12 per cent of Ugandans over 10 years of age had ever used the internet. 49 per cent have mobile phones, but there was no data on the proportion that may be smartphones. See: n.21 at p.21.

¹¹¹ See <https://eemis.mglsd.go.ug>

¹¹² See <https://eemis.mglsd.go.ug/register-page>

¹¹³ See <https://eemis.mglsd.go.ug/jobs>

¹¹⁴ See <https://helpdesk.eemis.mglsd.go.ug/help-center/public-ticket/create>

¹¹⁵ The Jordan BLA was renewed in accordance with its' terms but is not currently in active implementation.

i. General Recognition of Rights and Obligations

The Jordan BLA provides that Ugandan migrant workers enjoy the same “rights, privileges, protection and dignity” as other migrant workers “in similar occupations”, and that Jordan “shall ensure” that “all Ugandans, including domestic workers enjoy all internationally recognized rights of migrant workers” including freedom from abuse and protection from ‘unlawful confiscation’ of passports.

The KSA BLA requires the KSA to: “ensure the effective implementation” of the contract; “endeavour to establish a mechanism which will provide 24-hour assistance to the domestic workers”; and “endeavour to facilitate the expeditious settlement of cases of violations of the employment contract and other cases filed before appropriate Saudi authorities/courts.”

The UAE requires the parties to cooperate to “ensure safety, security and welfare of the Worker from harassment, discrimination and violence, with special attention to the female Worker.” The UAE is required to “ensure that the welfare of workers and their human rights and dignity [...] are promoted and protected in accordance with the applicable laws of the UAE.”

ii. Contractual Requirements

While the Jordan BLA generally requires “procedure of terminating the contract” and “dispute settlement procedure” to be “clearly indicate[d]” in the employment contract, the KSA BLA annexes a ‘Standard Employment Contract for Uganda Domestic Workers (DW) Bound for the Kingdom of Saudi Arabia’ in Arabic and English (provided side by side for reference). This contract offers significant protections for domestic workers who adhere to international labour standards and addresses many reported violations, including the following obligations of the employer:

- Protect the rights of the domestic worker in accordance with the laws and regulations in effect in the Kingdom of Saudi Arabia.
- refrain from any forms of physical abuse and all types of violence, including physical, verbal, or sexual harassment.
- “[B]ear the consequences of violating the provisions of this Contract by his family members and those residing with him.”
- “[E]nable the DW to have access to the committees for domestic worker’s dispute resolution.”

It also states that the employer is “strictly prohibited” from removing a domestic worker from the home in the event of a dispute, and that both parties “shall endeavour to amicably resolve any dispute arising out of this Contract before escalating the dispute to the Saudi Competent Authorities for litigation and mediation. However, they may immediately resort to Saudi competent authorities for litigation and/or resolution.”

iii. Responsibility for Violations

The Jordan BLA states that the employer, Jordanian recruitment company, and Ugandan employment agency are jointly and severally liable for matters related to the hiring and deployment of Ugandan migrant workers, including the full implementation of the employment contract. The KSA BLA requires the parties (i.e., the governments) to take legal measures against employers, recruitment offices, companies, or agencies for any violation of applicable laws, rules, and regulations in both countries.

iv. Access to Justice Provisions

Both the KSA BLA and the UAE MOE state that assistance or translation services will be provided for Ugandan domestic workers in the event of a contractual dispute.

The UAE MOU outlines a process for ‘dispute resolution in employment’. In the event of a dispute between a worker and an employer, a complaint must be filed with the complaints department of the UAE Ministry of Human Resources and Emiratization, aiming for an amicable settlement. If the dispute remains unresolved within two weeks, it will be referred to the appropriate judicial authorities of the UAE. A migrant worker does not have to pay fees for a court proceeding but must pay for their own lawyer.

v. Requirements for Bilateral Cooperation and Reporting

The Jordan BLA establishes a Joint Committee responsible for implementation, which is required to meet “at least” once a year. Furthermore, Jordan is required to submit quarterly reports on the “status” of Ugandan workers in Jordan.

The KSA BLA requires a ‘national contact point’ for labour matters “to facilitate communication.”

The ANNEX ‘Protocol on Domestic Workers’ to the UAE MOU generally requires the parties to cooperate “to ensure that the rights extended to Ugandan domestic workers under the UAE Law on Domestic Workers and other legislation are duly protected.”



► B. KENYA

1. Constitution of Kenya, 2010

As is the case in Uganda, the legal framework for access to justice is grounded in the *Constitution of Kenya, 2010* ('COK'). International labour standards regarding the right of migrant workers to access justice – whether specifically ratified by Kenya or not – automatically become part of domestic law. Kenya is obligated to enact laws to fulfill these international human rights obligations, and any domestic law that contradicts international labour standards, as well as any actions or omissions by the government that deviate from them, is deemed invalid. The 'national values and principles of governance' that bind every person – including public officers and members of the Judiciary who implement the laws – encompass the rule of law, human rights, social justice, and the protection of the marginalized, in addition to good governance, transparency, and accountability. It is the express duty of the State to 'observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights'.

The Bill of Rights – Chapter Four of the COK – guarantees the following rights for migrant workers:¹¹⁶ the right to non-discrimination based on race, ethnic origin, and birth;¹¹⁷ the right to equal protection and benefit of the law; freedom from slavery, servitude, forced labour, and cruel, inhuman, or degrading treatment;¹¹⁸ the right to have their inherent human dignity respected and protected; the right not to have their freedom arbitrarily denied and not to be subjected to any form of violence; the right to privacy, including the right not to have their possessions seized; the right to fair labour practices, the right to join a union,¹¹⁹ fair remuneration, and reasonable working conditions; and the right to have any legal dispute (including violations of employment or other contracts) decided in a fair hearing before a court or other independent and impartial body.

In terms of access to justice specifically, Kenya is required to "ensure access to justice for all persons" including by ensuring that any fee does not impede access to justice. Every person has the right to institute court proceedings claiming that a right has been denied, violated, or is threatened. The implication of this for migrant workers is twofold: first, the phrases 'all persons' and 'every person' means that it applies regardless of legal status in the country (and therefore applies to Kenyan/Ugandan migrant workers, including irregular migrants), and second, the word 'threatened' means that a migrant worker does not have to wait until their rights have been specifically violated to file a claim in court. Merely the threat of a potential violation is enough to invoke the right to access justice, including the remedy of preventing a potential or imminent violation from occurring.¹²⁰

2. Legislation and Policy

The *National Employment Authority Act, 2016* requires individuals seeking employment to register¹²¹ with the National Employment Authority ('NEA'), which is established to, among other things, monitor the implementation of employment policies,¹²² facilitate cooperation with the government, private sector, informal sector, and foreign governments to improve access to employment, and to "facilitate the employment and placement of job seekers in formal, informal, or any other form of employment,

116 In addition to other rights in the Bill of Rights that are not directly relevant to the topic of this report

117 This specifically extends the rights in the Bill of Rights and application of Kenyan law to migrant workers, unless the law specifically (i.e., in clear wording) limits the law to *citizens* (i.e., as opposed to 'persons' more broadly), which is permissible if it is "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom" (Art.24)

118 The rights to freedom from slavery, servitude and inhuman treatment cannot be limited in any way, for any reason.

119 The *Labour Relations Act* provides that every employee has the rights to form and join a trade union.

120 One of the remedies that a Court may order in human rights proceedings is an injunction, which is an order to stop action from being taken, including before it has started

121 Registration is open to citizens and residents of Kenya and is free for Kenyan citizens (s.20). Registrants who obtain employment through NEA's services are required to inform NEA (s.31).

122 NEA is required to undertake due diligence on prospective private employers to whom it refers job seekers (s.33)

locally and internationally.” The powers of the NEA include entering into cooperation agreements with other countries and taking necessary steps to protect the unemployed against any form of abuse or exploitation.¹²³

The NEA is required to maintain an up-to-date register of all job seekers, including details of their qualifications, areas of specialization or interest, contact information, and personal characteristics such as gender, ethnicity, and whether the individual lives with a disability.¹²⁴ The NEA is also mandated to ‘facilitate’ training on any matters related to Kenyans seeking employment.¹²⁵

The Government of Kenya’s National Action Plan on Business and Human Rights (2020-2025) (the ‘NAP’) emphasizes that “it is imperative for the labour market to be regulated to ensure compliance with constitutional, legal, and international standards,” including SDG 8.8, which focuses on the protection of migrant workers, particularly women migrants.¹²⁶

In line with this goal, the National Policy on Labour Migration (‘Labour Migration Policy’) outlines three priorities of the Kenyan government: the promotion of good governance in labour migration, the protection of migrant workers and the enhancement of their welfare and that of their families, and the optimization of labour migration benefits for development.¹²⁷ The Labour Migration Policy notes that a Task Force was established in 2014 in response to complaints of abuse suffered by Kenyan/Ugandan migrant workers. Recommendations from the Task Force that remain outstanding in 2023 include the establishment of a Migrant Workers Welfare Fund and the creation of an integrated communication strategy on labour migration.¹²⁸ The objectives of the Labour Migration Policy encompass the protection of human and labour rights as well as the promotion of welfare for Kenyan migrant workers, alongside the promotion of equal treatment for Kenyan/Ugandan migrant workers who are lawfully employed in Kenya. Furthermore,¹²⁹ the Labour Migration Policy identifies several emerging issues and challenges, including:

- Kenya has yet to ratify and domesticate several key international conventions, including the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, the *ILO Convention on Private Employment Agencies* (No. 181), and the *ILO Convention on Domestic Workers*.
- There is a lack of coordination among institutions responsible for managing labour migration, which inhibits effective protection of rights and access to resources.
- The full implementation of BLAs has not been achieved due to their limited scope and lack of mechanisms for monitoring their implementation.
- The penalties for the abuse of human and labour rights of migrant workers are too lenient and must be reviewed.
- There is a lack of shelters for Kenyan/Ugandan migrant workers in distress.¹³⁰

Concerning the coordination of labour migration duty-bearers, the Labour Migration Policy confirms that the NEA is the lead agency in a “One-Country-Team-Approach.” This approach will encompass a ‘one-stop-shop’ for labour migration services and a ‘National Inter-Agency Labour Migration Coordination Committee’ with members selected from ‘key stakeholders.’¹³¹

123 Sections 3, 6, 8 and 9.

124 Section 24.

125 Sections 34 and 35.

126 At p.12.

127 Republic of Kenya, Ministry of Labour and Social Protection, *National Policy on Labour Migration* (Sessional Paper No. 5 of 2023) at p. vi.

128 At p.2.

129 At p.3.

130 At pp.11-14.

131 At p.17.

2.1 Rights and Obligations vis-à-vis Employment in Kenya

The *Employment Act, 2007*, defines a migrant worker as “a person who migrates to Kenya with a view to being employed by an employer and includes any person regularly admitted as a migrant worker.” This means that a) Kenyan/Ugandan migrant workers are specifically covered by the Act, and b) by using the word ‘includes’, which in legal drafting means ‘includes but is not limited to’;¹³² it also encompasses workers who are not ‘regularly admitted’, i.e., irregular migrant workers. Furthermore, the definition of ‘employee’ applies to all ‘persons’ employed for wages,¹³³ and third, the definition of ‘contract of service’ includes all employment contracts and agreements, whether oral or in writing, and also whether express or implied¹³⁴ which protects workers in informal employment.

The general principles that govern all employment relationships in Kenya include the prohibition of forced labour. Anyone who uses forced labour or recruits or traffics for forced labour, commits an offence for which they may face a fine and/or imprisonment for up to two years.¹³⁵ Discrimination and harassment by employers, both directly and indirectly, on grounds such as sex and nationality, are also prohibited in all matters related to employment. The Act clarifies that an ‘employer’ under this prohibition includes employment agencies (i.e., recruiters).¹³⁶ Importantly for access to justice, the Act specifically requires the labour Cabinet Secretary, labour officers, and the Employment and Labour Relations Court to promote and guarantee equality of opportunity for migrant workers or their family members lawfully residing in Kenya.¹³⁷ The Act stipulates that a termination is considered unfair unless the employer can demonstrate that the reason for termination relates to the employee’s conduct, capacity, or compatibility, and that proper procedures were followed during the termination process.

The other legislation currently in force that provides substantive protections to migrant workers in Kenya is the *Labour Institutions Act* (Cap 234). The definition of “employee” in this Act substantially conforms to the definition in the *Employment Act, 2007*, set out above, and is authorized to represent the employer. Notably, it also defines an ‘employment agency’ as any person or organization that acts as an intermediary to procure employment for a worker. The *Labour Institutions Act* establishes a wage council that is responsible for making recommendations on minimum wages, which may lead to a wage order.¹³⁸ If an employment contract does not provide for a wage nor provides for less remuneration than the minimum set in the wage order, that minimum automatically applies.¹³⁹

Kenya’s NAP requires the Kenyan government to: a) mandate human rights due diligence, particularly in relation to gender considerations, before granting licences; b) offer ongoing training to government

132 In legal drafting, when a definition uses the term ‘includes’, the part of the definition after the term ‘includes’ are non-exhaustive examples of the broader definition that precedes the term ‘includes’.

133 As opposed to (for example) all ‘citizens’. The meaning of the word ‘persons’ in this context is inclusive of every person – whether citizen or non-citizen, regularly admitted or not – who is employed for wages.

134 Note that it does not include ‘foreign contracts of service’, which pertain to Kenyan migrant workers going abroad. This means that Kenyan migrant workers are not covered by the substantive provisions on terms and conditions of work in Kenya. However, a separate section of the Act is dedicated to such contracts, as discussed below.

135 While this is lenient, there are other laws that are specific to trafficking in persons that provide for significantly stronger punishment, as discussed below.

136 This section 5 uses the term ‘employment policy or practice’ which is defined as including “any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, termination of employment on disciplinary measures.” Further, the employer has the burden to prove that alleged discrimination did not take place.

137 Note that the phrase ‘lawfully in Kenya’ would serve to exclude irregular migrant workers from this protection; however, the Deputy Registrar of the Employment and Labour Relations Court confirmed that this provision would not be enforced by the ELRC to prevent such workers from benefitting under the Employment Act, 2007.

138 The current wage order, published in the *Kenya Gazette* on 1 July 2022 (Special Issue, Gazette Supplement No. 114 at p.831), provides that the minimum wage for ‘general labourers’ including nannies and ‘house servants’ (i.e., domestic workers) is 15,201 Kenyan Shillings per month in the cities of Nairobi, Mombasa, Nakuru and Kisumu (approximately US\$115 as of the writing of this report), and 14,025 Kenyan Shillings per month (US\$108) in other larger towns. In all other areas of the country, the minimum wage for these workers is Kenyan Shillings 8,019 per month (US\$61). Notably, on Labour Day (May 1) 2024 the President directed the Cabinet Secretary for Labour to convene a wage council and increase the minimum wage by no less than 6 per cent, see <https://www.kenyans.co.ke/news/100268-ruto-directs-labour-cs-bore-begin-talks-6-minimum-wage-increase#:~:text=Ruto%20categorically%20asked%20Bore%20to,minimum%20of%206%20per%20cent>

139 Section 48.

duty-bearers involved in regulating businesses regarding Kenya's human rights obligations; c) enhance oversight mechanisms and implement measures to promote safe and equitable labour migration; d) investigate ways to provide legal and psychosocial support services to victims of labour abuses; and e) raise public awareness, especially among women and vulnerable groups, about labour laws and migrant workers' rights.¹⁴⁰

2.2 Rights and Obligations vis-à-vis Labour Migration

The Labour Migration Policy outlines the government's intention to "strengthen labour inspections to eliminate foreign workers in irregular situations in the country; develop and implement repatriation policies; ... [and] establish and maintain an updated database of all foreigners in the country, including migrant workers in irregular situations." In this respect, the word 'eliminate' is quite unfortunate, particularly as it seems clear from the wording of this policy statement that the intended approach will be to remove workers in an irregular situation rather than regularize them, which contradicts the ILO's recommendations.¹⁴¹

The *Labour Migration and Management Bill, 2024 (Bill)* was introduced in the Senate on 21 March 2024. However, as of the time of writing this report, it has yet to be submitted for First Reading, and therefore, it is subject to change.¹⁴² Its stated objectives include promoting the safe, fair, and orderly recruitment of workers, protecting the human and labour rights while promoting the welfare of Kenyan migrant workers, and ensuring equal treatment for migrant workers of other nationalities in Kenya, 'lawfully engaged in employment.' However, in this last respect, the definition of 'migrant worker' is limited to Kenyan citizens, and there are no substantive provisions in the *Bill* that protect migrant workers in Kenya. The *Bill* would allow the government to restrict labour migration to any country if it may jeopardize 'public or State interest or the health and safety of the migrant workers.' Additionally, the *Bill stipulates* that the government must deploy migrant workers to countries where their rights are protected.

The *Bill* also provides for the NEA to be responsible for administering the law at the national level, including programs to safeguard the rights and welfare of migrant workers, conduct public awareness campaigns, receive and investigate complaints from migrant workers and job seekers, and offer an online portal that serves as a gateway for all migrant workers' services, including facilitating the registration of migrant workers and receiving complaints and recommendations from stakeholders and the general public. In carrying out these functions, the NEA would be required to establish offices in counties, improving in-person access to its services.

i. Regulation of Kenyan Recruitment Agencies

The *Labour Institutions Act* regulates employment agencies, which must be registered and are prohibited from charging any fee above the prescribed amount.¹⁴³ Failing to comply with these provisions constitutes an offence.¹⁴⁴ The *Labour Institutions (General) Regulations* stipulate that to be registered as an employment agency, the individual must be a Kenyan citizen or a non-citizen legally residing in Kenya, operating as a registered business, with a tax compliance certificate issued by the tax authorities, a certificate of good conduct issued by the Directorate of Criminal Investigations, and a registered office with an address. The agency must provide a guarantee of one million Kenyan Shillings (approximately US\$7,700 at the time of writing this report). An accreditation certificate is valid for one year.

The *Labour Migration and Management Bill* proposes to regulate private employment agencies, though while earlier clauses provide for the NEA to 'register and regulate private employment agencies' (cl.6), other proposed clauses of the *Bill* establish a separate national-level 'multi-agency committee' for vetting of private employment agencies (cl.8), and still other clauses require employment agencies to obtain

¹⁴⁰ At 17.

¹⁴¹ n.127 at p.21.

¹⁴² This means that there is still a very long process ahead before it may become law, which is not assured. If it does become law, the proposed provisions set out in this report are subject to modification and deletion.

¹⁴³ See the *Labour Institutions (General) Regulations* set out below.

¹⁴⁴ Sections 55, 57, 58 and 59.

an annual 'operating licence' from county governments (cl.14). Private employment agencies do need to be registered (annually) by the NEA (strangely, *after* obtaining an operating licence, even though an application for an operating licence requires proof of registration), with the requirement that agencies have "experience in human resource management", and to provide the NEA with "a duly notarised undertaking for liability for claims or damages for its commissions and omissions" as well as a security bond "for the purpose of repatriation and other entitlements in the event of default by the private employment agency or the employer." The term 'other entitlements' remains undefined, as does 'default', 'making it unclear whether this includes compensation or damages ordered by a labour officer or court for violations of a worker's rights. The *Bill* states that "a private employment agency shall be considered to be a representative of the foreign employee and liable for breach of any term of the foreign contract of employment." As currently worded, this clause renders the recruitment agency liable for the actions of the Kenyan migrant worker (and potentially for the actions of a migrant worker placed in Kenya), rather than the employer, raising questions about the protection available for the worker in cases of violation by a foreign employer. Proposed clause 33 substantially mirrors section 84 of the *Employment Act, 2007*, which provides for the payment of a security bond by a foreign employer or their agent; however, this requirement is discretionary rather than mandatory.

Under the *Bill*, private employment agencies would be responsible for ensuring that contracts comply with 'relevant written law,' BLAs, and MOUs between Kenya and the destination country. They may charge a fee for their services only as specified by regulation. Additionally, they would be required to notify the NEA of any migrant worker in distress. Failure to comply with these requirements would constitute an offence, for which the agency could face up to two years' imprisonment and/or a fine of not more than one million Kenya Shillings. Any other person who arranges for a migrant worker to leave Kenya without entering into a contract with the migrant worker would similarly commit an offence with the same liability for punishment. Further, 'any person' who deploys a migrant worker 'in a job which is harmful to the health, security or dignity of the migrant worker', who withholds the travel documents of a migrant worker before departure. Anyone who substitutes or alters an approved and attested foreign contract of employment without further approval from a labour officer would also commit an offence, facing up to two years' imprisonment and/or a fine of up to three million Kenyan Shillings (approximately US\$23,000 at the time of writing this report). While the *Bill* states that one of the functions of the NEA would be to "receive and investigate complaints from migrant workers," it also contains provisions for 'enforcement' by NEA inspectors to monitor compliance by private employment agencies, allowing the NEA to issue any orders deemed necessary to ensure compliance (Part V). However, the only provision for complaints regarding "any activity of a private employment agency" (cl.46) states that any person may submit a petition to the Cabinet Secretary responsible for labour (i.e., not to a labour inspector/officer, a court, or the NEA). The Cabinet Secretary must "consider" the petition and issue a written decision within one month; however, there is no provision for due process or any guidance on the Cabinet Secretary's scope of decision-making or remedies.

ii. Regulation of Recruitment and Placement of Kenyan Migrant Workers

The *Employment Act, 2007* regulates foreign contracts of service, which must be attested by a labour officer and comply with the following requirements: the contract must be in the prescribed form; the employee must consent to and sign the contract without any fraud, coercion, or undue influence, and there should be no mistake of fact or misrepresentation; the terms and conditions must conform to the *Employment Act, 2007* and be understood by the employee; the employee must be medically fit for the specific job; and the employee may not be bound by any other contract of service during the term of the foreign contract.¹⁴⁵

A foreign employer of a Kenyan migrant worker who does not reside or conduct business in Kenya must provide a security bond with a surety in Kenya approved by a labour officer, in an amount that the labour officer considers reasonable given the circumstances. An 'authorized agent' of the employer who resides in Kenya may be required to provide the bond and be personally bound by it.¹⁴⁶ The penalties include imprisonment and/or a fine.

¹⁴⁵ Sections 82 and 83.

¹⁴⁶ Given that none of the government agencies responsible for labour migration responded to the requests for an interview for this research, it could not be established whether this provision is ever implemented. None of the other interviewees mentioned knowledge of any such bond being required or paid in respect of migrant workers going abroad.

The *Labour Migration and Management Bill*, if enacted, would require that foreign employment contracts be attested by a labour officer. A potential Kenyan migrant worker must register with and obtain a 'clearance certificate' from the NEA or register with the Kenyan mission abroad within three months of employment. Failure to do so would constitute an offence punishable by up to three months of imprisonment or a fine of up to 100,000 Kenyan Shillings (approximately US\$770 at the time of writing this report).

The *Bill* would require the National Industrial Training Authority to develop a training curriculum that includes 'culture and laws of the countries of destination' and 'attitudes on customer service', among other topics, but does not mandate training on workers' rights or guidance on what to do in case of a violation or emergency.

iii. Protection of Kenyan Migrant Workers

The Kenya Diaspora Policy (June 2014) includes strategies for promoting continuous dialogue with Kenyans abroad, enhancing the capacity to provide consular services, negotiating and signing bilateral labour agreements with host countries, conducting pre-departure training for migrant workers, and facilitating the registration of Kenyans living abroad. Regarding migration coordination, the Diaspora Policy's strategies involve strengthening compliance with the Constitution and regional and international standards and laws – particularly by ratifying relevant migration conventions, standards, and legal frameworks – and safeguarding migrants' rights.¹⁴⁷ The Policy acknowledges that challenges faced by the government in ensuring the effective contribution of Kenyans in the diaspora to national development stem from capacity constraints concerning both budgetary allocation and personnel at diplomatic missions, as well as the sourcing and management of data on Kenyans abroad. Additionally, the Diaspora Policy emphasizes an inter-agency approach to upholding the human rights of all migrants, taking into account gender and other vulnerabilities, such as age.¹⁴⁸ In terms of migration information management, the policy advocates for mainstreaming the use of data to enhance efficiency, security, operational capacity, and the protection of human rights.¹⁴⁹

The Labour Migration Policy, adopted in 2023 nearly ten years after the Diaspora Policy commitments mentioned above, acknowledges that Kenyan migrant workers, especially women, face various abuses and challenges. These challenges include difficulties in seeking redress for the abuses they suffer, which are further worsened by a lack of information about their rights, unawareness of existing channels to report abuses and seek redress, and inadequate means of communication to access those channels. In this regard, one of the priority strategies is to develop a labour migration communications strategy, and establish a toll-free line to provide information and receive distress calls.¹⁵⁰

The *Foreign Service Act* defines an 'attaché' as "a public officer other than a Foreign Service officer deployed to a Kenya Mission abroad for specialised duties," but it does not contain any other provisions specific to attachés. However, it provides that the foreign service's functions include the provision of consular services and 'serving and promoting the legitimate interests of Kenyans living abroad.' The Labour Migration Policy notes that, as of 2023, there is one labour attaché in each of Saudi Arabia, Qatar, and the United Arab Emirates, tasked with 'dealing with the welfare of Kenyan migrant workers' and monitoring the implementation of the respective BLAs.¹⁵¹ The Labour Migration Policy states that the government will enhance the protection of migrant workers' rights by posting labour attachés, ensuring 'adequate supervision' of migrant workers' working conditions, establishing safe houses for migrant workers in distress, and undertaking follow-up and post-employment assessments.¹⁵²

The *Labour Migration and Management Bill*, if enacted, would require the Cabinet Secretary responsible for labour to deploy a labour attaché to each Kenyan mission abroad. The attaché's duties would include monitoring the implementation of Bilateral Labour Agreements (BLAs), authenticating job orders,

¹⁴⁷ At p.61.

¹⁴⁸ At p.56.

¹⁴⁹ At p.62.

¹⁵⁰ n.127 at pp.14 and 19.

¹⁵¹ At p.16.

¹⁵² At p.20.

ensuring the welfare of migrant workers, and raising awareness to minimize violations of their rights. They would also visit workplaces and workers' accommodation facilities to assess working and living conditions, address complaints related to migrant workers, coordinate safe house operations, facilitate counselling services for migrant workers, and collect data on Kenyan migrant workers. Additionally, the labour attaché would be tasked with reporting on migrant workers in the country, including any cases against a migrant worker, along with the assistance provided to Kenyan migrant workers in distress, which includes counselling and legal support. The Cabinet Secretary responsible for foreign affairs would be tasked with providing mechanisms to safeguard the welfare of migrant workers, particularly measures for their protection, such as access to legal representation, the establishment of safe houses for migrants in distress, and facilitating information sharing to ensure ongoing engagement between national and county governments and migrant workers.

The *Labour Migration and Management Bill* stipulates that the repatriation of a migrant worker is the 'primary responsibility' of the employment agency, except in cases where the termination of employment is due solely to the fault of the worker. The proposed *Bill* lacks any provisions regarding the proof required to demonstrate that it is 'solely the fault of the worker,' or how migrant workers who leave or are dismissed due to mistreatment by their employer would be protected.

The *Bill* would require any BLA or MOU to be based on specified principles, including the protection of migrant workers' rights, the right to information, adherence to international standards, and the right to redress for violations of migrant workers' rights.¹⁵³ However, there are no substantive provisions on how the right to redress would be implemented, aside from the NEA's responsibility for programs aimed at safeguarding the rights and welfare of migrant workers, and the provision for any person who is 'aggrieved' by an administrative decision – that is, a decision of the government – to appeal to the Employment and Labour Relations Court within thirty days.

Finally, the *Bill* would provide for the establishment of a 'Migrant Workers Welfare Fund' aimed at ensuring protection and assistance for Kenyan migrant workers during their departure, stay in the destination country, and upon their return to Kenya. However, the establishment of such a Fund would be discretionary rather than mandatory. This is, unfortunately, contrary to the Labour Migration Policy, which states that the government will establish a 'contributory fund' that will provide assistance and welfare services to migrant workers, including legal assistance to workers involved in disputes.¹⁵⁴

2.3 Access to Justice for Violations of Employment and Labour Migration Rights

Kenya's NAP states that the government is obligated to protect individuals within its jurisdiction from human rights violations, including those perpetrated by businesses. However, the consultations for the NAP raised concerns about structural and procedural barriers to accessing remedies for these violations. These barriers include limited physical access to courts in rural and remote areas, a low rate of prosecution for offences (which fails to deter the commission of violations), and the high cost of litigation.¹⁵⁵

i. Access to Justice in the Civil Context

The *Labour Institutions Act* empowers labour officers to monitor and enforce labour and employment laws, allowing them to 'institute proceedings' for any violations, including offences under the *Employment Act*. These officers can also file an appeal on behalf of an employee in any civil proceeding concerning "any matter, thing or cause of action arising out of or in the course of the employment."¹⁵⁶ While the contact information for Labour Officers is not available online, enquiries can be submitted via an online contact form, and there is a dedicated email address for complaints.¹⁵⁷ The State Department for Labour and Skills Development also has an X (formerly Twitter) handle @LabourSPKE.

¹⁵³ The proposed *Bill* would not however make it mandatory for the government to have BLAs with destination countries.

¹⁵⁴ n.127 at p.20.

¹⁵⁵ At pp.13 and 15.

¹⁵⁶ Sections 5, 7, 30 and 35.

¹⁵⁷ See <https://www.labour.go.ke/contacts>

As noted above, the *Labour Institutions Act* provides for the minimum wage to be set each year by way of a 'wage order'. A labour officer is empowered to bring a claim to the Employment and Labour Relations Court ('ELRC') on behalf of an employee for the recovery of such a sum. If proceedings are brought against an employer in this respect, the employer may demonstrate that the offence was the fault of another person and that the employer has exercised 'all due diligence' to ensure compliance with the law. In this case, the employer may be acquitted and the other person may be convicted. A labour officer may bring proceedings against the other person instead of the employer if the evidence points to such liability.¹⁵⁸

Section 25 of the *Employment Act, 2007* applies in the event that an employer wrongfully withholds or deducts from an employee's wages, by way of a complaint to a labour officer which can be made within three years of the unlawful deduction. Unlawful deduction of wages is an offence for which an employer is liable to pay a fine and/or imprisonment of up to two years. A complaint of unfair termination may also be made to a labour officer within three months of the termination, but may also be made directly to the ELRC within three years. However, an employee may only file a complaint of unfair termination if they have been employed for at least thirteen months.¹⁵⁹ The remedies that can be awarded by a labour officer or the ELRC for unfair termination include compensation, payment of wages and benefits owed, and reinstatement. The wishes of the employee in this respect must be taken into account.¹⁶⁰

The *Employment Act, 2007* outlines in detail the dispute settlement procedure for violations of the Act. Section 86 states that any complaint regarding a violation, including "any misconduct, neglect or ill treatment of either party or any injury to the person or property of either party," along with other breaches of contractual terms and conditions, may be submitted to a labour officer or to the Employment and Labour Relations Court.¹⁶¹ Critically important and problematic from an access to justice perspective, however, is the fact that the *Labour Migration and Management Bill*, if enacted, would remove section 86 of the *Employment Act* of 2007. Nothing in the proposed *Bill* clearly provides for a substantive substitute for this crucial protection.

Additionally, and critically important for access to justice for Kenyan migrant workers, Section 88 of the *Employment Act, 2007* expressly provides for enforcement of employment contracts made outside Kenya. This includes claims and remedies for any breach or non-performance against both the employers who are parties to the contract and any third parties (such as foreign recruitment agents) that 'violate' a worker's rights under the contract. Contracts made outside Kenya must be attested to by a judge or magistrate and authenticated by the official seal of the foreign court. The process for enforcement remains the same; a complaint can be filed with a labour officer or the ELRC.

The *Employment and Labour Relations Court Act, 2011* (the 'ELRC Act') establishes the jurisdiction of the ELRC to address claims brought under the *Employment Act, 2007*, and the *Labour Institutions Act*, specifically including 'disputes relating to or arising out of employment between an employer and an employee.' The ELRC is mandated to "ensure reasonable, equitable and progressive access to judicial services in all counties."¹⁶² Section 5 of the ELRC Act mirrors Section 5 of the *Employment Act, 2007*, which, as previously mentioned, stipulates that the ELRC has the duty to promote and guarantee equality of opportunity for migrant workers and their family members who are 'lawfully within Kenya.'¹⁶³

The ELRC has the authority to award compensation or damages, to issue injunctions, and to provide 'any other appropriate relief,' including costs. It may utilize 'any appropriate means of dispute resolution' at the request of the parties or on its own motion. According to its rules of procedure, the *Employment and Labour Relations Court (Procedure) Rules, 2016* establish that the ELRC can conduct virtual proceedings and may waive its filing fees, which are set at 200 Kenyan Shillings (approximately US\$1.50) for an individual employee. This waiver applies if the employee applies and can demonstrate to the ELRC that they do not possess sufficient means to pay the fees.

¹⁵⁸ Sections 43, 44, 46, 49 and 54.

¹⁵⁹ Sections 25, 45, 47 and 90. Note that another valid reason is the 'operational requirements of the employer', for e.g., if the employer is downsizing. There are particular requirements that an employer must follow in such circumstances.

¹⁶⁰ Section 49 and 50.

¹⁶¹ Section 86(2) give the Employment and Labour Relations Court exclusive jurisdiction to address such claims, i.e., specifically excludes any other court from determining claims under this Act. The Deputy Registrar, however explained that despite this provision, offences under the Act are prosecuted in criminal courts and not the ELRC.

¹⁶² There are 47 counties in Kenya.

¹⁶³ See comments in this regard above.

The *Legal Aid Act, 2016* states that citizens, refugees, stateless persons, children, and victims of human trafficking are eligible to apply for legal aid if they are indigent and reside in Kenya. Consequently, migrant workers in Kenya, regardless of their legal status, are not entitled to legal aid unless they are victims of trafficking. However, it may be available to indigent Kenyan migrant workers for employment matters in Kenya, such as claims at the ELRC against Kenyan recruitment agencies – based on several factors, including whether the cost of providing legal aid is ‘justifiable’ in light of the potential benefits, and whether resources are available.¹⁶⁴

In terms of legal assistance for Kenyan migrant workers to access justice for violations of their rights, in addition to the commitment to establish a Migrant Workers’ Welfare Fund as noted above, the Labour Migration Policy states that the government will establish a ‘National Reintegration Centre’ under the NEA with centre is mandated to, among other responsibilities, provide psychosocial counselling and legal assistance concerning both ‘planned and forced return.’¹⁶⁵ However, the Policy does not explicitly commit to providing legal assistance for accessing justice in destination countries, and the current *Labour Migration and Management Bill* lacks substantive provisions regarding any right to legal assistance. The only relevant provision is the responsibility of the Cabinet Secretary for Foreign Affairs to generally “put in place measures for the protection of migrant workers, including access to legal representation” (cl. 12(2)(e)). Additionally, there is one further reference to ‘legal assistance’ in the *Bill* concerning the obligations of labour attachés to report annually on “a list of the migrant workers in distress, the nature of distress, and any assistance or services offered by the Kenya mission or the steps taken to resolve the problems of migrant workers, including counselling and legal assistance.” While these provisions imply that legal assistance may be offered to migrant workers whose rights have been violated, it is important to note that the other responsibilities of labour attachés, as articulated in the *Bill* (cl. 11(3)), do not explicitly include any requirement to provide or facilitate legal representation or additional assistance for migrant workers in distress or whose rights have been violated. Their tasks are limited to “attend[ing] to complaints relating to migrant workers” (i.e., not explicitly complaints from migrant workers),¹⁶⁶ along with facilitating counselling services. Furthermore, the *Bill* does not contain substantive provisions regarding reintegration assistance (or any National Reintegration Centre), apart from general references to the responsibilities of the Cabinet Secretary for Foreign Affairs, the NEA, and county governments to develop, implement, and/or support a ‘framework’ and ‘programme’ for reintegration.

Regarding corporate responsibility to uphold human rights, Kenya’s NAP policy actions include training businesses on their duty to respect human rights; requiring them to adopt human rights policies, including providing access to remedies for violations; ‘encouraging’ recruitment agencies to offer legal and psychosocial support to migrant workers who have suffered abuses abroad; and compelling businesses to collaborate with government agencies and other stakeholders to facilitate access to remedies for business-related human rights violations.¹⁶⁷

Furthermore, the NAP’s policy actions regarding access to remedy encompass providing training and support to the judicial, administrative, and oversight bodies on business obligations concerning human rights. This includes prioritizing access to legal aid for victims of business-related human rights abuses, facilitating expeditious and affordable access to the Employment and Labour Relations Court, and enhancing the number and capacity of labour officers to monitor and enforce compliance with labour standards by addressing complaints in a transparent and accountable manner.¹⁶⁸

ii. Access to Justice in the Criminal Context

The *Counter-Trafficking in Persons Act*, which was revised in 2023, criminalizes exploitation, forced labour, and slavery. Exploitation is defined as including forced labour, and subjecting a person to practices similar to slavery. Forced labour is defined as ‘extraction of work or services from any person for the purpose of exploitation’ and slavery is defined as the exercise of the rights of ownership over a person. The offence

¹⁶⁴ Sections 35 and 36.

¹⁶⁵ n.127 at p.23.

¹⁶⁶ For context, another responsibility of labour attachés under the *Bill* would be to report annually on “a list of cases brought against migrant workers ... and information about workers detained or convicted of any offence”.

¹⁶⁷ At 18-19.

¹⁶⁸ At 20-21.

of ‘trafficking in persons’ includes recruiting, transferring, and receiving a person for the purpose of exploitation by means that include deception and the abuse of power or of a position of vulnerability. The consent of the victim is not relevant where such means are used. The offence may be committed in Kenya or internationally across the borders of Kenya. The punishment for trafficking, including for financing, controlling, aiding or abetting trafficking, is imprisonment for a minimum of thirty years and/or a fine of not less than thirty million Kenyan Shillings (approximately US\$230,000 at the time of writing this report) for the first offence.¹⁶⁹ A subsequent conviction is punishable by life imprisonment.

Any individual who “manages, runs or finances any job recruitment agency for the purposes of promoting trafficking in persons” commits an offence that may lead to imprisonment for a minimum of twenty years and/or a fine of not less than twenty million Kenyan Shillings (approximately US\$154,000) for the first offence, and any subsequent conviction is punishable by life imprisonment. Additionally, any person who knowingly and fraudulently acquires any document from government agencies to facilitate trafficking can face imprisonment for a minimum of ten years and/or be required to pay a fine of not less than ten million Kenyan Shillings (approximately US\$77,000). In cases where any of the aforementioned offences result in the victim suffering permanent or life-threatening bodily harm or death, the penalty is automatically life imprisonment.

In addition to the punishments for these offences, a person convicted of any of these offences may be ordered to pay restitution or compensate the victim for medical or psychological treatment costs, transportation, accommodation, and other living expenses.¹⁷⁰ Lastly, when a person who is not a citizen of Kenya is convicted of any of these offences, they are immediately deported after serving their sentence and permanently barred from re-entering the country.¹⁷¹

A victim of human trafficking is exempt from prosecution for being in Kenya illegally and is entitled to a waiver of court fees for any civil claim related to their trafficking. The Advisory Committee on Counter Trafficking is required to ‘formulate plans’ for victims of trafficking, regardless of nationality, to provide them with protection and support, which includes shelter, medical and psychosocial treatment, legal assistance, repatriation (to or from Kenya), as well as resettlement and reintegration. Such plans must be responsive to gender, disability, and age. Moreover, victims of trafficking are permitted to remain in Kenya until legal proceedings are concluded and ‘may’ be eligible to work for gain during their ‘necessary presence’ in Kenya. A National Assistance Trust Fund for Victims of Trafficking is established under the Act.

Furthermore, the *Victim Protection Act* aims to ‘recognize and give effect to the rights of victims of crime’ and must be implemented in line with the constitutional principles of non-discrimination and access to justice. It applies to any victim of a crime in Kenya, regardless of the victim’s nationality, county of origin, or immigration status, as well as any Kenyan citizen who is a victim of crime outside of Kenya. For these purposes, a victim is defined as ‘any natural person who suffers injury, loss, or damage as a result of an offence,’ which includes a migrant worker in relation to offences under the *Employment Act, 2007* and the *Labour Institutions Act*. A court is obligated to ensure that every victim is protected from secondary victimization in all informal, administrative, and judicial proceedings related to the victim.¹⁷²

The *Victim Protection Act* guarantees victims the right to privacy and the right to information necessary to assert their rights under the Act. This includes the rights to be present at the trial concerning the offence against them, to be informed of the charges facing the accused, to have reasonable access to evidence at the trial, to express their views during plea bargaining, and to have their views and concerns considered by the court.

A victim also has the right to protection from intimidation, harassment, corruption, abuse, and further harm. To this end, a victim may receive food and shelter, medical treatment, psychosocial support, police protection, rescue, and placement in a safe location. All support services provided to victims aim to assist them in coping with injury and trauma, and to facilitate their access and participation in the criminal

¹⁶⁹ Facilitating, aiding or abetting the exit of a person from Kenya or the entry of a person in a foreign country for the purpose of trafficking attracts the same punishment (s.7).

¹⁷⁰ Sections 2 to 9 and 13.

¹⁷¹ While the Act does not explicitly provide for extradition, this section 26 implicitly suggests that a person can be extradited to Kenya for offences under this Act.

¹⁷² Sections 2, 3, 4 and 5.

justice process.¹⁷³ Finally, a victim has the right to restitution and compensation from the offender and may also receive financial compensation for expenses incurred due to the loss or injury resulting from the offence in question, payable from the Victim Protection Trust Fund established by the Act.¹⁷⁴

3. Institutional Framework and Implementation

Labour immigration is governed by the State Department of Immigration within the Ministry of Interior in coordination with the national government. Migrant workers coming to Kenya can apply for various types of work permits, with the broadest category being 'Class D', which requires an offer of employment from an employer. The Directorate of Immigration Services also hosts the National Co-Ordination Mechanism on Migration ('NCM'), a government-led interagency platform¹⁷⁵ that has the mandate to facilitate migration management policy formulation, establish and implement a monitoring and evaluating framework, and create and manage a system for information collection and dissemination.¹⁷⁶ The NCM's *Kenya Voluntary Country Review Report on the Implementation of the Principles and Objectives of the Global Compact on Migration* in 2020 noted that the objectives of the NCM's Global Compact Action Plan include: collecting and utilizing accurate and disaggregated data as a basis for evidence-based policies, providing accurate and timely information at all stages of migration, using immigration detention only as a measure of last resort and working towards alternatives, and enhancing consular protection, assistance, and cooperation throughout the migration cycle by increasing capacity through the deployment of consular officers to all Kenyan consulates. Challenges mentioned include the lack of proper coordination in addressing the needs of migrants' access to justice and the absence of a fund to assist Kenyan migrant workers in distress.¹⁷⁷

Labour migration is managed by the NEA, which has an 'Integrated Management System' for recruitment agencies, employers, and job seekers (both local and abroad).¹⁷⁸ This system allows for online registration of Kenyan citizens working in other countries¹⁷⁹ and includes a 'distress reporting form' (for Kenyans only) as well as a toll-free number.¹⁸⁰ This addresses a commitment in the Labour Migration Policy. The NEA's 'Safe and Fair Migration' programme website offers pre-departure, arrival, and 'living and working' information for some common destination countries, including the GCC.¹⁸¹ It provides details on entry requirements, religion and language, dress, currency, transportation, labour laws, working hours, and dispute settlement, along with the address of the Kenyan Embassy in the respective countries. Additionally, there is a specific page titled 'Get help or information in the Gulf' that includes physical addresses, phone numbers, websites, and email addresses for the NEA, the Ministry of Labour, and the Ministry of Foreign Affairs, along with the respective embassies and consulates (including office hours and the names of each Head of Mission), but it does not include social media contacts.¹⁸² A study by the Commission on Administrative Justice ('CAJ') on the situation of Kenyan migrant workers in Saudi Arabia reported that the Association of Skilled Migrant Agencies in Kenya ('ASMAK') alleged that while complaints received from Kenyan migrant domestic workers are channeled to the NEA, "NEA lacks proper or adequate procedures for investigation and follow-up on such complaints."¹⁸³

173 Sections 10, 11, 14 and 19.

174 Sections 23 and 24.

175 Members include the Ministries of Interior, Labour, Foreign Affairs, Health, Youth and Gender, the National Employment Authority, the Kenya National Commission on Human Rights, and the Counter Trafficking in Persons Secretariat.

176 Republic of Kenya, Directorate of Immigration Services, National Coordination Mechanism On Migration (NCM), online: <https://usajili.go.ke/national-coordination-mechanism-migration-ncm/> [accessed 9 January 2024]. Note that the NCM's mandate does not include responding directly to migrant workers' complaints.

177 Republic of Kenya, Ministry of Interior and Coordination of National Government, National Coordination Mechanism (NCM) Secretariat, *Kenya Voluntary Country Review Report on Implementation of the Principles and Objectives of Global Compact on Migration (GCM)* (December 2020).

178 See <https://neaims.go.ke>

179 See <https://neaims.go.ke/NonRegisteredMigrants.aspx>

180 See <https://neaims.go.ke/DistressCallDetailsCaptureForm.aspx>

181 See <https://kmw.nea.go.ke>

182 See <https://kmw.nea.go.ke/get-help-or-information-in-the-gulf/> It should be noted that requests to these embassies for interviews went unanswered.

183 CAJ Report n.49 at p.45. ASMAK also noted that they "forward/escalate complex issues beyond their control to the Commissioner of Labour for resolution" (at p.48).

The Ministry of Foreign and Diaspora Affairs has a page on its website titled 'Advice to Prospective Migrant Workers' that includes 'Guidelines' such as the requirement for recruitment agencies to be registered, accompanied by a list of registered agencies and a warning about recruitment fees. It also states that contracts must be attested by the Ministry of Labour and provides advice for directing complaints about contracts to the Principal Secretary of the Ministry of Labour, though no contact information is provided. The page offers information on what to do upon arrival in the country of employment, including mandatory registration via email with the embassy, a warning to 'fully comply' with labour laws, and instructions to "in the event of breach of contract including delay or nonpayment of wages or compensation thereof, or any complain[sic], inform Kenya's Diplomatic Representation."¹⁸⁴ Additionally, there is an online registration form for Kenyans abroad,¹⁸⁵ an online 'contact us' form and email address,¹⁸⁶ along with an X (formerly Twitter) handle and a Facebook page.

4. Access to Justice Provisions in Kenyan BLAs

The Labour Migration Policy (2023) outlines several priority strategies and actions regarding the 'formulation, negotiation, and implementation' of BLAs as follows:

- Develop a model BLA and customize it for specific country contexts
- Develop and adopt a standard employment contract
- Establish and implement a mechanism for monitoring implementation¹⁸⁷

Kenya's BLA with Qatar was provided to the researcher by KUDHEIHA and reviewed for this research.¹⁸⁸ It was signed on 5 March 2012 and was valid for three years (renewable). The Qatari Ministry of Labour is responsible for "monitoring the implementation" of the BLA, and "in case of any dispute between the employer and the worker arising from the employment contract, the complaint shall be lodged with the Ministry of Labour for amicable settlement. If an amicable settlement is not reached, the dispute shall be referred to the appropriate judicial authorities in the State of Qatar." A standard (two-year) Employment Contract is appended to the BLA, which stipulates that termination may occur only by mutual agreement of the parties and that the employer holds responsibility for "due compensation for occupational accidents, disability or death resulting" during or as a result of work.

The Commission on Administrative Justice reviewed Kenya's BLA with the Kingdom of Saudi Arabia, as part of its report on domestic migrant workers in that country, and noted that there is no clear provision for protection from abusive employers. While the employer must give 30 days' notice of termination, a domestic worker has to give a notice of two months, and there is no requirement to notify any third party of termination. The CAJ's report states that "the BLA only mentions recourse without further elaborating on channels to be followed, including who and how dissatisfied Kenyan Domestic workers should communicate and the hierarchy of appeal."¹⁸⁹

¹⁸⁴ See <https://www.diaspora.go.ke/>

¹⁸⁵ See <https://www.diaspora.go.ke/registration.html>

¹⁸⁶ See <https://mfa.go.ke/contact-us/>

¹⁸⁷ n.127 at p.18.

¹⁸⁸ Unfortunately, this was the only Kenyan BLA that the researcher was able to obtain a copy of.

¹⁸⁹ CAJ Report n.49 at pp.40-41.

► C. GCC STATES

GCC States have laws that prohibit common violations experienced by migrant workers, and punish those violations.

1. Kingdom of Saudi Arabia

The Saudi Arabia Labour Law (SALL, 2005) and its accompanying regulations impose fines on employers who confiscate migrant workers' passports, fail to provide copies of contracts to employees, do not pay salaries on time or withhold them, or force workers to perform tasks not specified in their contracts. In terms of dispute resolution, complaints can be submitted to the 'Amicable Settlement Department' of a Labour Office and conciliation must take place within 21 days, failing which the Labour Office reports the dispute electronically to the Labour Court. For domestic workers, the timeline is shorter, with complaints to be referred to a Committee for 'amicable resolution' within 5 days, failing which the Committee renders a decision within 10 days. This decision can be appealed to the Labour Court. Dispute settlements made through 'amicable resolution' are documented in mediation reports, which are submitted directly to the Labour Court via an online portal. The settlement is automatically registered and enforced, including the issuance of an 'invoice' to the employer for any monetary settlement, which must be paid within five days; otherwise, penalties may be imposed. Furthermore, legal aid may be provided.¹⁹⁰

Saudi Arabia has established a 'Sakan Centre' in Riyadh for female domestic workers in distress, where they receive food, shelter, medical care, and psychological or psychiatric support prior to repatriation. According to the Kenyan Principal Secretary for Diaspora Affairs, who visited the Sakan Centre in January 2023, migrant workers staying there are free to leave and return, and can be visited by the Kenyan Embassy.¹⁹¹

2. United Arab Emirates

The UAE's legal framework requires recruitment agencies to refund migrant workers unlawfully charged fees and prohibits contract substitution. While some migrant workers in the UAE can terminate their contracts by giving notice and compensating the employer (up to three months' salary), allowing them to remain in the country to seek alternative employment, this option is not available to domestic workers. Furthermore, abuse by the employer is not an accepted reason for termination.¹⁹² The UAE has established mobile labour courts staffed by officers from the Abu Dhabi Labour Court that travel around the country, addressing complaints and enforcing wage claim orders 'on the spot'.¹⁹³ Additionally, the Labour Court in Abu Dhabi offers a 'one-day' dispute resolution mechanism for straightforward cases, with jurisdiction over claims up to US\$5000.¹⁹⁴

3. Qatar

Qatar has a specific law governing migrant workers that allows them to leave the country without needing an exit permit from their employer. Law No. 15 Pertaining to Domestic Workers, passed in 2017, imposes fines for violations and provides a process for referring disputes to the complaints system under labour law.¹⁹⁵ As noted earlier, Qatar has also indicated that it will reform the labour migration system to

¹⁹⁰ ILO, *Regulatory Framework Governing Migrant Workers (Saudi Arabia)* (November 2019), online: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/legaldocument/wcms_728262.pdf [accessed 6 April 2024].

¹⁹¹ See: <https://www.capitalfm.co.ke/news/2023/01/mfa-saudi-shelters-domestic-workers-in-distress-except-those-who-stray-into-the-black-market/>

¹⁹² Kennedy Atong, n.5 at pp.31, 33, 34, 35 and 38.

¹⁹³ ILO Fair Recruitment Initiative, n.16 at 30.

¹⁹⁴ Bassina Farbenblum and Laurie Berg, n.54 at p.38.

¹⁹⁵ ILO Fair Recruitment Initiative, n.16 at 24.

implement a government-sponsored system instead of an employer-sponsored one, prohibit passport confiscation, establish a minimum wage applicable to all workers without discrimination, ensure that wages are paid in full and on time, and enhance labour inspections of working conditions.¹⁹⁶ Qatar established a Workers' Support and Insurance Fund that can be used to pay migrant workers' claims for unpaid wages directly according to labour court orders or settlement agreements reached, with the fund then recovering the costs from the employer.¹⁹⁷

► D. RECENT REGIONAL DEVELOPMENTS

Both Kenya and Uganda are Member States of the Inter-Governmental Authority on Development and Partner States of the East African Community. A forum of labour ministers and other government officials from the East and Horn of Africa Region, convened in response to reports of the rescue of one hundred 'young Ugandan women and children' who were being flown to the UAE to work as domestic workers, resulted in a signed agreement for regional cooperation to establish a common platform for engagement with the GCC to harmonize labour migration policies, aiming for safe, orderly, and humane migration of African migrant workers. They also agreed to cooperate in providing diplomatic and consular assistance for migrant workers.¹⁹⁸ In this regard, a Technical Working Group of the Regional Ministerial Forum on Migration ('RMFM') met in October 2023 and agreed on an action plan for strengthening consular, labour attaché, and diaspora collaboration in protecting the rights of migrant workers, which includes communication platforms and case follow-up procedures. The action plan will be presented at the 5th RMFM in March 2024.¹⁹⁹

On April 1, 2022, the ministers responsible for labour and immigration of the EAC Partner States, meeting at the 3rd RMFM, agreed to establish an EAC Regional Consultative Process ('EAC-RCP') on Migration. This process aims to provide a platform for setting the labour migration agenda in the EAC and enhancing networking among the EAC Partner States and with other regional and international platforms for labour migration.²⁰⁰ They also called on Member States to ratify relevant human rights and international labour standards to improve access to protection for migrant workers and to engage with destination countries to do the same.²⁰¹

A two-day conference held in December 2023 by the African Trade Union Migration Network resulted in two resolutions to collaborate with relevant government authorities to eliminate gender-based violence against vulnerable women migrant workers through better management of labour migration.²⁰²

196 Kennedy Atong, n.5 at pp.31, 33, 34, 35 and 38.

197 Bassina Farbenblum and Laurie Berg, n.54 at p.47.

198 IOM, *New Cooperation Agreement Among East, Horn of Africa States Address Overseas Worker Exploitation* (24 January 2020), online: <https://www.iom.int/news/new-cooperation-agreement-among-east-horn-africa-states-address-overseas-worker-exploitation> [accessed 21 January 2024].

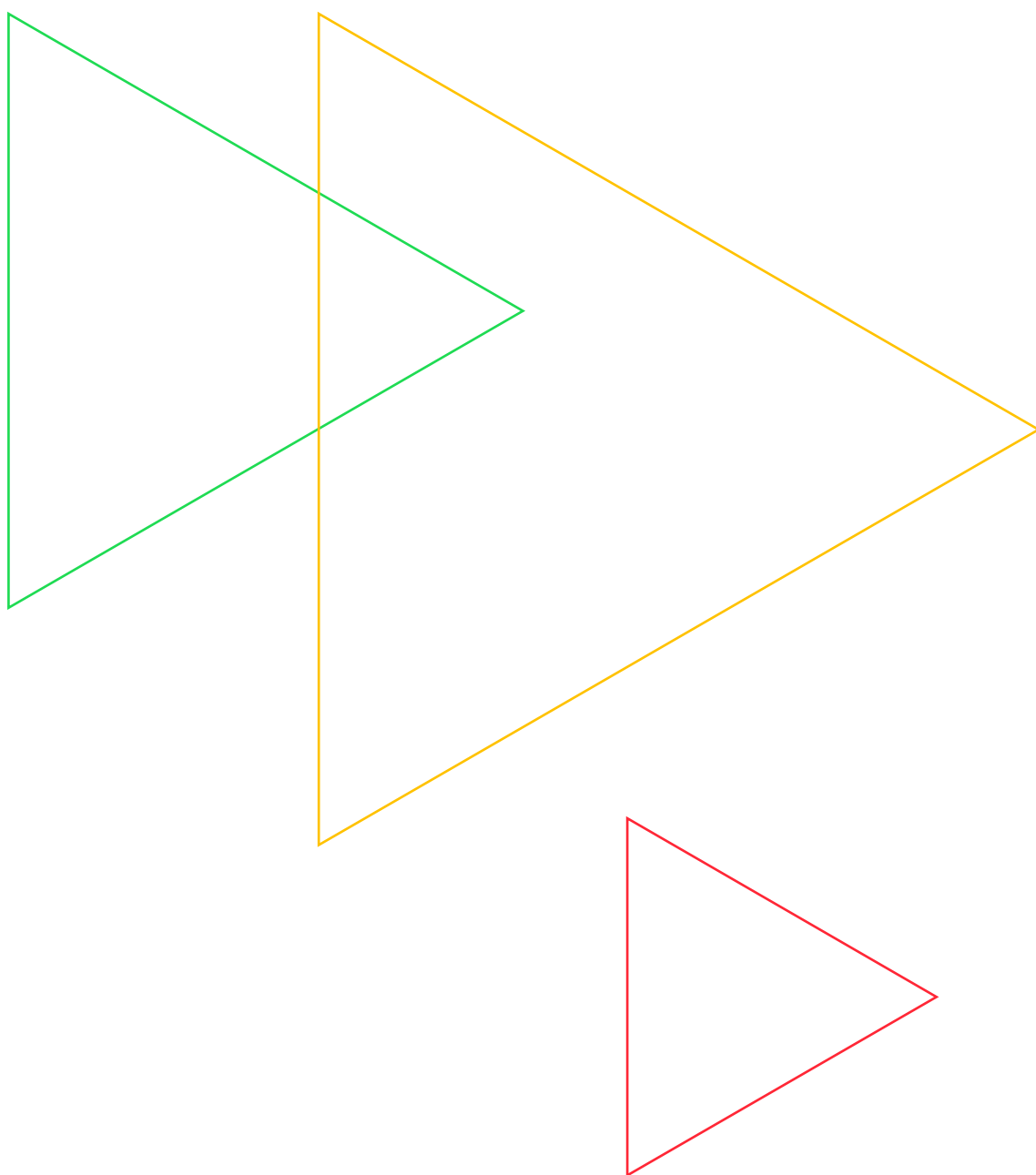
199 IOM, *Consular, Labour Attachés, and Diaspora Collaborate to Protect Migrant Workers* (12 October 2023), online: <https://eastandhornofafrica.iom.int/news/consular-labour-attaches-and-diaspora-collaborate-protect-migrant-workers> [accessed 9 January 2024].

200 EAC, *Ministers endorse establishment of Regional Consultative Process on Migration* (1 April 2022), online: <https://www.eac.int/press-releases/148-immigration-and-labour/2404-ministers-endorse-establishment-of-regional-consultative-process-on-migration> [accessed 9 January 2024].

201 IOM, *New Agreements Foster Regional Cooperation on Migration for Sustainable Development and Migrant Workers Rights in the East and Horn of Africa* (6 April 2022), online: <https://www.iom.int/news/new-agreements-foster-regional-cooperation-migration-sustainable-development-and-migrant-workers-rights-east-and-horn-africa> [accessed 21 January 2024].

202 Aggrey Mutambo, *Migrant workers and GBV: African experts seek solutions* (18 December 2023), online: ITUC-AFRICA <https://ituc-africa.org/Migrant-workers-and-GBV-African-experts-seek-solutions.html> [accessed 8 January 2024].

Most recently, the directors of labour and employment from EAC Partner States approved a new EAC Policy for 2025-2030 on Legal Frameworks Governing Labour Migration. This policy emphasizes key priority areas such as the 'promotion of fair recruitment practices' and the 'protection and empowerment of migrant workers' to assist Partner States in aligning their own labour migration policies with a regional standard.²⁰³



²⁰³ EAC, EAC Partner States approve Labour Migration Policy (23 January 2024), online: <https://www.eac.int/press-releases/148-immigration-and-labour/3004-eac-partner-states-approve-labour-migration-policy> [accessed 15 February 2024].

▶ 4

Situational Analysis



Part One of this chapter identifies the stakeholders involved in ensuring access to justice for violations of migrant workers' rights and analyses their roles in enforcing those rights and assisting migrant workers in accessing justice. Three categories of stakeholders have been identified and analysed: 1) the rights holders – migrant workers and their families; 2) the duty-bearers – government institutions responsible for respecting, protecting, and promoting the rights of the rights holders; and 3) the implementers and supporters/allies – such as employer and worker organizations, along with justice system actors – who assist the rights holders and hold the duty-bearers accountable.

Part Two of this chapter outlines the issues identified by stakeholders regarding the legal framework that supports access to justice for violations of migrant workers' rights, as explained in Chapter III. It specifically addresses the challenges and barriers to implementing this legal framework, along with stakeholders' recommendations on how best to address these issues, challenges, and barriers.

► PART ONE – STAKEHOLDER ANALYSIS

► A. UGANDA

1. Migrant Workers and Allies

In Uganda, the migrant workers interviewed for this project were sourced through the Migrant Workers' Voice organization. All of these migrant workers went abroad with the goal of supporting their families, as they were unable to find work in Uganda due to the very high unemployment rate, particularly among youth. Another push factor motivating Ugandans to seek work abroad, according to the interviewed migrant workers, is the absence of a minimum wage and the government's emphasis on attracting investment into the country by promoting the availability of 'cheap labour'.

The Ugandan migrant workers interviewed all went through what they were at least led to believe was a regular migration process via a recruitment agent, though it remains unclear whether the agent or agency was properly licensed by the government. At least two of the workers paid the agent, although it is also uncertain whether the payment was solely for obtaining a passport or exceeded the amount legally required from a worker. One migrant worker confirmed undergoing training in a piecemeal manner over the course of two months while travel documents were being processed, which included one week of training provided by the Migrant Workers' Voice organization on the rights and obligations of migrant domestic workers. None of the training included guidance on how to seek help in cases of emergency, exploitation, or abuse. At least

one of the migrant workers confirmed receiving no training and no contract, either prior to departing Uganda or upon arrival in the destination country. All three of the female migrant workers interviewed went as domestic workers.

The rights violations – including both labour violations and criminal offences – faced by Ugandan migrant workers range from the withholding or failure to pay proper wages, confiscation of passports, forced isolation or restricted freedom of movement, involuntary changes of employers or working conditions, physical abuse, sexual assault, to organ removal or trafficking. Each worker attempted to access justice with the assistance of the Migrant Workers' Voice organization, experiencing varying levels of government action or inaction, as well as different degrees of success. Only one case, the most extreme one involving trafficking and permanent physical injury, is currently being pursued in the formal justice system. This case faces challenges, including difficulties in obtaining evidence needed to support a prosecution, which may or may not lead to achieving justice for the survivor. Another case, involving sexual assault and unplanned pregnancy, encountered financial barriers and potential interference from unknown actors, leading to the impression that justice has been effectively denied. Their individual stories are detailed in Annex I.

1.1 Migrant Workers' Voice (CSO)

The Migrant Workers' Voice ('MWV') is a civil society organization founded in 2017 by a former Ugandan migrant worker to serve as the 'voice for the voiceless.' The organization is dedicated to advocating for the promotion and protection of migrant workers' rights, empowering them to understand their rights and live and work with dignity and respect, as well as preventing and rescuing them from abuse and exploitation.²⁰⁴ MWV features prominently in the Ugandan migrant workers' stories outlined in Annex I, which contains further details of MWV's efforts to assist migrant workers in accessing justice, including the challenges and barriers they face.

2. Duty-Bearers - Government and Public Institutions

The Ministry of Gender, Labour and Social Development ('MGLSD')²⁰⁵ seeks to protect migrant workers in several ways: first, through negotiating Bilateral Labour Agreements (BLAs); second, through regulating recruitment agencies; third, by providing training and sensitization; and fourth, by collaborating with embassies or missions in destination countries. As outlined in Chapter III, the Ugandan government has several BLAs in place and is in the process of negotiating more.

i. Regulation of Recruitment Agencies

The MGLSD legal framework to support migrant workers relies primarily on regulation of recruitment agencies, for which the ministry is responsible for enforcement. The MGLSD monitors and acts against Ugandan recruitment agencies that operate illegally to the extent of their capacity and resources. In situations where a Ugandan migrant worker experiences a violation of their rights, if it is brought to the attention of the MGLSD, the first action taken is to follow up with the Ugandan recruitment agency.

ii. Training of Migrant Workers and Sensitization of Recruitment Agencies

One measure taken by MGLSD to prevent and protect migrant workers from abuses is to educate them about their rights, primarily through the pre-departure training regulated by MGLSD and developed with tripartite consultation and input. It is currently delivered in nine modules over the course of two weeks. It was noted that module 203 covers labour laws, workers' rights, and employment contracts, while module 207 on Migrant Support Systems aims to inform migrant workers on how to access available supports, including the MGLSD, recruitment agencies, and embassies. Additionally, there is a language module

²⁰⁴ See <https://www.migrantworkersvoice.org/> [accessed 16 January 2024]. The researcher would like to thank Abdallah Kayonde, founder and President of MWV for his great assistance in sourcing migrant workers for interviews.

²⁰⁵ Interviews were conducted with Hillary Talemwa, head of the External Employment Unit, and two Senior Labour Officers. The researcher would like to express appreciation to the interviewees for the frank and honest discussions, in particular acknowledgement of shortcomings.

that teaches the basics in English and Arabic. In this respect, it was noted that workers are encouraged to obtain a smartphone and download a language translation app to continue learning independently. They are also encouraged to record a video if they need assistance and to identify themselves and the Ugandan recruitment agency, enabling traceability of the foreign agency for follow-up actions. Apart from the migrant worker-specific training, the MGLSD also conducts regional sensitization meetings on fair recruitment practices.

iii. Monitoring

The MGLSD has an 'external employment management system' designed to track all regular migrant workers.²⁰⁶ It currently collects data on job categories, destination countries, salaries, and 'demographic characteristics,' including gender and age. The system is being expanded to include information on recruitment agencies, employers, and work locations, as well as to capture complaints and their outcomes. Currently, this information is recorded manually, but the MGLSD is developing an app-based mechanism that will be accessible to all migrant workers with smartphones, allowing them to file complaints via the app or WhatsApp, including by workers' families and the general public. It will flag if a registered person is not using the app so that follow-up can occur, and it will also track complaints while providing timelines for action that generate flags and send reminders, including for tracking matters referred to another ministry or an embassy for action. Currently, timelines exist internally but do not exist outside of the MGLSD. Data collected is analysed internally, and the analysis is communicated to migrant workers during pre-departure training, but it is not otherwise published or disseminated.

iv. Assistance for Migrant Workers

The MGLSD supports access to justice for violations of workers' rights abroad, primarily through its embassies in destination countries, in conjunction with the Ministry of Foreign Affairs. A system is established for migrant workers – including those in irregular situations – to register at the embassy in their country of employment. However, as the embassies are not available at airports when workers arrive, the system depends on workers to register themselves. Additionally, workers who follow the regular labour migration process are also registered with the MGLSD itself.

If the MGLSD becomes aware of a migrant worker in distress or needing assistance- such as when some migrant workers send a video or post on TikTok- the MGLSD contacts the Ugandan recruitment agency to coordinate with the partner recruitment agency abroad, or the Ugandan embassy might reach out to the Ugandan coordinator for the partner recruitment agency. The partner recruitment agency is then responsible for contacting the employer. It has been noted that the Ugandan recruitment agency, in partnership with its sister agency, bears the legal responsibility to ensure the safety of migrant workers in destination countries. However, the MGLSD retains oversight responsibilities, and in some cases, the Ugandan embassy can rescue a worker directly. If the situation involves authorities in the destination country, the options are limited, and judicial processes can be complicated. Nevertheless, the embassy will follow up with the relevant authorities and provide legal aid, including representation and interpretation, for a worker who is a defendant in criminal matters.²⁰⁷ If the issue is not life-threatening or criminal, the embassy can mediate, though this is subject to the laws of the destination country. Consular services are provided equally to both regular and irregular migrant workers, and the MGLSD encourages embassies to document issues and inform the MGLSD so that follow-up measures can be taken, such as contacting the recruitment agency for investigation.

The MGLSD interviewees recognized that providing access to justice for violations of migrant workers' rights poses a challenge. Although the MGLSD has established mechanisms, they are neither effective nor efficient.

²⁰⁶ Data is not collected on irregular migrant workers.

²⁰⁷ One interviewee recounted an incidence of a female migrant worker who did not understand the language well enough and falsely confessed to murder. When her conviction came to the attention of the embassy, the matter was addressed diplomatically through a letter of protest, and she was given a retrial, for which the Ugandan government provided a lawyer and interpretation.

3. Justice Sector

3.1 Ugandan Courts

As set out in Chapter III, the **Industrial Court of Uganda** was established by the *Labour Disputes (Arbitration and Settlement) Act*. Its mandate is to address labour and employment disputes between workers and employers in Uganda. The Industrial Court has two judges and eleven panellists from the MGLSD. The quorum for a labour dispute consists of five members: two judges and three panellists (one neutral, one employer representative, and one employee representative).²⁰⁸

The **High Court of Uganda's Civil Division** has the jurisdiction to handle cases of a civil nature related to Ugandan migrant workers, including claims against Ugandan recruitment agencies. Additionally, the High Court has a special **International Crimes Division**, established in 2008, which tries perpetrators of war crimes and crimes against humanity. However, its jurisdiction also encompasses criminal offences with a transnational aspect, such as trafficking and other offences against or relating to Ugandan migrant workers, under the *Prevention of Trafficking in Persons Act, 2009*.

3.2 Other Justice Sector Actors

Two additional entities were found online that provide access to justice support, including for migrant workers. The first – an initiative of the Government of Uganda – is the **Justice, Law and Order Sector ('JLOS') Governance and Security Programme**, which includes an **Access to Justice Subprogramme** that “seeks to deepen and broaden access to JLOS services through well-targeted interventions aimed at enhancing access to services, [and] mainstreaming human rights.”²⁰⁹ JLOS operates Justice Centres, which are a “one-stop-shop legal aid service delivery model that seeks to bridge the gap between the supply and demand sides of justice by providing legal aid services across civil and criminal areas of justice to indigent, marginalized, and vulnerable persons.”²¹⁰

The other entity, a civil society organization, is **Voices for Labour**, which “defends and promotes Labour rights and standards in all forms of work – both formal and informal sectors – through legal aid and representation, advocacy, campaigns, research, education, and strategic litigation, among other methods.” It has a key focus on labour migration and development, aiming to ensure safe migration and protect migrant workers in Uganda and abroad. VFL engages national lawyers from destination countries to assist with the court process.²¹¹

4. Employers' and Workers' Organizations

4.1 Federation of Uganda Employers

The Federation of Uganda Employers ('FUE') was established in 1960 and continues to be the 'voice of employers' at local, national, regional, and international levels. It supports employers by undertaking policy advocacy, promoting good employment relations, and fostering business development.²¹² The FUE emphasizes that it operates within a tripartite arrangement with unions and government, highlighting that policy formulation is not possible without collaboration among all three parties.

While the FUE's role vis-à-vis migrant workers (and workers in general) is indirect, the FUE works both with employers directly, and through Memoranda of Understanding (MOUs) with other organizations in the

²⁰⁸ See: <https://industrialcourt.go.ug/composition/>

²⁰⁹ See: <https://governance.jlos.go.ug/index.php/serv/registration-services/access-to-justice>. The JLOS is a sector-wide approach adopted by the Government of Uganda, bringing together eighteen institutions with closely linked mandates of administering justice, maintaining law and order, and promoting and protecting human rights.

²¹⁰ See: <https://governance.jlos.go.ug/index.php/projects-and-programs/legal-aid>

²¹¹ See: <https://voicesforlabour.org/what-we-do/>

²¹² See: <https://fuemployers.org/about-us/> Interviewed for this research was Grace Nabakooza, Head of Employment Relations and Legal Services.

labour sector, including the National Organization of Trade Unions ('NOTU') and the Uganda Association of External Recruitment Agencies ('UAERA'). This collaboration involves raising awareness among employers and workers about business and human rights principles and laws, as well as connecting any worker in need of assistance (who comes to its attention) with support from unions or consulates. The FUE conducts outreach and sensitization through radio talk shows in local languages and via social media.

In relation to employment-related claims by workers in Uganda, the FUE's role is to represent the employer. They emphasize timely and informal dispute resolution and conduct compliance audits for employers, followed by relevant sensitization and training to rectify poor practices and ensure that workers' rights are respected. The FUE believes that compliance – in both formal and informal sectors – has improved since the Industrial Court became active in 2014.

With respect to the 'externalization of labour', the FUE's role is limited to advocacy on policy formulation and enforcement, but it does have a call centre in the UAE. The FUE notes that it advocates for beneficial terms and conditions, alongside effective enforcement mechanisms in BLAs. It is also advocating for amendments to the legal framework (in the form of a draft Bill that is under development) to better regulate the 'externalization of labour,' specifically ensuring that destination countries have labour attachés.

4.2 Uganda Hotels, Food, Tourism, Supermarkets and Allied Workers Union/National Organization of Trade Unions

The Uganda Hotels, Food, Tourism, Supermarkets and Allied Workers Union ('HTS-Union') was established in 1957 and has a specific focus on domestic workers, including non-Ugandan national domestic workers in Uganda and Ugandan domestic workers in other countries. It was also one of the founding members of the International Domestic Workers Union in 2018 and is a member of the National Organisation of Trade Unions in Uganda ('NOTU').²¹³

The unions support migrant workers, including those who are going abroad, by educating them about working conditions and their rights, in collaboration with the UAERA. However, the unions note that "it is not [or should not be] the responsibility of the recruitment agency to take care of a worker, where the commitment of the offence is in a different state." They have produced a handbook for migrant workers that explains the rights and obligations of domestic workers in Uganda, including how to join the unions and providing emergency contact information. This handbook is distributed in digital format via phone and in print during trainings and at the airport. Additionally, they maintain WhatsApp groups with workers in destination countries.

The unions collaborate with existing human rights NGOs when they identify a migrant worker in need of assistance abroad.²¹⁴ They also depend on their MOU with UAERA to pinpoint the relevant Ugandan recruitment agency and strive to encourage the agency to insist that an employer correct any breaches of an employment contract or to ensure that the recruitment agency compensates a worker if the employer refuses or fails to do so.

5. Recruitment Agencies

The Uganda Association of External Recruitment Agencies ('UAERA') is an umbrella organization for all licensed external recruitment agencies that source and place Ugandans abroad for work. Its primary objectives are self-regulation to ensure that members adhere to the laws and regulations governing the 'labour externalization sector'.²¹⁵

UAERA strongly believes that access to justice means every migrant worker – whether regular or irregular – should have access to a convenient and affordable redress mechanism *when their rights are abused or violated*. UAERA builds the capacity of recruitment agencies to respect and promote workers' rights,

²¹³ Interviewed for this research was Mauku R. Moses, General Secretary/CEO of the HTS-Union and Treasurer General of the NOTU.

²¹⁴ "We collaborate with anyone and everyone" to assist migrant workers.

²¹⁵ Interviewed for this research was Stuart Oramire, Executive Director.

monitors compliance in Uganda, and coordinates with the Ugandan government in both the country and destination nations through consulates and embassies to track and monitor migrant workers, ensuring their rights are upheld, though it notes that there is currently insufficient consular support. UAERA has deployed coordinators in Saudi Arabia who work with employers and their representatives, as well as consular officials,²¹⁶ to provide the necessary assistance, including legal support.²¹⁷

► B. KENYA

1. Migrant Workers and Allies

In Kenya, the migrant workers interviewed for this project were mainly sourced through the Kamkunji Community Justice Centre in Nairobi, which is a community-managed legal aid and resource centre. This centre undertakes civic education, provides legal aid, and engages in youth activities to enhance access to justice at the grassroots level.²¹⁸

► Kenyan Migrant Workers

All of the Kenyan migrant workers interviewed went abroad in search of better-paying jobs, and, to the best of their knowledge, all utilized recruitment agencies. In this regard, it is notable that recruitment agencies in Kenya often enlist individuals as brokers to recruit their friends and family, particularly from rural areas where unemployment levels are very high, promising potential workers ‘greener pastures’ and ‘bread and honey’.

One individual explained that he was offered 40,000 Kenyan shillings (approximately US\$300) per person by a recruitment agency to ‘mobilize’ women to work in Saudi Arabia. None of the Kenyan migrant workers interviewed received any training. Unlike their female counterparts, male migrant workers pay the recruitment agencies. The female migrant workers ended up working solely as domestic workers, although one of them experienced job substitution after being informed she was sent to work as a teacher. One male migrant worker went abroad to work as a security guard, while the other has held various jobs.

As with the Ugandan migrant worker returnees interviewed in Uganda, the rights violations experienced by Kenyan migrant workers are many and varied, encompassing both labour violations and criminal offences. The violations faced by male migrant workers primarily relate to fees paid to recruitment agencies in Kenya and issues concerning wage payments, including alterations in the expected amount, as well as delays or non-payment. Female Kenyan migrant workers also encountered non-payment or delays, along with contract or job substitutions, passport and mobile phone confiscation, forced isolation/restricted freedom of movement, excessive working hours, hazardous working conditions, and physical abuse. Both female workers ‘escaped’ from their employment situations, and both ended up in detention and then being deported. One of the male migrant workers voluntarily left his employment and paid a financial price for doing so.

While one of the female Kenyan migrant workers sought help from the Kenyan embassy, both male migrant workers tried to seek assistance from either or both authorities in the destination country and the Kenyan recruitment agency; however, none of the Kenyan migrant workers succeeded in these attempts. One male migrant worker attempted to access justice – or at least believed he had – by filing

²¹⁶ UAERA notes that the Ugandan Embassy in Riyadh now has a labour attaché, for which it applauds the government.

UAERA believes that two labour attachés are necessary in each destination country to effectively assist Ugandan migrant workers, as other consular officials are diplomats and not specific to this purpose.

²¹⁷ UAERA will coordinate provision of local legal counsel, and work with the Ugandan government or donors to pay the costs.

²¹⁸ See: <https://grassrootsjusticenet.org/wp-content/uploads/2013/11/kcbonet-brochure.pdf>. The researcher would like to thank Girland Ndirangu, Chairperson of Kamkunji Community Justice Centre and volunteer community paralegal, and Maxwell Onkwani, former migrant worker, for their great assistance in sourcing migrant workers for interviews.

a formal case, but it never reached adjudication, and ultimately, justice was denied. Notably, none of the Kenyan migrant workers believe that justice is accessible in Kenya, at least for anyone without money. Their individual stories are detailed further in Annex I.

► Migrant Workers in Kenya

The community justice workers who assist migrant workers in Nairobi observe that these migrants primarily come from other East or Central African countries, with many – especially women – hailing from Uganda. The migrant workers in Nairobi often arrive undocumented or solely with an ID, find themselves in irregular situations despite free movement protocols that grant them the right to work in Kenya, and are employed in the informal sector.

The rights violations faced by migrant workers in Nairobi seem to be gendered and related to the type of work performed. Female migrant workers, often employed as domestic workers, encounter low or unpaid wages, sexual abuse, and job insecurity. In contrast, male migrant workers usually work as street or small-scale vendors, facing harassment and criminalization from enforcement authorities. Justice for these violations has been achieved through informal dispute resolution supported by community justice workers, alongside the country's move toward decriminalizing so-called 'petty offences.'

1.1 Trace Kenya (CSO)

Trace Kenya is a counter-trafficking NGO based in Mombasa that facilitates safe labour migration and protects migrant labourers from trafficking.²¹⁹ Trace Kenya's core mandate, for which it receives funding, is to prevent and respond to human trafficking and the smuggling of persons. When they learn of migrant workers in distress, regardless of whether they have been trafficked or whether they are Kenyan or non-Kenyan nationals working in Kenya, Trace Kenya will attempt to assist, even if it is simply through a referral.

2. Government and Public Institutions²²⁰

2.1 Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights ('KNCHR') was established by Article 59 of the *Constitution of Kenya, 2010*, with the mandate to promote and protect human rights.²²¹ This mandate encompasses two aspects. The KNCHR's promotion of human rights involves conducting thematic research and advocating for law reform, including the development of policy grounded in a human rights-based approach, which enables KNCHR to address gaps at the institutional level. KNCHR is a member of the National Coordination Mechanism on Migration and the Advisory Committee on Counter Trafficking in Persons. Another aspect of KNCHR's promotion mandate is awareness creation and capacity building for duty-bearers, as well as sensitizing the public and rights holders, specifically through a programme on migration and human rights.

Another aspect of KNCHR's mandate is the protection of human rights. In this regard, it receives complaints, conducts investigations, and establishes arrangements to address violations. For instance, it can intervene in court proceedings to support victims of trafficking, ensuring their rights are protected and that they receive redress. KNCHR aims to empower both State and non-State actors to adopt a human rights-based approach to migration governance.²²² It operates a hotline and a WhatsApp number for

²¹⁹ See: <https://www.tracekenya.org/programs>

²²⁰ Unfortunately, none of the government institutions that are directly responsible for labour migration management in Kenya responded or committed to the researcher's request for an interview.

²²¹ Interviewed for this research was Veronica Mwangi, KNCHR Deputy Director, Research, Advocacy and Outreach, and Chairperson, National Advisory Committee on Counter Trafficking in Persons-Kenya.

²²² See: European Union, Emergency Trust Fund for Africa, 'Kenya: Protecting and promoting human rights for every person' (18 May 2022), online: https://trust-fund-for-africa.europa.eu/news/kenya-protecting-and-promoting-human-rights-every-person-2022-05-18_en [accessed 17 July 2024].

receiving human rights complaints. While it is not specifically for migrant workers, it is accessible to them both in Kenya and abroad. Additionally, it has established a referral mechanism that collaborates with the Diaspora Unit of the Ministry of Foreign Affairs, the Department of Immigration, and the Directorate of Criminal Investigations ('DCI') to address complaints from migrant workers in distress- often presented by their relatives- and to document the incidents and figure out how to provide support.

2.2 Commission on Administrative Justice

The Commission on Administrative Justice ('CAJ') is an oversight agency for public bodies, including those that oversee the recruitment and management of migrant workers. Its mandate is specifically focused on oversight. The CAJ cannot act on complaints directly from migrant workers in distress concerning issues that have arisen in the employment relationship. However, migrant workers can seek the CAJ's intervention when any public duty-bearers in the labour migration sector fail to fulfil their mandate.²²³ The *Commission on Administrative Justice Act* restricts the CAJ's jurisdiction by stating that it may not investigate "a matter relating to the relations between the State and any foreign State" or 'anything in respect of which a legal remedy exists. " Consequently, the CAJ is highly limited in what it can do regarding the actions of consular officials and labour attachés in destination countries.

CAJ's mandate, however, extends to the capacity building of public bodies. To this end, its role is to ensure that public bodies with a direct mandate in the labour migration sector have mechanisms in place for migrant workers to access justice. If a serious failure by the relevant duty-bearers to fulfil their responsibilities in supporting a migrant worker in accessing justice for violations of their rights comes to CAJ's attention, the CAJ would take action by documenting the case and referring it to the appropriate agencies, ensuring they act within their mandates. In such situations, while the CAJ would not represent the migrant worker or their family, it could inform them of their rights, advise on the steps they could take to report the issue, and follow up to ensure that action has been taken on the complaint.

The CAJ also has the mandate to investigate and issue advisory opinions on systemic issues. For example, when violations of Kenyan migrant workers' rights began to come to light, the CAJ conducted an investigation and issued a *Report on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia*, published in October 2022, contains recommendations. Its analysis and recommendations are outlined in Part Two of this chapter.

3. Justice Sector Actors

3.1 Employment and Labour Relations Court

Following the promulgation of the *Constitution of Kenya* in 2010, which requires Parliament to establish certain specialized courts, the Employment and Labour Relations Court was created by the *Employment and Labour Relations Court Act, 2011*.²²⁴ While the ELRC's jurisdiction broadly covers all labour and employment matters in the country, Chapter III notes that one of the ELRC's duties is "to promote and guarantee equality of opportunity for a person who is a migrant worker or a member of the family of the migrant worker, lawfully within Kenya." Although the wording of this section seems to exclude migrant workers in an irregular situation – i.e., those who are not 'lawfully within Kenya' – the Deputy Registrar clarified that, while the ELRC does not have data on whether a migrant worker involved in a proceeding before it is in a regular or irregular situation, the ELRC would uphold an irregular migrant worker's fundamental labour rights because these rights are inherent and thus apply whether a migrant worker is in the country lawfully or not.

► Procedural Access to Justice

Regarding the constitutional right to access justice, Article 48 of the *Constitution* states that any required fee must be reasonable and should not obstruct access to justice. In this regard, the ELRC, like all courts

²²³ Interviewed for this research were Morine Akinyi, Assistant Director Investigations and Faith Njoki, Legal Officer

²²⁴ Interviewed for this research was Deputy Registrar of the ELRC, Honourable Aziza Ajwang, who generously gave of her time despite being on leave.

in Kenya, allows for 'pauper briefs' to be provided by advocates on behalf of indigent litigants at no cost to them, although an application must be made for this, and the initial filing fees for such applications apply. However, the fund for pauper briefs is not under the control of the Judiciary and is primarily designated for indigent participants in criminal proceedings, not civil ones. Consequently, indigent litigants before the ELRC often lack legal representation. If a litigant is unrepresented, the ELC judges will explain the procedure and ensure that interpretation is provided at no cost to the litigant if the person does not understand or speak English or Kiswahili (court proceedings can be conducted in either official language). Judges are not trained specifically on how to handle unrepresented or indigent litigants, and also have no training on the issues or circumstances that are specific to migrant workers, who are 'handled in the same way as any other complainant'. The ELRC will apply the *Victim Protection Act*, which is one of the options available for managing vulnerable litigants and witnesses, such as migrant workers. Additionally, judges receive training on how to handle vulnerable witnesses, including survivors of sexual or gender-based violence.

► Monitoring and Evaluation

With respect to data collection on access to justice factors, the ELRC (as part of the Judiciary's case management and data collection system) does capture data on: utilization of legal aid support, in the form through a register of pauper briefs (see above); whether a claim was subject to conciliation before being brought to or proceeded with in the ELRC;²²⁵ the duration of proceedings (from filing a claim to the final outcome, including any appeal); the final outcome, including cases that may be abandoned (for instance, if a claim is dismissed for want of prosecution); the remedies granted;²²⁶ and whether an outcome is enforced through the extraction of a decree or an application for a warrant of execution. However, data is not specifically collected on migrant worker status and would only be captured if it is evident from the specific type of claim before the Court (case type), which is documented, but the Deputy Registrar is unaware of any claims brought before the ELRC under section 88 of the *Employment Act, 2007* concerning the enforcement of rights and remedies for any breach or non-performance of a lawful contract of service made outside Kenya.²²⁷ Additionally, data is not collected or disaggregated by gender, disability, age, or type of work (job/sector). The collected data is shared with stakeholders, such as those in the Court Users Committees, and published in the Judiciary's annual reports on the State of the Judiciary, detailing how many cases are pending and how many have been finalized during the reporting year. It is also included in the Judiciary's performance evaluation reports.

► Collaboration with Stakeholders

The ELRC collaborates with various stakeholders primarily in two ways. The first is through the Court Users Committees ('CUCs'), which feature representation from labour unions (via the Central Organisation of Trade Unions) and employers (through the Federation of Kenya Employers), alongside government representatives from the immigration department, the Ministry of Labour, the Attorney General, and the Law Society of Kenya (representing advocates), as well as Kituo cha Sheria (representing legal aid), the Chamber of Commerce, and various CBOs. The ELRC can raise topical and policy issues for discussion at the CUC, which convenes quarterly. The second method of collaboration is the 'Bar Bench' for the labour sector, which also meets quarterly and is specifically for lawyers practicing in the ELRC, the entire ELRC bench (all court members), and the ELRC Deputy Registrars. The Presiding Judge of the ELRC serves as the Chairperson of both the CUC and the Bar Bench and may choose to hold joint CUC-Bar Bench meetings if the agenda items are similar. These collaborations can effectively address topical issues within the jurisdiction of the ELC, including access to justice for migrant workers.

²²⁵ The first time a claimant appears before the court, they must inform the court whether conciliation (i.e., an informal alternative dispute resolution mechanism) was conducted by a labour officer. If the parties request it or otherwise agree, the ELRC can also refer them to court-annexed mediation during the proceedings, at any point up to judgment. If mediation is unsuccessful within 60 days, the matter will be returned to the ELRC. If the matter is settled at mediation, it is adopted as a consent judgment of the ELRC.

²²⁶ As part of reliefs granted, the ELRC can order other stakeholders to be involved, if the court identifies it as an access to justice issue. For example, the court can make an order for repatriation through the local immigration office.

²²⁷ For example, if a section of the *Employment Act* that is specific to migrant workers is raised in the claim.

► Case Law

A case search for any judgments related to migrant workers in the Employment and Labour Relations Court database on Kenya Law Reports – the Judiciary of Kenya’s online legal reporting database²²⁸ – returned no matches. Similarly, a search for the term ‘migrant’ in the *State of the Judiciary and the Administration of Justice Annual Report 2019 – 2020* also yielded no results. This is not particularly surprising given the ELRC Deputy Registrar’s statement that she is not aware of any cases resolved before that court, and that data is not collected regarding a worker’s status as a migrant.

4. Employers’ and Workers’ Organizations

4.1 Federation of Kenya Employers

The Federation of Kenya Employers (‘FKE’) was established in 1959 under the *Trade Unions Act*²²⁹ and serves, like its Ugandan counterpart, as the ‘voice of employers in Kenya.’²³⁰ The FKE stands for a labour policy environment that protects the welfare of workers and also supports growth of business. There must be a balance between the rights of workers and the rights of employers. The FKE’s role in this regard has two aspects.

Firstly, the FKE promotes respect for international labour standards by actively engaging with government (it sits on the board of the National Employment Authority), the ILO and unions, and by sensitizing its members on their rights and obligations. It notes in this respect that its members include private employment agencies, but unlike in some other jurisdictions, there is no requirement that they be a member of the FKE, and therefore the FKE’s ability to broadly monitor and support their compliance is limited. The FKE sensitizes and builds the capacity of its members on their role in adherence to conditions of work and fair labour practices, including the importance of regularizing migrant workers. Effective sensitization is key because the FKE sees its members violating the law but they ‘have no clue’ of what the law says, so it is not intentional. Therefore, the FKE is in the process of developing an information hub that employers will be able to access through a portal without having to leave their offices. However, a challenge the FKE faces is obtaining sufficient resources to operationalize this initiative.

Secondly, the FKE strongly believes that social dialogue and coordination is key. The FKE ‘is not afraid of unions’, rather it believes that unions are partners, and that strong unions are good for employees, for business, for the economy and ultimately therefore for the country. The FKE feels strongly that migrant workers should be informed about their right to join a union, which is crucial for protecting their rights.

4.2 Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers

The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (‘KUDHEIHA’) is a trade union registered in Kenya under the former *Trade Unions Act* with the mandate to represent employees engaged in the domestic work, health, hospitality, and education sectors. It is an affiliate of COTU-Kenya,²³¹ which launched a Migrant Resource Centre in May 2023 to measure and analyse migrant data for use in raising awareness of migrant workers’ rights through online campaigns. The centre also provides information to migrant workers on a walk-in basis.²³²

228 See: <http://kenyalaw.org/kl/>

229 Repealed. Now regulated by the *Labour Institutions Act, 2007*.

230 See: <https://www.fke-kenya.org/> Interviewed for this research was Stephen Obiro, Head of Advocacy, Communications and Partnerships, and William Wandera, Labour Migration Programme

231 Unfortunately, COTU-Kenya did not respond to the researcher’s interview request in time to be included in this report.

232 See: <https://cotu-kenya.org/launching-the-migrants-resource-center/>

KUDHEIHA was originally established to represent the interests of domestic workers.²³³ The rights violations outlined by migrant workers in this report mirror those reported to KUDHEIHA by migrant workers, which it seeks to address through sensitization, discussion, and collaboration with the government, the FKE, and other workers' organizations, as well as through advocacy, including litigation and other forms of legal representation.

KUDHEIHA has recently established an association – with leadership including migrant worker returnees – in an attempt to address the challenge of providing legal representation on a *pro bono* basis for migrant workers who are not its members, as well as for returnee members who cannot afford to pay membership dues. The association already has 744 members from the Coast region alone, even though it only started actively organizing in 2023. It hopes to eventually have a presence in destination countries to provide cross-border monitoring and assistance.

5. Recruitment Agencies

While the Association of Skilled Migrant Agencies of Kenya ('ASMAK') did not respond to the request to participate in this research, its submission to the Kenya Senate Standing Committee on Labour and Social Welfare, appended to the Committee's report on its investigation into distressed Kenyan migrant workers in the Middle East during COVID-19,²³⁴ is notable in stating that ASMAK's "[m]embers are at liberty to handle the distress cases with their partner agent, but where the Kenyan agent is unable to resolve the distress amicably, they forward the case to the ASMAK [...] who handle the case with relevant Government authorities, especially [the NEA] and contacts in the diaspora." In this respect, the ASMAK submission indicates that sixty-seven complaints were resolved directly with the employer, aided by the Chairperson of the Diaspora Community in Saudi Arabia, "as the partners were uncooperative." The submission notes that the 'way forward' is for ASMAK to establish an office – with 'government logistics assistance' – in the Kingdom to handle distress cases.

► PART TWO – ISSUE ANALYSIS

► A. UGANDA

i. Protection of Migrant Workers in Uganda

From the unions' perspective, the legal framework regulating labour in Uganda is 'absolutely inadequate.' The unions believe there is a lack of political will to establish strong labour administration and protect workers' rights, particularly the absence of a minimum wage.²³⁵ Additionally, the current revision of the *Employment Act* has removed a provision for labour officers to mediate complaints, necessitating that cases be taken to the Industrial Court for resolution. This creates a barrier to accessing justice, especially for vulnerable workers such as labour migrants. The unions have objected to this change and hope that the provision will be retained in the final law after the President's assent. They are also advocating for the ratification of ILO Convention No. 189.

233 See: <https://www.kudheiha.org/> and <https://www.kudheiha.org/domestic-workers/> Interviewed for this research was Ruth Khakame, Chairperson Domestic Workers, and Endro Otieno, Legal Officer

234 The Standing Committee's findings and recommendations are set out in part two of this chapter.

235 "A government who refuses to set a minimum wage does not care about workers."

ii. Regulation of Recruitment Agencies

Identifying and tracking recruitment agencies that are not registered and licensed is a challenge, as they purposely evade detection, but once identified by the MGLSD takes enforcement measures. As noted in the stakeholder analysis above and elsewhere, the MGLSD is constrained in its ability to take enforcement action against recruitment agencies due to limited capacity and resources. The UAERA does its part to address this issue by sensitizing its members about their legal obligations. Ugandan case law demonstrates that accountability for violations of migrant workers' rights has been addressed in some instances through court claims by migrant workers and State prosecution. However, this type of enforcement is costly and time-consuming. Moreover, success is not guaranteed, as each case depends on various factors influencing the outcome, such as investigators' capacity to collect evidence, the availability and effectiveness of legal representation, and judicial officers' knowledge and understanding of the relevant legal provisions applicable in different circumstances.

iii. Access to Information – Training, Sensitization, Data Collection and Management, Reporting

The MGLSD interviewees acknowledged that two weeks of training is insufficient, emphasizing the need for better sensitization and a longer training period. "Ideally we would have a structured education system that requires studying the language before workers leave, but the push/pull factors make that difficult, many just want to go."

Although unions, the UAERA, and the government work to sensitize migrant workers and there is a Migrant Workers' Resource Centre supported by the ILO that provides services for both outgoing workers and returnees, unions agree that the sensitization efforts are insufficient. Additionally, the Centre's funding has been reduced to the extent that the unions 'can't manage the numbers who need its services' adequately.²³⁶ The unions observe that skilled and professional expatriate workers in Uganda are aware of their rights and will assert them by joining a union or filing complaints with a labour officer. In contrast, lower-skilled workers, particularly in the informal sector, lack knowledge about their rights and are exceptionally vulnerable to exploitation by their employers. This issue also affects Ugandan labour migrants, who do not receive sufficient information or training before being sent to countries with inadequate labour laws, a lack of unions and labour attachés, and insufficient monitoring and enforcement of their rights.

iv. BLAs

The MGLSD acknowledges that given different countries' contexts, including varied cultural diversity, laws and mechanisms, and political will, it is challenging to provide a system that is comprehensive and effective in all contexts, and there is room for improvement. The BLAs provide for Joint Technical Committees where issues are meant to be raised and addressed at a government-to-government level, but it was acknowledged that the JTCs are not working as envisioned, and even when operational no 'concrete solutions' are achieved. It was also acknowledged that government-to-government negotiations exclude the migrant worker. Moreover, the BLAs stipulate that the destination country should ensure access to its mechanisms for resolving disputes, particularly labour disputes, but many destination countries fail to uphold their commitments. "Fifty per cent of the access to justice model we envisaged remains on paper." This has been attributed to a "lack of political will on the other side."

While the unions appreciate the government's initiative to negotiate BLAs – which they emphasize are intended to protect workers – they question whether these BLAs adequately address the prevailing industrial relations context in destination countries, including whether workers can exercise their right to a fair hearing. The unions note that BLAs are negotiated without the involvement of unions to represent the interests of migrant workers, despite the claimed existence of a tripartite arrangement. In fact, the BLAs are not even publicized, leaving workers – the intended or supposed beneficiaries – unaware of the protections they are meant to provide.²³⁷

²³⁶ The HTS Union, for instance, is funded through union dues in an extremely low-paid sector, so they do what they can with their limited pool of resources and seek external support to enhance their capacity for more action.

²³⁷ "If the worker does not know what they say, and the unions don't know what they say, then who do they exist for?"

v. Assistance for Migrant Workers

The MGLSD noted that rescuing a worker directly is challenging, especially in large countries like Saudi Arabia when the worker is far from an urban centre, particularly for domestic workers who are isolated and may lack the means to communicate. Ideally, there would be labour attachés in all destination countries responsible for monitoring and assisting.

Many cases do not come to the attention of the MGLSD until the worker reaches out for assistance. Sometimes, the MGLSD remains unaware until after the worker returns to Uganda and their stories emerge in the media, making it very difficult for the MGLSD to follow up, particularly in criminal matters. It was acknowledged that there is 'no way' to support a migrant worker in staying in the destination country to serve as a witness in criminal proceedings. There are no safe houses in destination countries, although the Ugandan embassy may provide 'a safe place to stay'.

In the FUE's opinion, improvements can be made to the provision of consular services, particularly regarding shared consular services – for instance, collaborating with Kenya's missions abroad to ensure service provision in areas where Uganda does not have a labour attaché.

UAERA notes that there is insufficient documentation and tracking of regular migrants, and no documentation for irregular migrants, particularly concerning monitoring of migrant workers who return to Uganda after experiencing physical and/or emotional trauma or other injustices for which they are entitled to support and redress. There used to be a reception centre to assist returnees, but it was privately operated and is no longer in service.

vi. Access to Justice/Remedy

Regarding access to remedies for violations of migrant workers' rights, MWV emphasizes that, although Uganda's *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations* originally included provisions in the 2005 version for holding licensed Ugandan recruitment agencies liable for "any and all violations of the contract"²³⁸ by the 'foreign principal',²³⁹ this limited liability was removed in the more recent 2021 revised version of the Regulations.²⁴⁰ Instead, the revised *Regulations* stipulate – as a condition of licensing – that a Ugandan recruitment agency must provide an undertaking to "guarantee compliance with applicable international labour standards"; however, it does not specify whose compliance is required or how it will 'guarantee' such compliance. MWV questions how the Ugandan recruitment agency, or the foreign recruitment agency, could or would possess the authority to monitor and/or remove a domestic worker from the employer's home or responsibility, presenting it this way:

"The recruiters, both in Uganda and in Saudi Arabia, are compromised. They are at the mercy of their customer, the employer, who pays the recruiter for their 'goods.' If this was a car that was purchased, would the seller tell the purchaser after one or two days or a week or a month, 'I have seen you driving that car, but it is very dirty, and there is a scratch. Why did you scratch your car? You can't drive a car that is scratched. Please fix it or return it.'"

UAERA also questions the capacity of private sector players to enforce compliance.²⁴¹ The MGLSD noted that, as a condition for approving a job order, Ugandan agencies must have a Ugandan coordinator to serve as a point of contact for all Ugandan migrant workers in destination countries. However, it was acknowledged that such a coordinator is 'attached to the foreign agent.' In UAERA's view, it is the obligation of governments to allocate the necessary capacity and resources for effective compliance enforcement. UAERA believes that the redress mechanisms for violations of migrant workers' rights are limited due to a lack of cross-jurisdictional powers or connections to the justice system in destination countries, where violations most often occur and where migrant workers – as non-citizens – face disadvantages.

²³⁸ See regulation 69 of the 2005 version which provided at (2) "The agency shall also be responsible for the faithful compliance by their foreign principals of all obligations under the employment contract and therefore be liable for any and all violations of the contract."

²³⁹ Being the counterpart recruitment agency, not the employer.

²⁴⁰ It is noteworthy that the 2021 Regulations are difficult to find online – only the 2005 version is available on the Uganda Legal Information Institute database of Ugandan law – and is only accessible in full online through a paid subscription service. This is a significant access to information and rule of law concern.

²⁴¹ "If you leave the rights and welfare of migrant workers to private companies, you encounter problems."

The 2021 *Regulations* further state that the Ugandan agency shall also “be fully responsible for all claims and liabilities which may arise as a result of the use of the licence.” However, it is not clear – at least at this point – whether Nakintu’s missing kidney or MW2’s child (see Annex I) may be regarded as having ‘arisen as a result of the use of the licence.’ In this respect, the MGLSD noted that Ugandan recruitment agencies are required to provide a bank guarantee, which can be utilized for compensation, but acknowledged that the existing system may not provide ‘an effective remedy’ for the worker, as the best remedy a worker may receive is compensation.

Only four court decisions regarding the protection of Ugandan migrant workers, which include substantive legal analysis, were located in the Uganda Legal Information Institute (‘ULII’) ²⁴² online database: two from the High Court Civil Division and two from the High Court International Crimes Division. These decisions are summarized in detail in Annex II and are briefly set out below.

► BOX 1: Ugandan Case Law on Remedy for Violation of Migrant Workers’ Rights

In *Sospeter Tatyabala v. SOC SMG and Dreshak Enterprises Ltd.* (initiated in 2008), a 2015 judgment by the Civil Division of the High Court found that a migrant worker sought compensation from the Ugandan recruitment agency for injuries sustained while performing his duties, as well as for breach of his employment contract and unfair termination by his Iraqi employer. The Court established that the migrant worker had been deemed medically fit to perform the work prior to going abroad and that he returned to Uganda with injuries. Under Ugandan workers’ compensation law, the migrant worker’s injury is covered, making the employer liable for compensating the worker accordingly, which includes the cost of medical treatment in Uganda. Additionally, the Court concluded that the worker’s employment contract had been unfairly terminated. From an access to justice perspective, this case is significant because the Court ordered that both the Ugandan recruitment agency and the Iraqi employer were jointly liable for the remedies, including both compensation and damages. It is important to note that this case was decided based on the original 2005 version of the *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations*.

In *C. et al. v. Attorney General and Uganda Veterans Development Ltd.* (commenced in 2013), a 2020 judgment of the Civil Division of the High Court, the twelve plaintiffs sought compensation and damages from their Ugandan recruitment agency for various contractual and physical abuses, including being assigned different jobs than they had understood, confiscation of their passports, physical abuse, and non-payment of wages. The plaintiffs also brought claims against the Attorney General (who represents the government in legal proceedings) for breaching the government’s legal obligation to establish labour assistance centres and to monitor the employment practices of workers and employers. Several aspects of this decision are significant:

- The Court determined it had jurisdiction to consider these claims, despite the fact that the rights violations experienced by the workers occurred outside Uganda.
- The Court found that the migrant workers were not trafficked by the recruitment agency because they had voluntarily signed contracts and travelled abroad; and
- The Court stated that migrant workers are expected to read and understand the implications and consequences of the contracts they are signing. A breach of contract does not occur simply because a worker failed to read the contract thoroughly before signing.

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²⁴² ULII is a free legal information service provided by the Law Reporting Unit of the Uganda Judiciary and a member of the global Free Access to Law community. It is the official database of laws and other legal information for Uganda.

Unlike the SOC SMG and Dreshak Enterprises case mentioned above, the Court ruled that the recruitment agency is not liable for the abuses endured at the hands of a foreign employer. This finding raises concerns from an access to justice perspective and emphasizes the issue pointed out by the MWV regarding the previous Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, which stated that the Ugandan agency is “liable for any and all violations of the contract.” However, this protection and liability have been removed in the new version. Regarding the claim against the Attorney General, the Court did determine that the government had failed in its duty to protect migrant workers, an important access to justice finding that confirms such an obligation exists.

An interim procedural ruling of the International Crimes Division of the High Court in *Uganda v. Kyalimpa Godfrey and Kunywana Benon* – part of an ongoing criminal prosecution (commenced in 2020) of a recruitment agency for forgery of immigration documents used to facilitate workers’ exit from Uganda – determined that a migrant worker is not considered trafficked if there is no evidence showing that the worker was recruited without consent or under duress. This decision poses challenges from an access to justice perspective, especially considering that the Prevention of Trafficking in Persons Act, 2009 states that the consent of a victim of trafficking is irrelevant.

Another recent (October 2022) interim procedural ruling of the International Crimes Division of the High Court, in *Uganda v. Kato Abubaker Sulaiman et al.* – the criminal case (commenced in 2022) against the Ugandan recruitment agency who sent Judith Nakintu to Saudi Arabia where she became a victim of organ harvesting (see Nakintu’s story in Annex I) – confirmed that this Division of the High Court could grant bail (release from jail pending trial). The importance of this ruling from an access to justice perspective – for the defendants who are presumed innocent until proven guilty – is the fact that the Court noted the slow progress of the case due to protracted investigations in transnational crimes. This confirms Nakintu’s story in which her access to justice – in the form of this prosecution of the Ugandan recruitment agency – is being hampered by the apparently uncoordinated and slow (if any) progress of the investigation of the organ harvesting that occurred in Saudi Arabia, including the challenge of obtaining verifiable evidence of crimes committed in a foreign country.

vii. Stakeholder Coordination and Collaboration

Regarding the coordination of various duty-bearers in the labour migration sector, UAERA acknowledges that both the ILO and the IOM have developed frameworks to engage stakeholders. However, it suggests that these frameworks depend on the government to collaborate with civil society to implement programs at the grassroots level. For instance, support is provided to the government for negotiating BLAs, yet civil society is not included in this process,²⁴³ and the government is currently insufficiently collaborating with and building capacity of other stakeholders who deal directly with migrant workers. UAERA questions how labour unions, employers and recruitment agencies/regulators can be expected to ‘own, support and implement’ in these circumstances, and also how other civil society actors – who are the ones holding the other stakeholders accountable, often on a not-for-profit basis – can be effective when they are engaged in these discussions.

The FUE believes that improved collaboration and coordination among stakeholders (government, unions, recruitment agencies, and employers) in Uganda and destination countries is essential for ensuring enforcement. This could be achieved, for instance, through regular meetings and by addressing issues proactively rather than reactively.

²⁴³ With the exception of after-the-fact validation

viii. Resource Capacity Gaps

The MGLSD noted that the systems and mechanisms they wish or intend to have in place are not as effective as they should be, primarily due to a lack of resources. This situation is true both domestically and in destination countries. One interviewee suggested that to effectively carry out its mandate, the Ministry of Labour should operate as a standalone ministry, with a dedicated division for in-country employment and a separate division for external employment. In this regard, the unions pointed out that the MGLSD is managing seven ministers and over twenty laws, including eight labour laws that govern more than 70,000 employers, all of which should be monitored and enforced by fewer than 100 labour officers and inspectors across 147 local government administrative units.

UAERA also strongly feels that a standalone and substantive law is needed that provides for an independent institution responsible for 'labour externalization' that is adequately resourced.²⁴⁴ In this respect UAERA also noted that the current External Employment Unit in the MGLSD is 'too small, ' lacking a proper administrative framework and sufficient resources to regulate, monitor, and support over 250,000 migrant workers.²⁴⁵ This vast population of migrant workers, with up to 90,000 individuals going abroad each year, becomes increasingly difficult to monitor and support with very limited staff in Uganda and no dedicated personnel in destination countries. The MGLSD has engaged volunteers to address capacity gaps, but their ability to act is limited, making it 'very challenging' to proactively identify traffickers before anyone is trafficked and harmed.

One MGLSD interviewee candidly stated that access to justice would be best improved by following the Philippines' model, where structures are established in the destination country that do not require reliance on the embassy. This includes having an independent office in each region, staffed by at least one labour attaché responsible for in-person monitoring and able to liaise with the embassy as needed. The interviewee acknowledged, however, that 'we will be told that the cost is prohibitive' and that development partners 'have a tendency to not fund human resources (paying salaries).' In this respect, the MGLSD has lobbied Cabinet for increased funding. When the migrant worker regulations were reviewed in 2021, the External Employment Unit attempted to highlight the issue of the non-tax revenue generated through labour migration, emphasizing that it is a critical sector. They hoped that at least 50 per cent of the revenue from this sector would return to it to establish structures and support in destination countries, such as call centres, deployment of labour attachés, and funding local lawyers for legal assistance when cases reach the justice system. To date, however, sufficient funding for such essential access to justice services 'has not been forthcoming.'

Regarding their ability to assist migrant workers, the unions are also pursuing funding to establish a toll-free hotline for migrant workers to access support both in Uganda and from destination countries.

²⁴⁴ Such as Kenya's National Employment Authority.

²⁴⁵ UAERA notes that labour externalization brings in US\$1.7bn in remittances – more than tourism and coffee exports combined – in addition to over 188bn Ugandan Shillings in non-tax revenue in the form of fees for licensing, medicals and good conduct certificates (among other things), but, despite this fact the EEU has a staff of eight, and the entire Ministry of Gender, Labour and Social Development "only gets 0.5 per cent of the national budget every year, with only a portion of that going to labour." UAERA acknowledges that the Ministry recently received a 'bump' but maintains that a 'realistic increase' is needed.

► B. KENYA

i. Enforcement of Protection for Migrant Workers in Kenya

Regarding the current legal framework for protecting migrant workers domestically, KUDHEIHA emphasizes – and the KNCHR agrees – that Kenya has commendable laws but lacks effective implementation. In the KNCHR's perspective, the National Employment Authority and the Labour Inspectorate 'sometimes lack a focus' on rights and access to justice concerning violations. In this regard, the CAJ notes that the *Employment Act, 2007* outlines the rights of labour migrants working in Kenya, but there are concerns about enforcement. For instance, although minimum wages are published each Labour Day, it is widely recognized that most domestic workers do not receive the minimum wage.

The FKE also agrees that there is already a solid legal framework for access to justice in labour matters domestically, which applies to migrant workers in Kenya. While this framework can be improved,²⁴⁶ it is tied to specific employers. For example, a Kenyan employer cannot unilaterally cancel a work permit; rather, the employer must inform the government and explain the reasons for wanting to cancel the permit, after which the relevant authority must invalidate it. This framework could be strengthened by clearly stipulating in the law that work permits remain valid until any complaint – whether raised by the employer or the employee – is finally resolved. This should include an automatic extension if the permit expires before a resolution is achieved. To be fair to employers, there should also be a requirement that a migrant worker must stay in the country until the matter is resolved, or the worker's embassy should guarantee the worker's return if they leave. The FKE notes that there is no legal obligation for a migrant worker's embassy or for the FKE to be notified in cases of legal proceedings between an employer and a migrant worker. Since it is impossible to monitor or provide support without awareness of the situation, this represents a gap that could be addressed.

Specifically regarding labour migrants in irregular situations in Kenya, particularly from neighbouring countries who primarily work in the informal sector, the challenges are greater. The FKE agrees with Trace Kenya and the Kamkunji Community Justice Centre that one of these challenges arises from the context of insecurity (from terrorism/Al-Shabaab), resulting in a 'thin' distinction between irregular migrant workers from neighbouring countries and individuals who may pose a security threat. The default perspective is to view irregular migrant workers (and refugees who are also migrant workers) through this security lens. This creates risks for migrant workers in irregular situations when they seek to complain or access available mechanisms. The KNCHR believes there should be more emphasis on supporting irregular migrant workers to achieve regularization, as they often find themselves in irregular situations due to the complicated processes involved, especially for vulnerable migrant workers in the informal sector. Additionally, the KNCHR advocates for alternatives to the detention of migrants who are found to lack the required documentation.

ii. Accountability of Recruitment Agencies

KUDHEIHA feels that recruitment agencies are not being held accountable under existing laws, and as a result, 'agents have grown big horns because they do not feel legally responsible.' In this respect, KUDHEIHA notes that the *Employment Act* since 2007 has provided for the attestation and enforcement of foreign contracts of service, including the liability of Kenyan recruitment agencies to ensure compliance with those contracts, but 'people are not aware' and the law relies on migrant workers to file complaints. As a result, the provisions are never implemented or enforced, even if a labour officer has attested to the contract as required. KUDHEIHA does attempt to address complaints about pre-departure issues that are brought to their attention and notes that they received twelve cases in 2023. In some cases, KUDHEIHA has filed a claim with the Employment and Labour Relations Court cases, a judge has ordered the parties to 'go away and have serious talks before coming back.' For example, KUDHEIHA has one case in the ELRC against a recruitment agent and a police officer, whom they allege facilitated the agent's fraud, on behalf of seven claimants who were promised certain

²⁴⁶ The access barriers for migrant workers include cost, language, and physical access even if the process is free.

jobs in Dubai but were given other jobs instead, and whose money paid to the agent 'went missing.'²⁴⁷ The agent has agreed to refund the money for four of the claimants, and the case is proceeding to a hearing regarding the other claims.

iii. Access to Information – Training, Sensitization

Many of the interviewees agreed that in Kenya, the legal framework and institutions – such as the National Employment Authority – exist, but the problem lies in a lack of awareness among migrant workers and a failure to provide sensitization by the government. For example, as noted above, most workers, not to mention migrant workers, are unaware that there is even a minimum wage they should receive. Access to information, which is essential for obtaining justice, must be ensured through targeted sensitization.

Trace Kenya believes that the Kenyan population needs to be better educated about labour migration- both outgoing and incoming- the associated benefits and risks, and the rights of migrant workers, including their right to seek remedies for injustices suffered. The KNCHR agrees that raising awareness is crucial, as the vast majority of migrant workers – both migrant workers in Kenya and Kenyan migrant workers – are unaware of their rights. Even if they are aware, they often do not know how to access justice for violations of those rights.

KUDHEIHA notes that passport control is the last point of contact for workers leaving the country, and one would think that better oversight could be done here.²⁴⁸ In this regard, the KNCHR understands that the Ministry of Labour is establishing a migrant worker desk at Jomo Kenyatta International Airport in Nairobi, which it views as a positive initiative, provided that the person working at that desk possesses the knowledge and capability to effectively address any issues they encounter. They must be trained and able to make necessary connections and referrals, with the rights of migrant workers at the forefront.

The Deputy Registrar of the ELRC acknowledges that courts are intimidating to most litigants and are particularly so for vulnerable litigants, such as migrant workers in Kenya, who likely don't understand the system or how to seek services. This would be exacerbated even further for irregular migrants, whose irregular status is likely a complete barrier to their access to justice before the ELRC likely fears exposure and its potential negative consequences. While the ELRC undertakes public sensitization broadly through radio and television, the focus is not specifically on migrant workers, but rather on all court users in general. Additionally, the ELRC has a 'Use of Court' sensitization programme that targets employers more directly. However, the Deputy Registrar acknowledges that it may be 'a bit elitist', and that the ELRC could be 'more intentional' in sensitizing migrant workers about their rights.

iv. Monitoring - Data Collection and Management, Reporting

In the FKE's view, there is currently insufficient structure for monitoring implementation and addressing the gaps between what is on paper and what is happening on the ground. In this respect, data collection on the implementation of the legal framework must be enhanced. If implementation is not measured, it cannot be monitored, and issues will not be addressed. 'When you commit, it must be adhered to. [The government] must be held accountable for their commitment.'

One of the findings of the CAJ's investigation was that the NEA lacked an effective complaints mechanism. Since then, the CAJ has been guiding that process by providing initial training to the NEA on handling complaints. However, the CAJ noted that one of the recommendations in its report that has not been implemented is a proper data management system.

²⁴⁷ Some had paid the agent up to 130,000 Kenyan Shillings

²⁴⁸ KUDHEIHA notes that such oversight should at a minimum include confirming – using the National Employment Authority's online portal – that the recruitment agency sending the worker is accredited.



v. BLAs

Regarding BLAs, the KNCHR emphasizes that not only are they not publicly accessible, but they are also not accessible to the KNCHR itself. The question, therefore, is why? KUDHEIHA also suggests that while there may be BLAs, it has never actually seen one and has only heard about what they entail. The question remains whether they truly protect migrant workers, especially domestic workers, who are the most vulnerable as they work in private households, hidden from view. For instance, the KNCHR questions whether the BLAs even mention a minimum wage.²⁴⁹ In this regard, ASMAK noted in its submission to the Senate Standing Committee that Kenyan domestic workers in Saudi Arabia are paid half of what domestic workers from the Philippines receive and recommended that BLAs adhere to international labour standards.²⁵⁰ The KNCHR has suggested that BLAs be proactively disclosed to the public and that the government agencies responsible for negotiating BLAs ensure that there are provisions for substantive rights that comply with Kenyan employment laws.

To the extent that the BLAs depend on the destination country to address violations of the rights of migrant workers, stakeholders believe they are ineffective. Trace Kenya argues that in many countries where Kenyans seek work, the BLAs act merely as a ‘public relations exercise’ and fail to offer any real

²⁴⁹ The BLA with Qatar does not.

²⁵⁰ Republic of Kenya, Senate Standing Committee on Labour and Social Welfare, *Report on Labour Migration, Senate Study Visit to the Middle East and Policy Implications* (October 2021) [Kenya Senate Committee Report] at ASMAK Annex.

mechanisms to assist migrant workers in distress. KUDHEIHA contends that Kenya should ensure ‘someone is paying attention’ and provide essential support, including inspecting the living and working conditions of migrant workers, as well as offering safe houses and legal representation for both regular and irregular migrant workers. The KNCHR agrees that the BLAs should incorporate structured intervention provisions, including a mechanism for reporting violations and seeking redress, as well as sharing information, utilizing the ‘whole-of-government approach’ outlined in the Labour Migration Policy.

vi. Assistance for Migrant Workers

In response to numerous reports of distressed Kenyan migrant workers in the Middle East during COVID-19, the Kenya Senate Standing Committee on Labour and Social Welfare conducted a study visit and consultations, issuing a report in 2021 with the following observations (among others): “Migrant workers lack formal mechanisms including requisite consular assistance useful for self-improvement, wellbeing and protecting their rights” and “the Committee is concerned about the deteriorating conditions of migrant workers in the KSA. The Committee opines that the processes likely to protect life and the welfare of migrants supersedes all others and therefore must be prioritized.”²⁵¹

The Committee noted that the Cabinet has approved the deployment of labour attachés to the key labour destination countries’, and has also approved establishment of a migrant workers’ welfare fund. Furthermore, the Ministry of Labour and Social Protection intends to operationalize the welfare fund by December 2021, establish safe houses in target destination countries by February 2022, and deploy labour attachés by June 2022.²⁵² Finally, the Committee observes that Kenya is adopting the One-Country-Team Approach applied in the Philippines to build synergy and enhance coordination among government departments and agencies involved in labour migration.

Ultimately, the Committee’s recommended strategies and initiatives include assisting Kenyans in filing cases with the Ministries of Labour in host countries and establishing a toll-free hotline, mobile application, and social media platforms for Kenyan migrant workers in need of assistance.²⁵³

Like the Senate Standing Committee and the CAJ (as well as stakeholders in Uganda mentioned above), Trace Kenya also observes that the ‘sponsorship system’- for example, the *kafalah* system, which is more widespread and used globally in various forms- enables employers to pay money to bring in a migrant worker. This system often subordinates migrant workers, placing them at the mercy of their employers and opening the door to exploitation and abuse. When combined with prevalent racism and misogyny, it frequently leads to African migrant workers, especially female African domestic workers, facing ‘slave-like’ conditions.

Accessing justice for these migrant workers is extremely challenging. First, migrant workers must recognize that they have rights,²⁵⁴ and then possess the resources and courage to seek help. KUDHEIHA understands that police in many destination countries are compromised by employers or recruitment agencies, that access to legal representation is nearly impossible,²⁵⁵ and that Kenyan embassies often lack the influence, capacity, or willingness to provide assistance beyond issuing the necessary documentation for repatriation. While KUDHEIHA acknowledges that the Kenyan government is increasing the number

²⁵¹ *Ibid.* at p.7.

²⁵² Based on all the information gathered for this report, it appears that none of these targets have been met.

²⁵³ Kenya Senate Committee Report, n.250 at pp. 12, 15, 19, 21, 22, 24-25, 27-29, and Annex 2. Based on a report by the Kenya Institute for Public Policy Research and Analysis in June 2023, which recommends fast-tracking the use of technology to improve the existing national labour market information system to record the location and status of Kenyan migrant workers, it appears that this last recommendation has not yet been operationalized. See Meshack Omega and Elizabeth Mang’eni, *Measures to Ensure the Safety of Kenyan Domestic Workers in the Middle East* (30 June 2023), online: Kenya Institute for Public Policy Research and Analysis (KIPPR) <https://kippra.or.ke/measures-to-ensure-the-safety-of-kenyan-domestic-workers-in-the-middle-east/> [accessed 13 February 2024] at Recommendations.

²⁵⁴ KUDHEIHA feels that the pre-departure training is not sufficiently comprehensive, but to the extent that Kenyan migrant workers are told that their rights are protected, when their rights are violated through no fault of their own, that protection is not actually provided and they are left on their own to try to access justice.

²⁵⁵ KUDHEIHA notes that it has never heard of a case where a lawyer in a destination country has effectively held their own government to account for failing to enforce protections for migrant workers. The best KUDHEIHA is aware of is a lawyer negotiating directly with an individual employer but is not aware of any taking a case to court.

of labour attachés in destination countries, it remains concerned about whether they comprehend their protection mandate and possess the interest and capacity to execute it.

Most Kenyan migrant workers do not inform the Kenyan Embassy of their presence in the destination country until something goes wrong. However, in Trace Kenya's experience, when an issue arises, migrant workers are advised by others not to bother calling the embassy, as they believe that they will not receive assistance. Even if they do reach out, without their passport – whether it was confiscated or left behind – they are informed that they must first prove their Kenyan nationality before any help can be provided.²⁵⁶ If they possess their documents and can confirm their identity, the embassy will often direct them to seek financial assistance for a return ticket from their family or NGOs like Trace Kenya. KUDHEIHA has similarly heard from migrant workers or their families that when they contact the Kenyan embassy, they are told they must first prove the migrant worker's nationality, and even if they manage to do this, they hear, 'There are 99 cases ahead of you; just wait.' Despite this, even Kenyans who return home after a negative experience often venture abroad again, hoping that 'this time it will be better,' or feeling pressured by their family or community in Kenya after returning empty-handed, which makes them feel like failures and compels them to try again. This is confirmed by the migrant worker stories detailed in Annex I.

In KUDHEIHA's view, a clear mechanism – such as the Philippines model – is needed to ensure that the labour attachés are 'actually effective.' The KNCHR agrees and states that the Ministry of Labour, working together with the Ministry of Foreign Affairs through labour attachés, should be following up to check and ensure that migrant workers have the expected experience; however, this is not happening. KNCHR notes that technology is available but no one seems to be using it to support migrant workers, and questions 'why is it difficult for labour officers and labour attaches to leverage technology?' Why is there no dedicated mechanism for migrant workers to report violations and get information and support? The FKE concurs that the law should require the embassy to monitor migrant workers through a secure mechanism that allows them to report on their progress, for instance, every six months. If the worker fails to report, action can then be taken to follow up.

The FKE suggests that migrant workers should, as a condition of starting employment in the destination country, first register in person with the Kenyan embassy or, if one does not exist, with the embassy or consulate of another East African country. The employer should then pick up the migrant worker from the embassy rather than from the airport or recruitment agency. This registration requirement should not be left to the discretion or responsibility of the migrant worker. Furthermore, if any action is taken against a migrant worker – whether a legal proceeding is initiated or a report is made to the police or other authority – the legal framework should require that the Kenyan government be not just informed but actively involved.

The CAJ study found that even though the Kenyan Embassy in Riyadh 'collaborates' with the Saudi Ministry of Human Resource and Social Development's dispute settlement department to file labour complaints or write referral letters on behalf of Kenyan migrant workers, there is a 'lack of comprehensive complaints handling and dispute resolution mechanisms.' Furthermore, the "processing of complaints both at the conciliation and court levels are characterised by long delays that are costly in terms of time and resources for the affected migrants." The CAJ's report noted that most of the migrant workers do not know how to contact the Embassy or report violations of their rights, and concludes that "it's evident that complete overhaul of the entire labour export industry is needed."²⁵⁷

vii. Access to Justice/Remedy for Migrant Workers

Trace Kenya explains that, to the best of its knowledge, in many destination countries, a non-national does not have standing in a civil trial for labour disputes. Instead, they must obtain a local 'sponsor' to stand in their place, and that sponsor will say, 'I know the employer is an honourable family, so I will apologize and beg for mercy and to please be allowed to leave.' If the employer brings a criminal complaint against a

²⁵⁶ It was noted that many individuals from neighbouring countries to Kenya utilize Kenyan recruitment agencies or processes to secure employment abroad. They typically depart from JKIA in Nairobi, and if they encounter any difficulties, they seek assistance from the Kenyan Embassy for repatriation since they left from Kenya.

²⁵⁷ CAJ Report, n.49 at pp.2-3, 36, 39, 42 and 43.

worker, such as theft, again, the employer has the power to ‘forgive’ and allow the worker to be released. The non-national is not given the opportunity to refute any allegations or present their case, and Trace Kenya is not aware of any instances where a non-national has had legal representation. Very few who attempt to use the available mechanisms ever achieve a remedy.

viii. The *Labour Migration and Management Bill*

The CAJ notes that the *Labour Migration and Management Bill* aims to implement several recommendations made by the CAJ in its report on migrant workers in Saudi Arabia. These include ratifying ILO Convention 181, establishing a return and rehabilitation centre for migrant workers that offers psychosocial support to returnees, and legally anchoring a Migrant Workers’ Welfare Fund to ensure its operationalization.

KUDHEIHA explains its involvement in the *Bill*’s development, stating that it ‘is not perfect, but it touches the basics’ and includes tools KUDHEIHA can utilize to advocate for accountability. KUDHEIHA appreciates that the *Bill* follows the Philippine model, including provisions for a welfare fund; however, there are concerns regarding whether the fund will be operationalized and, if it is, whether it might become merely a ‘cash cow.’ Consequently, KUDHEIHA has suggested that workers should be represented on the proposed fund’s management committee to ensure proper oversight. Another concern is whether political will exists to pass the *Bill*, let alone to ensure its effective implementation, particularly in light of the failure to implement the existing legal framework effectively.

ix. Access to Justice/Remedy for Migrant Workers in Kenya

One barrier to migrant workers’ access to justice before the ELRC results from the fact that, despite the provision in the *Labour Institutions Act* allowing labour officers to initiate proceedings before the ELRC,²⁵⁸ it ‘does not work that way in practice’. Offences under the *Employment Act, 2007* are not prosecuted before the ELRC; instead, they are prosecuted in a criminal court.²⁵⁹ If an ELRC judge becomes aware of a potential offence under the *Employment Act* during an employment proceeding, the judge may instruct the police or the public prosecutor to investigate, which can happen concurrently with an ongoing ELRC matter.

Another barrier is that, since COVID-19, almost all of the ELRC’s proceedings are conducted virtually, and the entire filing system is electronic, which can be complex for unrepresented litigants lacking legal knowledge. This complexity is particularly intimidating for an unrepresented migrant worker when the employer has legal representation. Even if a proceeding is held in person rather than virtually, the ELRC has only ten registries across the country and about twelve sub-registries to serve all 47 counties. For instance, between Nairobi and Mombasa, there are no ELRC locations, forcing litigants to travel distances of up to three hundred kilometres to access the court physically. These barriers likely explain why most migrant workers do not pursue cases before the ELRC.

Furthermore, the ELRC lacks sufficient judicial officers to manage the caseload without significant delays. The situation is even more severe in magistrates’ courts. It is important to note that the ELRC at the High Court level has jurisdiction over claimants (employees) earning 80,000 Kenyan Shillings or more per month (approximately US\$600 at the time of writing this report). Employment matters concerning those earning less than 80,000 Kenyan Shillings (which includes most migrant workers, if not the majority of workers) are handled at the magistrates’ court level.²⁶⁰ The magistrates’ capacity to manage the caseload is even lower than that of the ELRC, as there are currently 7,000 active cases before magistrates in Nairobi alone, covering all types of matters (civil, criminal, children, commercial).

x. Coordination and Collaboration

A majority of the interviewees agree that the main challenge with the existing legal framework is the effectiveness of various government institutions in implementing their mandates, particularly in terms of coordination among them. Government institutions in the labour migration sector operate in silos,

²⁵⁸ See section 35 of the *Labour Institutions Act*.

²⁵⁹ The ELRC is a civil court.

²⁶⁰ Unless the claim raises a constitutional issue.

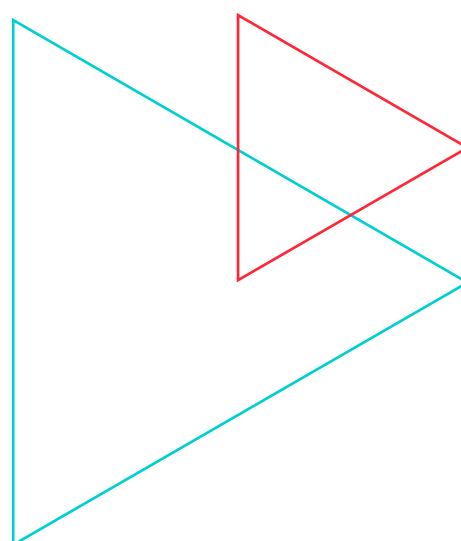
lacking referral pathways – ‘you can’t even find the number of a labour officer’ – and exhibiting poor coordination of oversight and accountability. Even if a migrant worker or their family seeks assistance, they are shuffled from one government agency to another, with little understanding of each agency’s mandate. The CAJ pointed out that ‘the right hand does not know what the left hand is doing,’ and a significant amount of ‘blame game’ is exploited by recruitment agencies. For instance, there is insufficient coordination with the DCI to investigate and hold recruitment agencies accountable for violations.

KUDHEIHA, however, has piloted a project that brings together stakeholders in the Coast region, including the NEA, NITA, KAPEA, KNCHR, legal aid providers, county labour officers, police, immigration officials, local area chiefs, religious leaders, and the media, to conduct community sensitization on safe labour migration and discuss challenges. While this requires a great deal of effort, this engagement has been effective so far, and KUDHEIHA hopes to replicate it in Nairobi with the headquarters of the national institutions.

xi. Resource Capacity Gaps

A systemic issue identified in the process of the CAJ’s investigation was a lack of funding and resources for effective consular assistance. As noted above, effective supervision and service delivery are hindered by this lack of resources. The CAJ’s recommendation in this respect is that a sufficient percentage of the non-tax revenue raised through the management of labour migration should be allocated to ensure the effective functioning of labour offices in destination countries.

The ELRC also faces resource challenges in delivering access to justice in Kenya. In addition to the insufficient number of judicial officers available to handle the caseload mentioned earlier, there is also a lack of resources for training judges who, as noted previously, are not specifically trained in relation to migrant workers. The Judiciary Training Institute has this mandate, but it is responsible for training around one thousand magistrates and judges nationwide and does not possess enough resources to adequately fulfil this mandate. Consequently, the ELRC relies on stakeholders such as development partners for any specialized training. The ILO has conducted a week-long training for ELRC judges on labour conventions and international labour standards, but there has been no ongoing professional development in this area.



▶ 5

Gap Analysis, Best Practices and Recommendations



Despite the existing legal frameworks, as well as the intentions and measures taken by duty-bearers, supporters, and allies to implement them and ensure that the human and labour rights of migrant workers are respected and protected, migrant workers in Kenya and Uganda, along with Kenyan and Ugandan migrant workers, continue to have their rights violated and face significant challenges in accessing justice for these violations. While the efforts of both the Kenyan and Ugandan governments to provide access to justice by establishing systems and measures, collaborating domestically and regionally, and negotiating bilateral agreements are commendable, they have not yet proven effective in providing remedies for the violations suffered by migrant workers.

This chapter analyses the issues and challenges highlighted in previous chapters and builds on the obligations, guidelines, and recommendations of the international and regional normative framework. It also considers various reports, analyses, and best practices from the stakeholders in other jurisdictions to make actionable recommendations for Kenya and Uganda to enhance their legal frameworks and implementation for access to justice for migrant workers. Acknowledging that, in many instances, the legal framework already exists and includes both the rights of migrant workers to access justice and the obligations of duty-bearers to ensure such access, the analysis and recommendations tackle a key concern regarding the review and reform of any legal framework: that implementation is a fundamental component of the adequacy and effectiveness of the laws, regulations, policies, and institutions that make up the framework. As noted by several interviewed stakeholders, rights that exist only on paper are effectively no rights at all.

► 1. Access to Information – Sensitization of Migrant Workers, Training and Capacity Building of Duty-Bearers, Data Collection and Management, Reporting, Coordination and Collaboration

Access to information is a human right and a necessary precondition for the realization of other rights. Migrant workers cannot access justice for violations of their rights if they do not know that they have rights and that they are entitled to remedies for these violations, as noted by many stakeholders interviewed for this report. Likewise, public authorities and judicial officers responsible for monitoring and enforcing migrant workers' rights cannot fulfil these obligations if they are not aware of them. Therefore, the provision of information – which can take the form of training, capacity building, and sensitization/public awareness campaigns, among other measures – is essential. While both Kenya and Uganda acknowledge in policy documents that information is key to protecting workers, and both countries are providing information to migrant workers through various means – primarily mandatory orientation/training programs and websites – it is clear that these measures are neither sufficient nor effective, as almost all stakeholders in both countries noted.

Therefore, **governments and judiciaries committed to protecting migrant workers' rights must re-evaluate how this vital information is disseminated and take proactive measures to improve awareness** among migrant workers and public authorities that provide services to them.

i. Sensitization of Migrant Workers

Many principles and guidelines set out in international, regional, and domestic normative documents encourage and require governments to ensure that migrant workers, recruitment agencies, and employers have access to comprehensive and accurate information about their rights and obligations in the recruitment process and in employment. Furthermore, the domestic legal framework in both countries requires public bodies responsible for labour to conduct sensitization initiatives for workers in general and for migrant workers specifically.²⁶¹

Information and guidance should be targeted, gender-responsive, and presented in a format and language that is accessible and understandable. Preventive awareness information should be directed towards recruitment agencies and employers who are obligated to comply with the laws and regulations pertaining to migrant workers. While it is important that migrant workers are informed of their obligations – which should be incorporated into their orientation and training – **targeted sensitization regarding their rights and the means to seek justice for rights violations must occur at all stages of the labour migration process. This information must be comprehensive, providing detailed guidance – in a language and format accessible to them – on how to obtain assistance and how to file a complaint at each stage.**

► Kenyan and Ugandan Migrant Workers

The situational analysis in Chapter IV clearly indicates that, while pre-departure orientation and training programs mandated by both the Kenyan and Ugandan governments exist, they are either insufficient or not accessed by outgoing migrant workers. Regarding the former, many stakeholders described these training programmes as too short in duration. Although Uganda's training modules cover information on migrant workers' rights and how to access support, the provisions in **Kenya's proposed Labour Migration and Management Bill (Part IV) do not require the training to address workers' rights or the steps to take in cases of violations or emergencies, highlighting a crucial omission that should be rectified.**

Regarding the fact that migrant workers are not receiving the government-mandated training, stakeholders noted that these workers are unable to access such training for various reasons. These include corruption among the recruitment agents and government officials responsible for ensuring that migrant workers attend and receive certification of attendance, as well as the desire of migrant workers to 'just get going' to their destinations. Therefore, **additional means of targeted information dissemination are necessary to supplement the training programs.**

In this respect, both the Kenyan and Ugandan government agencies responsible for labour migration have dedicated websites that contain information for outgoing migrant workers. However, these platforms are passive, requiring the migrant worker to seek out the site, except perhaps to the extent that workers may be informed of it during orientation, which is unknown. Aside from providing contact information for embassies and an online inquiry form, they are entirely inadequate in explaining workers' rights and how to access justice for violations.

► Migrant Workers in Kenya and Uganda

Regarding incoming migrant workers, there is virtually no targeted and systematic sensitization from the government on their rights and obligations as labour migrants in Kenya and Uganda. Any information they receive seems to come primarily from the community level, provided by trade unions, NGOs, or CBOs. The Kenyan *Employment Act of 2007* addresses situations involving irregular employment. While

²⁶¹ For example, Kenya's *Labour Migration Policy*, and the NCM's Global Compact Action Plan commit to providing accurate and timely information at all stages of migration. Kenya's proposed *Labour Migration and Management Bill* would require the NEA to conduct public awareness on safe, regular and orderly labour migration.

no such workplace notice is required of Ugandan employers, the *Employment Act, 2006* requires labour officers to sensitize employers and workers on compliance with the law. Both the Federation of Kenya Employers and the Federation of Uganda Employers facilitate awareness among their members about their legal obligations; however, in the absence of clear and enforceable mandates for employers to communicate this information to employees, it is unlikely to happen except perhaps in an informal or reactive manner. Kenya's National Action Plan also stipulates that the government should raise awareness among the public, especially women and vulnerable groups, about labour laws and migrant workers' rights. It remains unclear how effectively this occurs in either country, but it is evident that systematic information is not reaching migrant workers in the informal sector.

RECOMMENDATION 1: Dissemination of information on rights and complaints mechanisms systematic, ongoing, proactive and targeted

Accordingly, **both governments need to be more proactive in informing migrant workers – both in Kenya and Uganda, as well as in destination countries – about their rights and how to access complaint mechanisms.** In this regard, it is concerning that the current version of the Ugandan *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations*, which outlines the rights and obligations of migrant workers along with the responsibilities of duty-bearers, cannot be easily found online. **This issue should be addressed immediately by ensuring that the *Regulations* are made publicly available, widely disseminated, and easily accessible, particularly in the ULII database.**

The responsible authorities, such as labour ministries, should systematically and proactively disseminate gender-responsive information to migrant workers on an ongoing basis. This **information should be tailored to workers in different sectors and types of employment** by:

- Ensuring that labour officers comply with their obligations by implementing or enhancing accountability mechanisms, and that information on workplace rights and obligations is disseminated according to the relevant requirements of the respective *Employment Acts*.
- Supporting worker and employer organizations, NGOs, and CBOs in providing information and training community paralegals and migrant worker advocacy and support groups to do the same.
- Training local government administrators, including local area chiefs, about the labour migration process and the rights of migrant workers in relation to recruitment agencies and employers, as well as access to justice mechanisms and how to navigate them (such as contact information for the local labour officer and legal aid providers) and requiring them to disseminate this information in their jurisdictions.
- Effectively utilizing social media to engage with migrant workers, along with their families, friends, and supporters.

Regarding social media, using platforms to raise awareness and share vital information about rights, access to justice mechanisms, and how to seek assistance – such as the requirements for migrant workers to register with the NEA/MGLSD or embassy, as well as the availability of toll-free helplines, online distress reporting forms, migrant worker apps, and WhatsApp groups – is essential in addressing the challenges faced by migrant workers, particularly women domestic workers. Leveraging social media enables proactive information dissemination throughout the labour migration process, including reinforcing or updating details provided in training programmes. **To effectively harness social media for this purpose, the following strategies can be applied:**

- Create engaging and informative content, utilizing all platforms – especially Instagram and TikTok – along with multimedia formats such as short videos, infographics, and testimonials.
- Collaborate with influential figures, trade unions, and various organizations – including local groups and influencers in both origin and destination countries – to amplify the message. In this regard, influencers can help reach a broader audience, while former and current migrant workers can add credibility to the information shared, for example through organized interactive challenges and campaigns that encourage users to share their experiences and tips.

- Utilize social media platforms like TikTok to promote toll-free helplines and other means of obtaining assistance through sponsored content, dedicated landing pages, and in-app notifications.
- Maintain an active presence on social media platforms by regularly sharing updates, success stories, and resources.
- Respond promptly to enquiries, comments and messages to foster engagement and trust.²⁶²

Duty-bearers, such as labour officers, labour attachés, legal aid providers, and courts, should be encouraged to leverage social media to ensure that migrant workers are informed about the access to justice services they provide and how to access those services.

In Kenya, the current Part IV of the *Labour Migration and Management Bill, 2024* should be amended to explicitly require that the training of migrant workers includes instruction on workers' rights and protocols for addressing violations or emergencies, including how to access a complaints mechanism.

Furthermore, to prevent violations, the responsible authorities should **systematically and proactively disseminate gender-responsive information to recruitment agencies and employers** at all points of contact with them, including through:

- Licensing and registration systems and requirements.
- Provision of support to the FKE, FUE, UAERA, ASMAK (and other organizations such as chambers of commerce and business associations) to ensure widespread training and sensitization of their members.
- Training of local government administrators, such as local area chiefs, on the obligations of recruitment agencies and employers and requiring them to disseminate the information in their areas of jurisdiction.
- Use of both traditional and social media to ensure the widest possible outreach.

ii. Training and Capacity Building of Duty-Bearers

As noted by many stakeholders in Chapter IV and Annex I, frontline public officers and other implementers who interact directly and regularly with migrant workers, such as judges, magistrates, lawyers, paralegals, labour officers, police and immigration officials, local administrators, such as area chiefs, consular officials, and labour attachés, are not sufficiently aware of the rights of migrant workers and the corresponding obligations of duty-bearers to assist workers in complying with the law (such as residency and work authorization requirements) and accessing justice for violations of their rights. As mentioned earlier, Kenya's NAP requires the State to continuously train judicial, administrative, and oversight organs responsible for regulating businesses on Kenya's human rights obligations.

RECOMMENDATION 2: Duty-bearers should have access to systematic and substantive training and capacity-building

Systematic and substantive training and capacity building should therefore be undertaken by the relevant government bodies and judiciaries in both countries to ensure that public and judicial officials are aware of the rights of migrant workers – particularly those commonly in irregular situations, such as the rights to establishment and residence for EAC nationals – and their corresponding obligations to protect and enforce these rights in a gender-responsive manner. This includes addressing specific violations that are commonly or exclusively suffered by migrant workers and recognizing the intersecting vulnerabilities that characterize certain jobs, such as domestic workers and those engaged in the informal sector. The meaning and requirements of access to justice for violations of migrant workers' rights – including the different mechanisms and referral pathways, and the right to a remedy – should also be included.

²⁶² Elizabeth (Liz) Anyango, Communications and Social Media Expert, see @mclizanyango.

The Philippines' model of capacity building for OWWA Case Officers in case management (see Annex III) is a best practice that could be followed and adapted to the relevant duty bearer or context, particularly for labour officers and for consular officials or labour attachés in destination countries. Training should not be a one-off but should be provided at regular intervals to ensure that 'new' officials are sensitized and 'old' officials are refreshed. This could be facilitated using a 'training of trainers' approach, whereby those receiving the training – for example, in the capital city – are responsible for training other duty-bearers in their respective areas of jurisdiction or responsibility. Training materials should be publicly available and disseminated for access to information of the stakeholders and to ensure transparency and accountability.

iii. Data Collection and Management

ILO Recommendations provide that States should collect information and data to monitor the implementation of measures related to the employment relationship. In the context of labour migration, this specifically pertains to the rights of migrant workers and their access to justice for violations of those rights. This information should be disaggregated by characteristics such as sex, age, and nationality. States must then analyse and make available reliable, unbiased, and detailed information and statistical data (see recommendation above regarding sensitization). Data collection and analysis is critical to monitoring and ensuring accountability of access to justice mechanisms, as well as for evaluating their effectiveness. This process allows for the regular review and reform of the legal framework to ensure it meets the rights and needs of migrant workers seeking access to justice.

While legal frameworks²⁶³ already establish requirements for data collection and information management, some stakeholders, including the MGLSD/EEU, NEA, and ELRC, do collect data. However, this data is either not specific to migrant workers (as with the ELRC), not disaggregated by particular subsets of migrant workers (such as regular versus irregular status), or, where such data may be collected, it remains unavailable to the public. Disaggregated data is crucial for policymaking and interventions that are responsive and targeted to the specific characteristics and vulnerabilities of migrant workers, who are not a homogeneous group. Ensuring that data is publicly available is essential for transparency and accountability, as well as for the right of migrant workers and the general public to access information.²⁶⁴

RECOMMENDATION 3 All duty-bearers should engage in systematic disaggregated data collection

Therefore **data should be systematically collected by all duty-bearers – including the EEU, NEA, labour officers, labour attachés, and courts – and disaggregated by (at a minimum) sex, age, nationality, job type/sector, country of origin, country of employment, and migration status, concerning both the utilization *and* outcomes of their services. This includes not only the number of complaints made by migrant workers but also the time taken for services to be provided and the outcomes (redress) that are achieved.**²⁶⁵ The Philippines' model – for example, databases on complaints and pending legal cases – can be referenced (see Annex III). Finally, this information must, in fulfillment of the States' responsibility to proactively realize access to information, be made publicly available.

To the extent that Uganda has the EEMIS and Kenya has the NEIMS, these systems should be updated to collect better data, specifically including complaints²⁶⁶ and improved disaggregated data to capture

²⁶³ For example, Kenya's NCM has the mandate to establish and manage an information collection and dissemination system. Its Global Compact Action Plan specifically includes collecting and utilizing accurate and disaggregated data as a basis for evidence-based policies and establishing a monitoring and evaluation framework. Its Labour Migration Policy states the intention to establish and maintain an updated database of all foreigners in the country, including migrant workers in irregular situations. Furthermore, the proposed Labour Migration and Management Bill would require the NEA to provide an online portal to serve as a gateway for all migrant workers' services, including facilitating the registration of migrant workers and receiving complaints and recommendations from stakeholders and the general public. Uganda's Employment Policy notes that data on immigrant workers are hardly accessible.

²⁶⁴ See *Guidance on BLMAs*, Annex III at p.14.

²⁶⁵ See *Guidance on BLMAs*, Annex III at pp.48-54 and Annex 6.

²⁶⁶ Kenya's NEIMS contains an online 'distress reporting form', but stakeholders noted that the NEA does not have an adequate procedure for investigation and follow up on such complaints.

various characteristics of migrant workers, such as job sector and migration status. They should be harmonized and integrated with other data collection systems across ministries, departments, agencies, and the courts that have labour migration mandates (both within the country and abroad). Additionally, they should be made more user-friendly by utilizing or linking with platforms that are accessible to a wider audience (such as a mobile application currently under development by the Uganda MGLSD). In this regard, **a fully integrated information management system should offer various levels of access for different users, allowing information to be entered and analysed comprehensively, and disseminated in a targeted manner and format** to all stakeholders who have a right and need to access the information.

iv. Reporting

To ensure accountability in carrying out their roles and responsibilities, performance reporting requirements of public officials²⁶⁷ with assisting migrant workers in accessing complaint mechanisms and processes- specifically, labour officers (including labour inspectors) in Kenya and Uganda, and labour attachés (or other consular officials) in destination countries- should include follow-up actions that are tagged for completion or referral to another mechanism, which should also be monitored within established timelines.²⁶⁸ To the extent that reporting of complaints and follow-up actions is not mandatory,²⁶⁹ it should be made mandatory. The integrated information management system recommended above should be utilized for this purpose. Furthermore, **destination country reporting requirements contained in BLAs** (see recommendation regarding this below) should be considered. should also be captured in the information management system and cross referenced with responsibilities of labour attachés or of other country of origin authorities that may be responsible for taking action.²⁷⁰

RECOMMENDATION 4: Labour officers and labour attachés should systematically record and report on actions taken to support migrant workers' access to justice

► BOX 2: Best Practices - Reporting²⁷¹

Access to information requires management systems that document details of migrant workers and collect data on actions taken by government authorities for record keeping, follow-up, and accountability. A good example of this is observed in the models from both Sri Lanka and the Philippines. Both require labour attachés to submit reports that include data on complaints received from migrant workers, which is entered into the information management system and disaggregated by gender, nature of the complaint, and destination country.

267 For example, the Government of Kenya has used 'performance contracting' since 2003 as a key accountability framework in its endeavour to improve service delivery in the public service. Performance contracting "is a management tool to help public sector executives and policymakers define responsibilities and expectations for contracting parties—government on one side and its employees on the other—to achieve common goals. ... Public agencies file quarterly and annual performance reports in prescribed formats. Performance evaluation for each public agency [is] based on the signed performance contract and the annual performance report." Africa for Results Initiative, *Getting Better Performance from the Public Sector: Performance contracting in Kenya (Case Study No.23)* (June 2026), online: <https://elibrary.acbfpact.org/acbf/collect/acbf/index/assoc/HASH9afe/ea5084cd/de43375c/e3.dir/AfCoPCaseStudy023.pdf> at pp. 2-4. Uganda has undertaken performance contracting in the past and has indicated an intention to do so again. See <https://www.kenyanews.go.ke/uganda-benchmarks-on-performance-contract-in-kenyas-public-service-sector/>

268 For example, the Uganda MGLSD noted that often they do not become aware of issues in time for substantive action to be taken, such as while a migrant worker is still present in the destination country.

269 For example, the Uganda MGLSD 'encourages' embassies to document issues and inform the MGLSD so that follow up measures can be taken. In Kenya, the CAJ noted that the NEA does not adequately follow up on complaints received.

270 See *Guidance on BLMAs*, Annex III at pp.48-54 and Annex 6.

271 OSCE, IOM, ILO, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (2006) at p.97.

v. Coordination and Collaboration – Information Sharing, Networking and Referral Mechanisms

Many of the stakeholders interviewed for this research noted the lack of effective coordination, collaboration and information sharing amongst the various duty-bearers, not only between public institutions and authorities (including police, immigration and border officials), but also between public institutions, employer organizations and trade unions, and between these actors and other actors in the broader labour migration sector such as NGOs, CBOs and other grassroots level actors. For example, interviewees stated that some duty-bearers work in silos and/or do not understand their mandate, and migrant workers are ‘bounced around’ between agencies when they seek assistance. Policy documents also identify a lack of coordination as an issue to be addressed.²⁷² One interviewee questioned how umbrella organizations responsible for representing workers, employers, and recruitment agencies, can be expected to ‘own, support, and implement’ their respective mandates within the labour migration legal framework in the absence of sufficient collaboration and sharing of relevant information among public bodies. Additionally, how can other civil society actors effectively provide support on the ground to assist migrant workers in accessing available mechanisms when they are also not sufficiently informed of referral pathways or involved in the development of programs and implementation of interventions designed to increase access to justice.

RECOMMENDATION 5: Improve collaboration and information sharing among government institutions with a labour migration mandate, and between government and civil society

Enhanced coordination, collaboration, and information sharing – including across borders – among all stakeholders in labour migration is essential to ensure the timely and effective provision of assistance and support to migrant workers so they can file complaints and access remedies for violations of their rights. To the extent that some collaboration and information sharing is already taking place, for example, through tripartite arrangements, the ELRC’s Bar Bench, and the pilot project undertaken by KUDHEIHA on the Kenyan Coast, such initiatives should be upscaled and supported (or responsibility taken) by the government to ensure participation by all relevant duty-bearers and supporters/allies, specifically and purposefully including national human rights institutions (NHRIs). As noted above, an integrated information management system established by the government could allow for access levels for worker and employer organizations, other civil society actors, and the judiciary to facilitate information sharing, referrals and follow-up, in particular with respect to migrant workers’ complaints, investigations and active legal cases.²⁷³

► 2. Monitoring and Enforcement in Kenya and Uganda

Effective monitoring and enforcement of compliance with employment contracts and other rights of migrant workers in the workplace is essential to identifying and remedying violations, thus ensuring access to justice for migrant workers affected by such violations. In both Kenya and Uganda, the responsibility for proactive monitoring and enforcement of migrant workers’ rights in the workplace primarily falls on labour officers (including labour inspectors), while the responsibility for monitoring and enforcement of residency and work authorization primarily rests with immigration authorities. The legal frameworks are in place and adequately provide for the obligations of these duty-bearers and the processes they must follow in fulfilling these obligations. Effective implementation – particularly regarding the responsibility to monitor workplaces, including through inspections – is hindered by a lack of capacity.

²⁷² For example, Uganda’s *Employment Policy* attributes poor employment terms and conditions to inadequate coordination among the responsible government agencies, including the labour and immigration administration.

²⁷³ See *Guidance on BLMAs*, Annex III esp. at pp.14, 37, 39, 44, 47 and 49.

The ability of migrant workers to access justice in Kenya and Uganda by reporting and filing complaints of rights violations to labour officers also faces another barrier however, if the migrant worker is in an irregular situation and labour officers report them to immigration authorities, particularly when the response involves detaining and deporting the worker. The *Employment Acts* in both countries state that migrant workers have the right to non-discrimination and equal protection under labour laws, regardless of their status. Therefore, enforcement should not lead to unequal protection of their rights. **Monitoring and enforcement should focus on addressing violations by recruitment agencies and employers, rather than worsening the effects of undocumented status by penalizing migrant workers for their irregular situation.**

RECOMMENDATION 6: Migrant workers in irregular situations should not be criminalized, detained, or deported, and options for regularization should be explored

The protection of undocumented migrant workers should be enforced and, if necessary, explicitly included in the legal framework.²⁷⁴ This includes ensuring that labour inspections and the reception of complaints by labour officers that lead to the identification of a worker as undocumented do not result in detention and deportation. This can be achieved by establishing an institutional ‘firewall’ between labour officers and immigration authorities, or preferably, by explicitly requiring coordination between these bodies to help undocumented workers regularize their status. **Detention and deportation should only occur in cases where the migrant worker has committed a serious offence that warrants criminal prosecution.** In this regard, **the use of immigration detention should be examined as a systemic human rights issue, such as by the Kenya National Commission on Human Rights and the Equal Opportunities Commission in Uganda.**

Article 9 of the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which both Uganda and Kenya have ratified, states regarding migrant workers who are not in compliance with the laws governing authorization to work in a destination country that, “the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularized, enjoy equality of treatment for himself and his family” [emphasis added]. The ILO’s Recommendation No. 151, which supplements Convention 143, states in paragraph 8(1) that, “... a decision should be taken as soon as possible in cases where these laws and regulations have not been respected, so that the migrant worker knows whether his position can be regularized or not.” Regularization is important as an alternative to the detention and deportation of migrant workers in an irregular situation.

Similarly, while one of the stated objectives of Kenya’s proposed *Labour Migration and Management Bill* is to promote equal treatment of migrant workers in Kenya who are ‘lawfully engaged in employment,’ the definition of ‘migrant worker’ is restricted to Kenyan citizens. This exclusion of migrant workers in an irregular situation from the law’s protection is discriminatory and violates both international law and the *Constitution of Kenya, 2010*. **The Bill should be revised to ensure it aligns with the Labour Migration Policy’s aim to ‘eliminate irregular status’ by explicitly providing for the regularization (not deportation) of migrant workers with irregular status.**

► 3. Access to Complaints Mechanisms

The key components of ensuring access to justice for violations of migrant workers’ rights have been discussed in various other chapters. It is sufficient to emphasize that access to justice has both procedural and substantive aspects. For mechanisms that pursue access to justice to be effective, all these aspects must be addressed. Moreover, due to the specific and intersecting vulnerabilities of migrant workers,

²⁷⁴ Note that Kenya’s Labour Migration Policy states the government’s intention to “strengthen labour inspections to eliminate foreign workers in irregular situation in the country.”

particularly women migrant workers, concrete and targeted interventions must be undertaken to address the inherent power imbalance between migrant workers and their employers in cases where the rights of migrant workers are violated.

RECOMMENDATION 7: Migrant workers should be supported in filing complaints, and barriers should be eliminated

► Migrant Workers in Kenya and Uganda

For migrant workers in Kenya, in addition to enhancing the implementation of labour officers' inspections and monitoring, the **restriction on eligibility to file complaints in s.45(3) of the Kenyan Employment Act, 2007** – which requires an employee to have been employed for at least a year or longer before they can complain of unfair termination – **should be revised down, as it contributes to employment insecurity for migrant workers and can lead to irregular status.**²⁷⁵ Furthermore, **discriminatory eligibility restrictions on access to courts** by migrant workers in irregular situations **should also be identified and removed**; for example, the provision in the Employment Acts of both countries regarding the duty of labour officers and the ELRC and Industrial Court to promote and guarantee equality of opportunity to migrant workers "lawfully within [the country]" (s.5 of both statutes).

Migrant workers in Kenya and Uganda should receive assistance in reporting and addressing workplace disputes. This should involve **facilitating access to legal aid providers, paralegals, community justice organizations, local administrators such as area chiefs and councils, and community policing initiatives.** These resources would help migrant workers in Kenya and Uganda by sensitizing them to referral pathways and building capacity for informal dispute resolution, particularly for those in irregular situations and within the informal sector. The work being done by the 'Street Changer' and the Kamkunji Community Justice Centre in Nairobi (see Annex I) serves as a good practice that should be purposely replicated in other areas and jurisdictions where migrant workers are present.

One potential barrier to access to complaint mechanisms in Kenya does not currently exist but would arise if the *Labour Migration and Management Bill, 2024*, in its present form, becomes law. This is because it would delete section 86 of the *Employment Act, 2007*, which allows for any complaint regarding violations of the Act to be made to a labour officer or to the ELRC, the body with exclusive jurisdiction to address such complaints. Nothing in the proposed *Bill* clearly provides a substantive substitute for this critical access to justice provision, and **therefore, this deletion must be removed from the Bill.** In this regard, it should be noted that Kenya's NAP policy actions include enhancing the capacity of labour officers to manage complaints, thereby improving access.

Similarly, the current revision of the Ugandan *Employment Act of 2006* removed section 93(2), which allowed labour officers to conciliate complaints. This change necessitates those cases be brought directly to the Industrial Court for resolution, creating a barrier to accessing justice, especially for vulnerable workers, such as labour migrants. The **provision allowing Ugandan labour officers to conciliate complaints**, which previously existed but was removed in the current revision of the *Employment Act, 2006*, **should be reinstated.**

Finally, from a procedural standpoint, consideration should be given to how the burden of proof for migrant workers in employment matters can be eased by relaxing evidentiary requirements regarding proof of an employment relationship or by placing some of the evidentiary burden on the employer, for example, requiring them to prove that wages were paid and other benefits were provided in accordance with the law.

► Kenyan and Ugandan Migrant Workers

Facilitation of monitoring and reporting violations of workers' rights in destination countries should include specific measures to ensure that domestic workers can report situations where their freedom

²⁷⁵ For example, section 71(1) of the Uganda *Employment Act, 2006* allows for a complaint of unfair termination to be made if an employee has been continuously employed for at least thirteen weeks immediately before the date of termination.

of movement has been restricted. This could **include an app, a helpline, the use of social media (as discussed above), and regular physical monitoring of their workplaces**. Given that migrant workers are often spread out over great distances in most, if not all, countries and face resource challenges in both Kenya and Uganda, the app proposed by the MGLSD in Uganda- which allows **for remote check-ins and creates a flag if the migrant worker does not open or interact with it after a certain period**- is a commendable initiative that should be implemented by both countries, alongside targeted sensitization to ensure users understand the significance of checking in with the app for their protection. Additional measures may include establishing partnerships with local and international human rights NGOs, workers' organizations, and other organizations in destination countries that are already conducting monitoring activities (regardless of whether these activities are specifically related to labour violations). These organizations would need to be informed about the referral pathways available for Ugandan and Kenyan migrant workers. Another option is to facilitate the establishment of a migrant workers' welfare association in each destination country to undertake such monitoring, with the involvement and support of labour unions in Kenya and Uganda.

Assistance should be provided to migrant workers for filing complaints with the relevant authorities in destination countries, including utilizing technology. The Philippines' model, detailed in Annex III, features a system of substantive inspection, monitoring, and enforcement assistance (filing a claim to obtain remedies for contractual and rights violations) within the destination country. Case Officers are well-trained and responsible for protecting the interests of their 'client,' the migrant worker.

RECOMMENDATION 8: A Migrant Workers' Resource Centre (or similar provision of services) should be established and adequately resourced in destination countries

For migrant workers who can move freely and are in or near urban centres where embassies are situated, as well as for those who have been rescued from other parts of the country, it is highly recommended that the establishment of a Migrant Workers' Resource Centre, similar to that in the Philippines (see below) or a comparable 'one-stop shop' for providing services to migrant workers in destination countries, be explored.

► **BOX 3: Best Practices – Migrant Workers' Resource Centre in Destination Countries²⁷⁶**

The *Migrant Workers and Overseas Filipinos Act of 1995* provides for the establishment of a Migrant Workers Resource Centre at Philippine embassies in countries with a significant number of OFWs. These centres offer counselling and legal services, welfare assistance for medical treatment, information programs such as post-arrival orientation to promote social integration, and gender-sensitive programs and activities to assist women migrant workers. They also monitor daily situations and circumstances affecting migrant workers and facilitate the registration of undocumented workers. The centres are open seven days a week, 24 hours a day, including holidays. The labour attaché is responsible for coordinating the centre's operations, which include staff made up of foreign service personnel and officers representing organizations from host countries. The Act states, "In countries categorized as highly problematic by the Department of Foreign Affairs and the Department of Labor and Employment, and where there is a concentration of Filipino migrant workers, the government must provide a lawyer and a social worker for the centre." The Philippine Department of Foreign Affairs has a counterpart 24-hour information and assistance centre that ensures a "continuous network and coordinative mechanism at the home office."

²⁷⁶ See Annex III.

Such a centre should serve as the foundation for all measures aimed at protecting migrant workers and facilitating their access to justice, specifically including:

- i. Processing all migrant workers upon arrival in the country (in a post-arrival orientation)** includes fulfilling information obligations by ensuring that migrant workers are registered and adequate details are entered in the relevant registration platform (e.g., the app discussed above). It also involves educating migrant workers about their rights and obligations and explaining how to report or lodge a complaint if their rights have been violated. BLAs should be negotiated or amended to allow representatives from Kenya and/or Uganda (or from another East African country) to serve as the initial point of contact for migrant workers, preferably at airports upon arrival. Regardless of the implementation method, provisions should ensure that migrant workers have in-person contact with consular authorities before or within the first week of being assigned to a recruitment agency or employer for the purposes of registration and orientation.
- ii. Ensuring the provision of free language interpretation and legal aid**, specifically including free legal representation when necessary to guarantee effective access to justice in the circumstances. Kenya and Uganda should consider collaborating with each other and with other East African countries that have consular services in destination countries to create and fund a roster of competent and independent local lawyers and/or paralegals on retainer who can be called upon to provide legal assistance to their nationals.
- iii. Provision of support services for victims** to aid migrant workers whose employers face prosecution for criminal (and quasi-criminal, if relevant in the host country context) offences includes counselling on legal rights and the criminal justice process, as well as legal representation or other assistance if the victim must testify in the proceedings, in line with the similar aid given to victims in Kenya under the *Victim Protection Act*.
- iv. Provision of gender-responsive programmes and outreach activities** to deliver targeted assistance and support to women migrant workers.
- v. Collecting data and reporting on complaints and outcomes.**

Regarding recommendation i. above, proposed clause 35 of Kenya's *Labour Migration and Management Bill*, if enacted, would require potential Kenyan migrant workers to register with the NEA or with the Kenyan mission abroad within three months of employment. Failure to comply would constitute an offence, punishable by imprisonment for up to three months or a significant fine.

RECOMMENDATION 9: Migrant workers should not be penalized for failing to register with the authorities

As with the criminalization of migrant workers in an irregular situation, criminalizing them for failing to register – although likely intended to ‘encourage’ registration for their own protection – is not a responsive approach to human rights. It leads to over-incarceration, which imposes costs on the government and heightens the risk of involuntary repatriation and/or hindered remittances, negatively impacting not just the workers but their families as well, especially when many migrant workers are unaware of such legal requirements. The preferred approach would be simple registration for the worker. While it is important for migrant workers to register with the government's employment oversight agency and/or mission in the destination country, it is the government's responsibility to ensure that this is done in a way that does not create an additional financial burden on the migrant workers. Therefore, **Kenya should remove this offence from the *Bill*, and both countries should enhance mechanisms to ensure that migrant workers are made aware of their registration requirements and supported in complying with them.**

RECOMMENDATION 10: Enhance physical access to courts

Physical barriers to accessing justice include the availability of physical access to courts, which are typically dispersed across urban centres with significant distances between them. Uganda and Kenya are both quite large countries. Therefore, **consideration should be given to implementing mobile courts** similar to those in the UAE. The Judiciary of Kenya already has mobile courts for certain types of matters,²⁷⁷ so this service could be expanded to encompass employment issues before the ELRC.

► BOX 4: Best Practice – Mobile Labour Courts²⁷⁸

As noted in Chapter III, Abu Dhabi in the UAE has established a mobile labour court in the form of a bus that travels around the emirate to address wage claims, which are resolved on the spot if the employer is found to owe the worker money – i.e., the worker gets paid immediately. A report on its effectiveness indicates that it addressed the claims of 53,000 workers over the course of 18 months.

RECOMMENDATION 11: Targeted measures must be taken to ensure that migrant workers can remain in destination countries while dispute resolution proceedings and criminal proceedings are ongoing

Migrant workers who file a claim against their employer, as well **as those who are victims of criminal offences involving prosecution of their employer (or anyone else), should be granted sufficient time to stay in the destination country without facing detention or repatriation until a final decision on the merits of their case is reached.** This can be done by providing for the labour officer or court that is addressing the matter to order the immigration authorities to issue a short-term authorization for the period necessary until the matter is finalized. It is important that this provision apply equally to migrant workers in an irregular situation in addition to those whose residency authorization will expire during the proceedings. To ensure that the worker's rights are not further violated, This **extension should permit the worker to pursue alternative employment, enabling them to support themselves** instead of relying on the host or home government for assistance throughout the proceedings.²⁷⁹ Notably, the Ugandan *Prevention of Trafficking in Persons Act* explicitly allows the Ugandan government to negotiate with the destination country's government for an extension of a trafficking victim's residency and for financial support to ensure that the victim can testify in related proceedings. **Such assistance should be available to all Ugandan migrant workers who are complainants or mandatory witnesses in proceedings in destination countries, regardless of the type of proceeding.**

Alternatively, **substantive provisions should be made to ensure that a migrant worker can participate in dispute resolution proceedings upon returning to their home country.**

²⁷⁷ See <https://judiciary.go.ke/magistrate-courts/>

²⁷⁸ ILO Fair Recruitment Initiative, n.16 at p.30.

²⁷⁹ Bassina Farbenblum and Laurie Berg, n.54 at p. 28.

► **BOX 5: Alternative Practices – Measures to Ensure Participation in Court Proceedings²⁸⁰**

Israel enables a migrant worker facing deportation to provide evidence in advance of the case being formally heard by the labour court. This is accomplished through an urgent application to the court, which can be processed within a short time frame (1-2 days) by allowing the migrant worker to testify in person, as would occur under normal circumstances. The advantage of this approach is that live testimony is significantly more impactful when presented directly to the judge. Advocates report that this process helps them continue the case after the migrant worker has exited the country and enhances the chances of a successful outcome.

Another option to ensure that a migrant worker's claim can continue to be addressed after they leave the country is the practice of immigration authorities in France who, upon being notified by a labour officer that a migrant worker is to be deported but is owed wages, initiate proceedings to recover the wages on behalf of the worker, subsequently transferring the recovered wages to the migrant worker after they have departed.

Since it is typically the employer's responsibility to prove that they have paid all wages due in full, in most cases, it is probably unnecessary for the migrant worker to participate directly in wage recovery proceedings. Placing the responsibility on the authorities in the destination country to ensure the recovery of unpaid wages addresses many concerns that can hinder recovery when the migrant worker must bring – and enforce – the case on their own.

The same provisions should be guaranteed for migrant workers in Uganda and Kenya, including agreements or coordination with the migrant worker's embassy or consulate to provide support, such as a safe house. **Every alternative to detention should be considered and made available to migrant workers in irregular situations.**

RECOMMENDATION 12: Ensure the timely resolution of complaints

As a corollary to the preceding recommendation, **provisions should be made to ensure the timely resolution of complaints.** Since the legal frameworks in Kenya and Uganda already provide timelines for actions to be undertaken in dispute resolution proceedings, these timelines should be enforced. Additionally, assistance such as legal advice, representation, and union support should be provided to migrant workers to ensure their compliance. **Duty-bearers, including labour officers and courts, should also be provided with sufficient resources and capacity to meet their obligations in this regard.** In this respect, the Ugandan *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2021* appear to require a migrant worker who has filed a complaint against a recruitment agency to appear in person at the MGLSD for conciliation and to seek redress from a court if the matter is not resolved by a labour officer. There is currently no provision for a migrant worker to receive translation or be assisted or represented by anyone, including a lawyer or trade union, either before the Ministry or in court. **The Regulations also provide for a labour officer to conduct conciliation where either the worker or agency is located, rather than requiring the worker to travel to the Ministry.**

Additionally, **options for informal and rapid dispute resolution mechanisms should be expanded,** along with the necessary capacity building for duty-bearers, including training on relevant laws and workers' rights. The UAE's 'one day labour court' fast-track process may serve as a model.

²⁸⁰ Bassina Farbenblum and Laurie Berg, n.54 at pp. 27-28 and 40.

► **BOX 6: Best Practice – Rapid Adjudication**²⁸¹

In addition to mobile labour courts, the UAE also has a ‘one-day labour court’ fast-track process for the rapid adjudication of disputes in Abu Dhabi involving simple matters that can be dealt with expeditiously due to a lack of many issues or contention.

As noted in Chapter III, while the Kenyan *Labour Institutions Act* allows labour officers to prosecute offences under the *Employment Act* before the Employment and Labour Relations Court, and gives the EL, granting exclusive jurisdiction to address such claims,²⁸² this is not reflected in practice. Instead, offences are prosecuted in criminal courts by public prosecutors. This is likely due to the *Constitution* assigning the prosecution of offences solely to public prosecutors. However, Article 157(6) also states that the Director of Public Prosecutions (‘DPP’) can initiate and conduct criminal proceedings against any person in any court (excluding court-martial) regarding any alleged offence. Therefore, **the National Council on Administration of Justice should ensure that prosecution of offences for employment-related matters is heard and dealt with by the court that is specialized in these matters**, ensuring a more timely, comprehensive and substantive resolution without duplicating evidence or proceedings and avoiding potential disparate outcomes.

Regardless of whether a claim proceeds while the migrant worker remains in the country of employment or after they leave, **there should be a method to track the migrant worker’s claim to ensure it is resolved promptly**. This is vital for transparency and accountability in the justice process, as well as facilitating the migrant worker’s access. A good practice in this regard is India’s Consular Grievances Management System, an online portal through which claims can be submitted, tracked, and escalated as needed.²⁸³ Such a system should be incorporated into the information management system recommended above.²⁸⁴

RECOMMENDATION 13: Migrant workers should be provided with legal aid and assistance

In addition, the **provision of legal assistance to migrant workers should be assured until the final outcome of proceedings**, specifically including the enforcement of judgments and orders for remedies. Concerning migrant workers in Kenya and Uganda, while Uganda lacks formal legal aid legislation, steps should be taken to ensure access to legal aid for migrant workers in the country. This includes improving access to existing programs, such as the JLOS access to justice program, to guarantee that migrant workers in Uganda can obtain legal assistance. The Kenyan *Legal Aid Act* should be revised to encompass migrant workers – specifically those in irregular situations – as a class of eligible recipients, akin to refugees and IDPs, for employment-related matters. Furthermore, the current fund for ‘pauper briefs’ should be intentionally made accessible to migrant workers in Kenya, alongside efforts to inform them about its availability when filing a complaint with the ELRC. Additionally, **labour officers should inform the migrant worker’s embassy or consulate and the relevant umbrella organization** – whether a workers’ organization, employers’ organization, or association of recruitment agencies – when a complaint is lodged, facilitating the provision of legal assistance and other support to all involved parties.

²⁸¹ Bassina Farbenblum and Laurie Berg, n.54 at p.38.

²⁸² Note that the proposed *Labour Migration and Management Bill* would delete this protection. This clause should be removed from the *Bill*.

²⁸³ Bassina Farbenblum and Laurie Berg, n.54 at p. 32.

²⁸⁴ See, for example, the Philippines ‘shared government information system for migration’ in Annex III.

► **BOX 7: Best Practices – Provision of Legal Assistance to Migrant Workers**²⁸⁵

Mexico's consulates in the United States offer legal aid programs for Mexican migrants (not limited to workers) in the US. The support encompasses not only traditional legal assistance but also includes psychosocial and cultural services.

The Philippines' *Migrant Workers and Overseas Filipinos Act of 1995* establishes the position of Legal Assistant for Migrant Workers Affairs, responsible for the, "provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers." The Legal Assistant's responsibilities include issuing guidelines on the provision of legal assistance to OFWs, obtaining assistance (including hiring) from Filipino law firms to complement the government's efforts in the country, hiring foreign lawyers to represent migrant workers facing criminal charges abroad, maintaining the information system, and establishing linkages with the POEA, OWWA, Department of Labor, other government agencies, and NGOs that assist migrant workers.

► **4. Access to a Remedy**

A key component of access to justice is access to a remedy. Access to an effective remedy for migrant workers requires systematic enforcement of judgments and orders for compensation, restitution, and sanctions against recruitment agencies and employers. While some jurisdictions require licensing fees or a bank guarantee to cover migrant workers' claims, others impose penalties such as revoking a licence or banning the hiring of migrant workers in the future if the agency or employer fails to pay the ordered amount. This serves as an incentive for agencies or employers to comply. Regarding employers, this can be managed alongside other regulatory mechanisms outside the labour migration management context that issue the permits or licences an employer needs to operate. Additionally, agencies and employers can be 'named and shamed' by publishing their names – such as on the oversight body's website, whether governmental or self-regulatory – on a list of those who have been de-registered or whose licences or permits have been revoked.²⁸⁶

In this respect, a gap in the protection of migrant domestic workers in Uganda can be identified. Section 38 of the *Employment Act, 2006*, which permits agencies that recruit for employment in Uganda, excludes agencies or recruiters who recruit "domestic servants" from the requirement of having a valid recruiting permit issued by the Commissioner of Labour. This exclusion means that already vulnerable migrant domestic workers in Uganda receive less protection than other migrant workers against unfair or abusive practices by recruitment agencies. Additionally, women migrant workers are disproportionately affected, given their prevalence in this type of employment. **This exclusion should be removed, and all recruitment agencies should be mandated to obtain a valid recruiting permit.**

If a remedy is ordered by a labour officer or a court, however, enforcing that remedy – such as ensuring that the employer or recruitment agency pays the ordered compensation – is often left up to the migrant worker to pursue.

RECOMMENDATION 14: Migrant workers' right to access an effective remedy must be ensured

It is important to emphasize that both the Kenyan and Ugandan legal frameworks require recruitment agencies to provide a bank guarantee as a condition for accreditation or licensing. A systemic lack of data collection, or of making the data publicly available if it is collected, means that it is unknown whether and

²⁸⁵ ILO *Multilateral Framework*, n.60 at ANNEX II, V(i) para. 55 (Mexico practice); See Annex III for more detail on the Philippines' model.

²⁸⁶ Bassina Farbenblum and Laurie Berg, n.54 at p. 41.

to what extent this is actually implemented in either country. If implemented, it is also unclear whether these guarantees are used to compensate workers for violations by the recruitment agencies; however, they remain an essential tool for ensuring access to remedies and should be utilized. Data should be collected in this regard and made publicly accessible to promote transparency and accountability.

Foreign employers should also be required to provide a bank guarantee or security bond upon the signing of an employment contract with a migrant worker, as stipulated in section 84 of the Kenyan *Employment Act, 2007* (which is significantly mirrored in clause 33 of Kenya's *Labour Migration and Management Bill, 2024*, although it is discretionary rather than mandatory, which should be amended), and this requirement **should be enforced in all circumstances**. Section 88 of the same Act clearly provides for the enforcement of employment contracts made outside of Kenya, including claims and remedies for any breach or non-performance, against both employers who are parties to the contract and against any third party. However, the proposed *Labour Migration and Management Bill* seeks to remove this provision and does not replace it with any substantial enforcement mechanism against foreign employers. **This deletion should be reversed, and section 88 of the *Employment Act, 2007* should either be retained or replicated in the *Bill*.** Additionally, the judiciary, advocates, labour officers, and labour unions should be educated about this provision to ensure it is utilized to secure remedies for migrant workers. **Uganda should consider revising its *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations* to adopt these provisions and directly hold employers accountable for providing remedies.**

In this respect, the liability of Ugandan recruitment agencies that existed in the 2005 version of the *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations* was removed in the 2021 (current) version, which instead states that Ugandan agencies “be fully responsible for all claims and liabilities which may arise as a result of the use of the licence.” This phrasing is much less clear regarding what ‘claims and liabilities’ are considered to arise from the ‘use of the licence’. The fact that the Ugandan High Court held a Ugandan recruitment agency jointly liable with a foreign employer in a proceeding prior to the revision of the *Regulations*, but ruled afterwards that the Ugandan recruitment agency is not responsible for abuses suffered at the hands of a foreign employer, is instructive. A similar provision in Kenya's draft *Labour Migration and Management Bill, 2024*, states that recruitment agencies are liable for a foreign employer's liabilities arising from the contract. As noted by the UAERA and the MWV, however, it is unrealistic to hold domestic recruitment agencies responsible for ensuring compliance by foreign employers, since they have little to no effective control over the foreign employer's actions. It is therefore **preferable to hold employers directly liable for a remedy** if they are found to have breached the employment contract or otherwise violated a migrant worker's rights. If access to a remedy for violations of a Kenyan or Ugandan migrant worker's rights by their employer in a destination country remains elusive, despite the implementation of other recommendations in this Chapter, access to a remedy must be addressed by making joint liability explicit, particularly by ensuring that **bank guarantees submitted by recruitment agencies as a condition of licensing are automatically used to ensure a remedy is achieved.**

Finally, regarding the liability of recruitment agencies, Kenya's *Labour Migration and Management Bill, 2024* includes a caveat that excludes the Kenyan recruitment agency's responsibility to repatriate a migrant worker “where the termination of employment is due solely to the fault of the worker.” As noted in Chapter III, there is nothing in the proposed *Bill* that outlines how this would be implemented, particularly what proof would be required to establish that it is ‘solely the fault of the worker,’ or how migrant workers who leave or are dismissed due to mistreatment by the employer would be protected. Kenya should review and amend the *Bill* to either remove this caveat or, if it is retained, ensure that a migrant worker's responsibility to cover the costs of their repatriation follows a clear determination of the worker's ‘sole fault’ for the termination, i.e., an impartial evaluation of just cause (or other justification) for termination made by an adjudicator in a fair hearing following due process.

RECOMMENDATION 15: Sanctions such as imprisonment and fines for offenders provided for under labour laws should be reviewed and harmonized

Sanctions, such as imprisonment and fines for offenders outlined in labour laws, should be reviewed and aligned with those for offences under other laws to ensure they serve as a sufficient deterrent.

For example, while the Kenyan *Employment Act, 2007* provides for imprisonment of up to two years for offenders convicted of using or recruiting for forced labour, the same offence under the *Counter Trafficking in Persons Act* is imprisonment for not less than 30 years. Similarly, section 85 of the *Employment Act, 2007* states that it is an offence to employ a migrant worker outside Kenya or arrange for someone to leave Kenya for this purpose without complying with the attestation requirements; the penalty is up to six months in prison and/or a fine. However, the punishment for trafficking under the *Counter Trafficking in Persons Act*, including financing, controlling, aiding, or abetting trafficking, is imprisonment for a minimum of thirty years. Finally, in this regard, the *Labour Migration and Management Bill of 2024* would penalize recruitment agents who substitute contracts or withhold travel documents with up to two years in prison or a fine of up to three million Kenyan Shillings (approximately US\$23,000), which is oddly disproportionate itself.

Similarly, section 37 of the Ugandan *Employment Act, 2006*, makes it an offence for any person to organize or assist another person in the 'illicit or clandestine movement of migrants' for work into or out of Uganda. If found guilty, the fine for this offence can be up to 'twenty-four currency points' or 480,000 Ugandan Shillings (approximately US\$125) for a first offence, and this increases to double the fine or imprisonment for up to two years (or both) for a subsequent conviction. The *Prevention of Trafficking in Persons Act, 2009*, in section 8, however, provides that any person who "recruits, transports, transfers, harbours, provides, or receives a person for domestic or overseas employment or training or apprenticeship with the intention of trafficking" commits an offence, with penalties for a first offence including imprisonment for five years, a fine (at the Court's discretion), or both imprisonment and a fine.

► 5. BLAs

Recent meetings of the African Labour Migration Conference, the Regional Ministerial Forum on Migration, and others have highlighted the importance of incorporating effective complaint procedures in BLAs, including communication platforms and case follow-up processes.²⁸⁷

RECOMMENDATION 16: Substantive provisions of BLAs should be strengthened to better protect migrant workers and ensure access to justice

The following actions should be taken by both Uganda and Kenya to implement this recommendation:

- i. General references to compliance with 'international labour standards' in BLAs should be replaced with explicit provisions for comprehensive complaints procedures and dispute resolution mechanisms, including timelines and clear referral pathways. A good example in this respect is Article 13 of Uganda's MOU with the UAE.
- ii. Specific provisions should also be made to ensure the realization of the right to redress, including referencing legal requirements for security bonds and insurance schemes, as well as allowing these to be used for compensation if an employer or recruitment agency is found at fault.
- iii. Processes and mechanisms ensuring access to justice for migrant workers who are victims of criminal offences (such as sexual offences, trafficking, or organ harvesting) by a foreign recruitment agency, an employer, or another individual – including victim services and provisions for giving evidence at trial and submitting a victim impact statement during sentencing- should also be explicitly included.

²⁸⁷ IOM, *Consular, Labour Attachés, and Diaspora Collaborate to Protect Migrant Workers* (12 October 2023), online: <https://eastandhornofafrica.iom.int/news/consular-labour-attaches-and-diaspora-collaborate-protect-migrant-workers> [accessed 9 January 2024].

- iv. Specific provisions should be made to extend a migrant worker's status and regularize it if necessary, for the required duration to resolve a migrant worker's complaint and any associated remedy.
- v. Enhancing cooperation between State parties through Joint Technical Committees necessitates increasing the frequency of JTC engagements and ensuring representation of NHRIs and migrant workers in the JTCs.
- vi. Provisions for cooperation among State parties should also be strengthened to ensure that destination countries undertake specific actions to assist and support the origin country's efforts to protect its migrant workers and facilitate their access to justice in the destination country, as well as to report on all actions taken.
- vii. Provisions in standard employment contracts appended to BLAs that violate migrant workers' human rights, such as restrictions on engaging in 'political or religious affairs,' which infringe on freedom of expression and religion, should be removed. Furthermore, general references to 'penalties' for failure to fulfil 'responsibilities under the contract' should be revised to provide explicit notice of these responsibilities and the associated sanctions for non-compliance, applicable to both migrant workers and employers.

Further reference should refer to the best practices guidelines issued by the UN Network on Migration, summarized in Annex III.

Workers' organizations should be actively consulted before finalizing BLAs to ensure that the interests of migrant workers are adequately represented in the development of BLA provisions. **Labour attachés and NHRIs should also be involved in the development of BLAs** to promote engagement and ownership among all stakeholders responsible for implementation and oversight.

To the extent that BLAs exist but are not operational, concerted and expeditious efforts should be made – and resources dedicated as necessary – to **ensure that the rights and protections they contain do not exist only on paper.**

RECOMMENDATION 17: BLAs should be publicly available and proactively disseminated to relevant stakeholders

As noted by stakeholders in both Kenya and Uganda, while some may have been consulted on the development of BLAs, the final versions are neither directly provided to stakeholders nor made publicly available. Since BLAs serve as the framework for governments' responsibilities to recognize migrant workers' rights and ensure their protection in destination countries, this lack of accessibility significantly hinders access to justice for these workers, creating a barrier to timely and effective referrals, as well as coordination of support and assistance in accessing available complaint resolution mechanisms. To fulfil their obligations regarding access to information, ensure government transparency and accountability in respecting and promoting the human rights of migrant workers, and facilitate awareness among workers, employers, and recruitment agencies for compliance, all BLAs should be proactively disseminated to relevant stakeholders, such as unions and umbrella organizations representing employers and recruitment agencies, and made publicly available.

► 6. Funding and Resource Capacity

The final issue identified in the situational analysis in Chapter IV that presents a significant barrier to migrant workers' access to justice in both Uganda and Kenya is the systemic problem of capacity constraints, concerning both budgetary allocations and personnel. Ideally, both countries would possess sufficient resources – financial and human – to ensure that migrant workers' welfare is fully protected

and that all migrant workers can access justice in both Kenya and Uganda, as well as in destination countries, regardless of their migration status. In Uganda, while recognizing the challenge of funding, many stakeholders have envisioned a new law that establishes the existing External Employment Unit of the MGLSD as a standalone public institution, akin to Kenya's NEA, which would be responsible for the overall administration of labour migration and overseeing the implementation of the relevant laws and policies.

RECOMMENDATION 18: Uganda should establish through legislation an independent public institution that is adequately resourced and responsible for administration of labour migration

As previously outlined in earlier chapters, both Uganda and Kenya's domestic legal frameworks – Uganda's *Employment Policy* and Kenya's *Labour Migration Policy* and *Labour Migration Management Bill* – allow for the establishment of a Fund to support labour migration and/or the welfare of migrant²⁸⁸ workers. Many stakeholders have either recommended creating such a Fund or expressed approval of this possibility. However, neither the policies nor the *Bill* provide details on what this Fund would entail, including the services and/or benefits it could offer and who would be responsible for funding it. There are many considerations in this regard, and reference should be made to the ILO's Guidance on Migrant Welfare Funds,²⁸⁹ as well as the Philippines' model of funding the provision of services and benefits for migrant workers, summarized in Annex III (which includes several separate funds). Potential sources for these funds could include charging nominal membership fees to migrant workers, as seen in the Philippines model (which might also allow voluntary contributions from migrant workers in Kenya and Uganda). In this case, it should also include a requirement for employers and/or recruitment agencies to contribute (see ILO guidance).²⁹⁰ Additionally, it could feature a dedicated budgetary allocation from non-tax revenue generated by labour migration, along with donor funding. These sources should be explicitly outlined in the legislation, including a specified proportion of non-tax revenue that is adequate to provide comprehensive and effective services.

In any event, whatever model is adopted or developed, specific provisions should be made for funding legal assistance to facilitate access to justice for all migrant workers.

RECOMMENDATION 19: A dedicated Fund for Legal Assistance should be established through legislation

Ideally, a separate fund should be established exclusively for the provision of legal assistance to migrant workers, including paying the fees of foreign lawyers to represent migrant workers facing criminal charges abroad. The legal assistance fund should not be limited to the provision of legal aid to migrant workers from Kenya and Uganda, but should also provide legal assistance for migrant workers in these countries, in the form of support for both non-judicial (for example, conciliation or mediation by labour officers) and judicial proceedings (as an alternative or supplementary to the recommendations above on amending the *Legal Aid Act* in Kenya). Reference can be made in this respect to the Legal Assistance Fund established in the Philippines (see Annex III).

²⁸⁸ Note that while Kenya's Labour Migration Policy couches establishment of a Fund in mandatory language, and specifically references legal assistance as one of the services it would provide, the *Bill's* provisions for such a Fund are discretionary, and the purposes of the Fund are couched in very general terms with no specific reference to legal assistance. In any event, as at the time of finalizing this report efforts are being made to establish such a welfare fund, see <https://www.ilo.org/resource/news/ilo-supports-kenya-establish-migrant-workers-welfare-fund>, though the details are as yet unknown publicly.

²⁸⁹ ILO, *Guidance note: Using Migrant Welfare Funds as a social protection instrument – potential and limitations?* (July 2023), online: <https://www.ilo.org/publications/guidance-note-using-migrant-welfare-funds-social-protection-instrument>

²⁹⁰ In this respect, it is important to note that Kenya's NAP policy actions include encouraging recruitment agencies to provide legal and psychosocial support to migrant workers who suffer abuses abroad, and requiring businesses to co-operate with government agencies and other stakeholders in facilitating access to remedies for business-related human rights violations (see Chapter III).

Conclusion and Way Forward



While all the recommendations and action items above are important for improving access to justice for migrant workers in Kenya and Uganda, the table below lists these recommendations and action items by priority. This prioritization is based on whether they are fundamental to actualizing other recommendations or represent a ‘quick win’ that can help build the confidence of rights holders and their allies in the actions taken by duty-bearers, demonstrating that systemic change is possible.

► Table 2: Recommendations and proposed actions

Priority	Recommendation / Proposed Actions
1	RECOMMENDATION 1: Dissemination of information on rights and complaints mechanisms systematic, ongoing, proactive and targeted Be more proactive about informing migrant workers – in both home and destination countries – about their rights and how to access complaint mechanisms. Training curricula for migrant workers should explicitly include workers’ rights, and what to do – including how to access a complaints mechanism – in the case of a violation or emergency. Ensure that information on rights and obligations in the workplace is disseminated in accordance with the relevant requirements in the <i>Employment Act</i>. Systematically and proactively, on an ongoing basis, disseminate gender-responsive information to recruitment agencies and employers on their responsibilities vis-à-vis migrant workers. Support worker and employer organizations, NGOs and CBOs to provide information to migrant workers, and to train others such as community paralegals and migrant worker advocacy and support groups to do the same. Train local government administrators on the labour migration process and the rights of migrant workers vis-à-vis both recruitment agencies and employers, and on access to justice mechanisms and how to access them and require them to disseminate the information in their areas of jurisdiction. Utilize social media platforms as a means to raise awareness and disseminate vital information about rights, access to justice mechanisms and how to seek assistance, and encourage labour officers, labour attachés, legal aid providers and courts to leverage social media to sensitize migrant workers on the access to justice services they provide and how to access them. Disseminate gender-responsive information to migrant workers, targeted to workers in different sectors (specifically including informal sector) and types of employment. The Ugandan <i>Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations</i> must be immediately made publicly available, at a minimum in the ULII database.

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Priority	Recommendation / Proposed Actions
2	RECOMMENDATION 7: Migrant workers should be supported in filing complaints, and barriers should be eliminate The time restriction on eligibility to file complaints of unfair termination in s.45(3) of the Kenyan <i>Employment Act, 2007</i> should be revised down. The provision in the Ugandan <i>Employment Act, 2006</i> for labour officers to conciliate complaints (s.93(2)) that was removed in the current revision should be reinstated. Deletion of section 86 of the Kenyan <i>Employment Act, 2007</i> must be removed from the <i>Labour Migration and Management Bill, 2024</i>. Discriminatory eligibility restrictions on access to courts by migrant workers in irregular situations should be identified and removed (e.g., section 5 of both <i>Employment Acts</i>). Legal aid providers, paralegals, community justice organizations, local administrators such as area chiefs and councils, and community policing initiatives should be supported to help migrant workers file complaints by educating them on referral pathways and building capacity for informal dispute resolution, especially for migrant workers in irregular situations and in the informal sector. Consideration should be given to ways in which the burden of proof for migrant workers in employment matters can be eased by relaxing evidentiary requirements regarding proof of their employment relationship, or by shifting some of the evidentiary burden to the employer, for instance, to demonstrate that wages were paid and other benefits provided in accordance with the law. Facilitating the monitoring and reporting of violations of workers' rights in destination countries should involve specific measures to ensure that domestic workers can report situations where their freedom of movement has been restricted, such as through an app, a helpline, social media, and regular physical monitoring of workplaces (including partnerships with local and international human rights NGOs, workers' organizations, and other relevant organizations in destination countries that are already engaged in monitoring activities). Assistance should be provided to migrant workers for filing complaints with the relevant authorities in destination countries, including by leveraging technology. One option is to facilitate the establishment of a migrant workers' welfare association in each destination country, with the involvement and support of labour unions in Kenya and Uganda, which could undertake monitoring and provide assistance in filing complaints.
3	RECOMMENDATION 8: A Migrant Workers' Resource Centre (or similar provision of services) should be established and adequately resourced in destination countries This Centre should be the base for all measures to protect migrant workers and facilitate their access to justice, specifically including: - Processing of all migrant workers on arrival in the country (post arrival orientation). - Ensuring provision of free language interpretation and legal aid. - Provision of victim support services. - Provision of gender responsive programmes and outreach activities to provide targeted assistance and support to women migrant workers. - Collecting data and reporting on complaints and outcomes.
4	RECOMMENDATION 13: Migrant workers should be provided with legal aid and assistance Legal assistance for migrant workers should be guaranteed until the conclusion of proceedings, including the enforcement of judgments and orders for remedies. Labour officers in Kenya and Uganda should be required to notify a migrant worker's embassy or consulate, as well as the relevant umbrella representative associations – workers' organizations, employers' organizations, or associations of recruitment agencies – when a complaint is filed by a migrant worker. This requirement aims to facilitate the provision of legal and other assistance to all parties involved. Measures must be instituted to provide legal aid to migrant workers in Uganda, particularly by improving access to existing programmes such as the JLOS access to justice initiative, ensuring that migrant workers can obtain legal assistance. The <i>Kenyan Legal Aid Act</i> should be amended to include migrant workers – specifically those in irregular situations – as a class of eligible recipients on par with refugees and IDPs, for employment matters. Furthermore, the existing Judiciary fund for 'pauper briefs' should be made available to all migrant workers in Kenya. This includes raising awareness about its availability when filing a complaint to the ELRC and facilitating their access to it.
5	RECOMMENDATION 19: A dedicated Fund for Legal Assistance should be established through legislation The legal assistance fund should not be limited to providing legal aid to migrant workers from Kenya and Uganda; it should also offer legal assistance to migrant workers in these countries, through both non-judicial (e.g., conciliation/mediation by labour officers) and judicial proceedings.

Priority	Recommendation / Proposed Actions
6	RECOMMENDATION 14: Migrant workers' right to access an effective remedy must be ensured Statutory requirements for recruitment agencies to provide a bank guarantee as a condition of accreditation and licensing should be systematically implemented, and these bank guarantees should be utilized to compensate workers for violations committed by the recruitment agencies. Data should be collected in this regard and made publicly available to ensure transparency and accountability. Foreign employers should also be required to provide a bank guarantee or security bond upon signing an employment contract with a migrant worker. These bank guarantees or bonds should be utilized to compensate workers for violations by the employer. Existing discretionary provisions for bank guarantees and security bonds must be made mandatory and enforced in all cases. Data should be collected in this regard and made publicly available to ensure transparency and accountability. The exclusion of agencies or recruiters that recruit "domestic servants" from the requirement in Section 38 of the Ugandan Employment Act, 2006 should be eliminated. All recruitment agencies must be mandated to obtain a valid recruiting permit. Section 88 of the <i>Kenyan Employment Act, 2007</i>, which provides for the enforcement of employment contracts made outside Kenya, including claims and remedies for any breach or non-performance against both foreign employers who are parties to the contract and any third party, should be either retained or replicated in the <i>Labour Migration and Management Bill, 2024</i>. Uganda should consider revising its Employment (<i>Recruitment of Ugandan Migrant Workers Abroad</i>) Regulations to make foreign employers directly accountable for remedies if they breach the employment contract or otherwise violate a migrant worker's rights. Kenya's <i>Labour Migration and Management Bill, 2024</i> should be amended to eliminate the caveat that a Kenyan recruitment agency's responsibility to repatriate a migrant worker is excluded "where the termination of employment is due solely to the fault of the worker". If this caveat is retained, then the Bill should be revised to ensure that a migrant worker's responsibility to cover the costs of their repatriation only follows a clear determination of the worker's 'sole fault' for the termination; that is, an impartial assessment of just cause (or other justification) for termination made by an adjudicator in a fair hearing that adheres to due process.
7	RECOMMENDATION 2: Duty-bearers should have access to systematic and substantive training and capacity-building Public and judicial officials must be aware of the rights of migrant workers, particularly those who are often in irregular situations, such as the rights to establishment and residence for EAC nationals. They must also understand their obligations to protect and enforce these rights in a gender-responsive manner, addressing specific violations that migrant workers often or exclusively face, as well as the intersecting vulnerabilities found in certain jobs, such as domestic work and informal sector employment. The meaning and requirements of access to justice for violations of migrant workers' rights, including the various mechanisms, referral pathways, and the right to a remedy, should be covered. Training should not be a one-time event but should be provided at regular intervals to ensure that 'new' officials are sensitized and 'old' officials are refreshed. Training materials should be publicly available and disseminated to provide stakeholders with access to information and to ensure transparency and accountability.
8	RECOMMENDATION 5: Improve collaboration and information sharing among government institutions with a labour migration mandate, and between government and civil society Improved coordination, collaboration, and information sharing – across borders – among all stakeholders in labour migration (duty-bearers and supporters/allies, including NHRIs) is essential to ensure the timely and effective provision of assistance and support to migrant workers in filing complaints and accessing remedies for violations of their rights.

Priority	Recommendation / Proposed Actions
9	RECOMMENDATION 11: Targeted measures must be taken to ensure that migrant workers can remain in destination countries while dispute resolution proceedings and criminal proceedings are ongoing Migrant workers who are victims of criminal offences for which their employer (or anyone else) is prosecuted should be granted sufficient time to remain in the destination country without being detained or repatriated until a final decision on the merits of the case is made. Arrangements should be made to enable a worker to pursue alternative employment so that they can sustain themselves while proceedings are ongoing. As an alternative to extending the time in the destination country, substantive provisions should ensure that migrant workers can participate in dispute resolution proceedings after returning to their home country. The same provisions should be guaranteed for migrant workers in Uganda and Kenya, including agreements or coordinating with the migrant worker's embassy or consulate to provide support, such as a safe house. Every alternative to detention should be considered and made available to migrant workers in irregular situations.
10	RECOMMENDATION 6: Migrant workers in irregular situations should not be criminalized, detained, or deported, and options for regularization should be explored The focus of monitoring and enforcement from an access to justice perspective should emphasize the denunciation of violations by recruitment agencies and employers, rather than exacerbating the effects of undocumented status by persecuting migrant workers for their irregular situation. The legal framework should ensure protection for migrant workers who are undocumented. This includes preventing detention and deportation resulting from labour inspection or complaints received by labour officers that identify a worker as undocumented. This can be achieved by establishing an institutional 'firewall' between labour officers and immigration authorities or, preferably, by explicitly requiring coordination between these authorities to help undocumented workers become regularized. Detention and deportation should be employed only in situations where a migrant worker has committed a serious offence that may warrant criminal prosecution. The use of immigration detention should be examined as a systemic human rights issue, for instance, by the Kenya National Commission on Human Rights and the Equal Opportunities Commission in Uganda. Kenya's proposed Labour Migration and Management Bill should be amended to ensure that migrant workers are not excluded by definition (i.e., remove the citizenship requirement in the definition) and that migrant workers (specifically including those with irregular status) are not denied protection. In this respect, the <i>Bill</i> should be revised to ensure that it conforms with the Labour Migration Policy's aim to 'eliminate irregular status' by explicitly providing for the regularization (not deportation) of migrant workers with irregular status.
11	RECOMMENDATION 9: Migrant workers should not be penalized for failing to register with the authorities While requiring a migrant worker to register with the government's employment oversight agency and/or mission in the destination country is important, it should be the government's responsibility to ensure that this is done in a way that does not impose an additional financial burden on the migrant worker. Efforts to ensure that migrant workers are informed about and supported in fulfilling the registration requirement with their home government authorities should be enhanced, and offences or penalties for noncompliance should be eliminated.
12	RECOMMENDATION 3: All duty-bearers should engage in systematic disaggregated data collection Data should be systematically collected by all duty-bearers, including the EEU, NEA, labour officers, labour attachés, and courts, and disaggregated by at least sex, age, nationality, job type/sector, country of origin, country of employment, and migration status. This collection should focus on both the utilization of their services and the outcomes achieved, including not just the number of complaints made by migrant workers but also the time taken to provide these services and the resulting redress. Additionally, this information should be made publicly available and regularly updated. Labour migration information management systems should be harmonized and integrated with other data collection systems in ministries, departments, agencies, and the courts that have labour migration mandates (both domestically and internationally). They should also be made more user-friendly by utilizing or linking to platforms that are accessible to a wider audience, such as mobile applications. A fully integrated information management system should offer various levels of access for different users, enabling information to be entered and analysed comprehensively, and disseminated in a targeted manner and format to all stakeholders who have the right and need to access the information.

Priority	Recommendation / Proposed Actions
13	RECOMMENDATION 4: Labour officers and labour attachés should systematically record and report on actions taken to support migrant workers' access to justice Reporting should include follow-up actions that are marked for completion or referral to another mechanism, which should also be followed up within established timelines. To the extent that the reporting of complaints and follow-up actions is not mandatory, it should be made mandatory and explicitly included in BLAs, integrated into the labour migration information management system.
14	RECOMMENDATION 16: Substantive provisions of BLAs should be strengthened to better protect migrant workers and ensure access to justice The following actions should be taken by both Uganda and Kenya to implement this recommendation: General references to compliance with 'international labour standards' in BLAs should be substituted with explicit provisions for comprehensive complaint procedures and dispute resolution mechanisms, including timelines and clear referral pathways. A good example in this regard is Article 13 of Uganda's MOU with the UAE. Specific provisions should also be made to ensure the realization of the right to redress, including references to legal requirements for security bonds and insurance schemes, as well as provisions for these to be used for compensation if an employer or recruitment agency is found to be at fault. Processes and mechanisms must ensure access to justice for migrant workers who are victims of criminal offences (such as sexual offences, trafficking, or organ harvesting) by a foreign recruitment agency, an employer, or any other person. This includes victim services, provision for giving evidence at trial, and the opportunity to present a victim impact statement during sentencing; these should be explicitly included. Specific provisions should be made to extend and, if necessary, regularize a migrant worker's status for the duration needed to resolve their complaints and any associated remedies. Cooperation between State parties through Joint Technical Committees should be strengthened by increasing the frequency of JTC meetings and ensuring the representation of NHRIs and migrant workers in the JTCs. Provisions for cooperation among the State parties should be strengthened to outline specific actions for destination countries to assist and facilitate the origin country's efforts to protect its migrant workers and ensure their access to justice in the destination country, as well as to report on all actions taken. Provisions in standard employment contracts attached to BLAs that violate migrant workers' human rights, such as restrictions on participating in 'political or religious affairs' which infringe upon freedom of expression and religion, should be eliminated. General references to 'penalties' for failing to meet 'responsibilities under the contract' should be updated to clearly state these responsibilities and the corresponding sanctions for non-compliance, applicable to both migrant workers and employers. Workers' organizations should be actively consulted prior to the finalization of BLAs. Labour attachés and NHRIs should also be consulted in the development of BLAs. To the extent that BLAs exist but are not operational, concerted efforts should be made – and resources dedicated as necessary – to ensure they are operationalized expeditiously. RECOMMENDATION 17: BLAs should be publicly available and proactively disseminated to relevant stakeholders
15	RECOMMENDATION 12: Ensure the timely resolution of complaints Duty-bearers – labour officers and courts – should be provided with sufficient resources and capacity to meet their obligations in this regard. Options for informal and rapid dispute resolution mechanisms should be expanded, ensuring appropriate capacity building for duty-bearers, including training on relevant laws and workers' rights. Regardless of whether a claim proceeds while the migrant worker is still in the country of employment or after they have left, there should be a method to track the migrant worker's claim to ensure it is resolved promptly. The Ugandan <i>Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations</i>, 2021 should be reviewed and amended to allow migrant workers to access translation and legal assistance, and should also enable a labour officer to conduct conciliation at the location of the worker or recruitment agency, rather than requiring the worker to travel to the Ministry. The Kenya National Council on Administration of Justice should ensure that the prosecution of offences related to employment matters – whether by labour officers or by the Director of Public Prosecutions – is heard by the court specialized in these matters (ELRC).
16	RECOMMENDATION 15: Sanctions such as imprisonment and fines for offenders provided for under labour laws should be reviewed and harmonized with those for offences under other laws (e.g., relating to trafficking in persons) to ensure they are a sufficient deterrent.
17	RECOMMENDATION 10: Enhance physical access to courts Consideration should be given to implementing mobile courts.
18	RECOMMENDATION 18: Uganda should establish through legislation an independent public institution that is adequately resourced and responsible for administration of labour migration

While the recommended prioritization is valuable, it is ultimately up to the duty-bearers in Kenya and Uganda to decide how to practically implement these recommendations. Both countries should start by identifying which proposed actions can be initiated immediately within the existing legal framework and budgetary allocations, which actions require legislative amendments, and which necessitate entirely new legislation. While some amendments may be undertaken relatively quickly, especially if a relevant bill is already in development or pending before the legislature, developing new legislation is a time-consuming and resource-intensive process. A realistic timeframe should be established and planned for as necessary.

While many of the recommendations may require financial resources, some could be implemented within existing budget allocations and should be prioritized accordingly. Urgent consideration should also be given to all available options for enhancing financial capacity to implement the current legal framework and any new legal obligations to ensure access to justice, with the most viable options pursued at the earliest opportunity.



► Annex I. Migrant Workers' Stories

A. UGANDA

Migrant Workers' Voice ("MWV") relayed information about conditions described by other migrant workers whom the organization has assisted or rescued, including the *kafalah* system in Saudi Arabia that was described as 'slave-like' whereby female domestic workers are 'bought and sold' after first being subject to 'jail-like' conditions so as to render them so uncomfortable that they are relieved and happy when 'chosen' by an employer, who literally picks one from among a group "like a banana." MWV explained that, in Islam, someone who releases a slave is rewarded, and this is why the conditions are created such that the migrant workers have the appearance of being slaves who are 'released' when chosen by their employer. Since the employer pays money to the recruitment agency to 'release' the migrant worker, the worker becomes the full 'responsibility' of the employer.

MW1's Story²⁹¹

MW1 was 'sent' to Saudi Arabia to work as a housekeeper 'around COVID time.'²⁹² Upon arrival, MW1 described being held with several other migrant workers in a shelter at the office of the Saudi recruitment agency for at least one month under conditions likened to being 'in jail.' This included having only toilet water to drink and being fed a meagre meal only once a day or not at all. MW1 was then assigned to work at the residence of a foreign ambassador to Saudi Arabia. The employer paid the Saudi recruitment agency directly for a full year in advance, amounting to 2000 Riyals (approximately US\$500) per month. However, the agency subsequently paid MW1 only 900 Riyals (approximately US\$240) per month. Despite being treated well by the foreign ambassador, MW1 was told by the Saudi recruitment agency that the employer was 'bad' and a 'threat' and counselled to 'act out' but not to tell anyone that the recruitment agency had told her this. Ultimately MW1 left the employer and returned to the recruitment agency. She believes that this was a scam by the recruitment agency to retain the salary paid in advance, a sum that the employer could recover through insurance.

When MW1 returned to the recruitment agency, her phone was confiscated until she was deployed to a new employer, where she worked on a one-month contract before returning to the agency, which informed her that she was being sent to a new employer – a household of three people – immediately. When MW1 inquired about her salary for that month, she was told to hurry as she had to catch a flight. Ultimately, MW1 never received any salary for that month. Upon her flight landing in Saudi Arabia, MW1 was picked up by a new employer who confiscated her ID, passport, and ATM card, and drove her several hours to a large house with eight adult occupants. MW1 tried unsuccessfully to contact the agency to inquire about her salary. When she did not receive any response from the agency, MW1 asked the employer about her salary and was told that the employer had paid the agency. After working for six months without getting paid, MW1 complained to the employer, who decided to return her to the agency.

Upon her return to the agency, MW1 states that the agency was 'very angry', confiscated her phone again, and began 'torturing' her. MW1 found many other Ugandan workers at the agency who were also demanding to be paid. Together, they (MW1 and about 15 others) 'caused a ruckus' on social media but received no assistance until they reached out to the MWV organization through WhatsApp, which organized a virtual meeting with the migrant workers, the Saudi recruitment agency, and the Ugandan recruitment agency. The Ugandan agency agreed to return the workers to Uganda and to compensate them upon their return. When MWV insisted that the workers be paid their full salaries owed *before* leaving Saudi Arabia, the Saudi recruitment agency alleged that the workers were 'bad girls' and had caused damage to its premises, although no proof of any damage was ever provided. Eventually, it was agreed that the Saudi agency would pay each worker 1M Ugandan Shillings (approximately US\$250, or

²⁹¹ The migrant workers' names are withheld to protect their privacy.

²⁹² Note that it is not clear whether this worker's experience occurred before or after the new 2021 *Regulations* came into effect.

the equivalent of around one month's pay based on what MW1 received when she worked for the foreign ambassador) and retain the remainder of their salaries to cover the damage and the return air tickets.

Upon their return to Uganda, MWV attempted to persuade the Ugandan agency to compensate the workers as promised, but they refused, claiming they had no budget and no insurance to cover this. MWV then filed a written complaint to the Director of Labour at the Ministry of Gender, Labour and Social Development but received no response. Instead, MW1 alleges that 'someone from the Ministry' contacted her family and told them that the MWV organization was 'just making noise.' She further states that the Ugandan recruitment agency met with each of the returned workers individually and told them to 'be strong' while a new opportunity was arranged for them. However, no new opportunity ever materialized, and MW1 lost hope of ever obtaining justice for the violation of her right to be paid for her work.

MW2's Story

MW2 found herself struggling to support her children without a job after her husband abandoned the family. When MW2's mother mentioned that she knew someone who 'takes people to Saudi Arabia,' MW2 saw this as her opportunity to provide for her children. A man arrived and arranged for MW2 to undergo a 'background check' and obtain a passport, for which she paid. After receiving her passport, the man connected MW2 with 'another person' who had an office at or near the international airport in Entebbe and who arranged for her to go to Dubai, where she worked for nine months as a domestic worker without any issues. Upon returning to Uganda, MW2 decided to go abroad again, using the same contacts who had facilitated her job in Dubai. This time, MW2 was told she would be going to Qatar; however, before her departure, she was informed that her destination had changed to Saudi Arabia. She was not given any contract to read or sign. MW2 recalls that upon arriving in Saudi Arabia, she was met by a man who took her to an office with the same name as the office in Entebbe, where she was instructed to wait alongside several other women in a waiting area. MW2 states that her 'boss' came in, paid money, and signed something, but she was neither asked to sign anything nor given any information.

MW2 worked for this employer for seven months and claims she was paid. Problems began when she started experiencing tooth pain. When she informed her employer that she needed to see a doctor or dentist, she was told no. When the pain became unbearable, she complained again and was eventually taken for treatment; however, she states that thereafter she and her employer began 'quarrelling,' leading to her being returned to the agency. After one week, MW2 says she was taken to her employer's sister's house, where she worked for two weeks, and then she was moved to another home where she worked for another week before being sent back to the recruitment agency. The next time, she was picked up and taken on an approximately two-hour drive to 'another office,' where she stayed for about a month before being taken even farther away to another home that housed three adults and three children.

MW2 worked in that home for seven months. She states she was generally treated well, but she was not paid; instead, she was told that payment would be made at the end of her contract. Although she was allowed to have her phone, when it stopped working, she was told it would not be replaced. Every couple of weeks, MW2 was taken to the sister of her employer's house to clean before being returned. Once, MW2 recalls deciding to run away after being told she could not use the washing machine to wash bedsheets soiled by the children; instead, she was instructed to wash them by hand. MW2 stated that she 'got tired' and chose to leave. The gate was not locked, and she left easily, but she says she was just walking, trying to find help when she was 'picked up and returned' to the house, where her employer's husband warned her that she would be beaten if she ever tried to leave again.

At some point during the seven months,²⁹³ MW2 recounts that the wife of the family went away with the three kids, leaving MW2 in the house alone with the husband. This was the first time that the husband raped MW2, who emphatically states that she did not consent, but she was very scared of being beaten and so did not resist. She explains that she was only thinking about keeping her job so that she could support her children at home. MW2 was raped many times, and eventually she became pregnant. MW2

²⁹³ MW2 was very uncertain of timelines and had no recollection of names, places or many other details. This is likely due to the trauma she experienced.

says that she knew she was pregnant, but she was very fearful of being beaten. One day, the husband began asking her if she was pregnant, and she denied it many times, until eventually, the wife asked her and did not believe when MW2 denied it. She was taken to the hospital, where the pregnancy was confirmed, and then she was taken to the home of the wife's sister, who did not know MW2 was pregnant. MW2 states that she worked at the home of the wife's sister for about one week, and then the husband came to pick her up and took her to the airport, where he bought MW2's ticket, handed over her passport, and paid her salary for the seven months. MW2 states that she does not remember the amount she was paid but it was 'not much'. MW2 believes that she was around five months' pregnant when she returned to Uganda, and her child is now two years old. MW2's story was relayed to a television reporter, who in turn contacted MWV to provide assistance.

MWV assisted MW2 in filing a complaint with the 'aviation police' (the police department at Entebbe International Airport), who informed the family to obtain a DNA test. When it was discovered that the Ugandan recruitment agency had changed its name and residence, MWV reached out to the Saudi recruitment agency for help. MWV was connected to the embassy, where they were similarly instructed that MW2 would need to get a DNA test. A police officer from the 'aviation police' notified MWV that the Ugandan recruitment agency had threatened the police, and subsequently, the case file was 'reshuffled' and this particular officer was transferred out of the aviation police. MWV states they have been unable to gather the funds necessary for a DNA test, causing the case to fall through the cracks. They have not returned to the media to protect the identity and privacy of MW2's child. When asked what access to justice means to her, MW2 responded that she would like the father of her child to contribute to the child's education, health, and other basic needs, as she is currently employed as a cook for a school, earning only 15,000 Ugandan Shillings (approximately US\$4) per month.

Judith Nakintu's Story

Judith Nakintu's name and image are well known in Uganda, as her story has been widely reported in the media.²⁹⁴ Since Nakintu has been rendered unable to speak clearly, her story was relayed to the researcher by her family and their representative, Abdallah Kayonde, President of MWV. A mother of five children, Nakintu went through a Ugandan recruitment agency, Nile Treasure Gate, to Saudi Arabia as a migrant domestic worker in December 2019. After working for approximately three months without payment, in March 2020, Nakintu was informed by her employer that they were all going for a COVID-19 test. Nakintu does not remember leaving the house. The next thing she recalls is waking up in the hospital and being told she had been on life support for over a year. She was unable to speak, was paralyzed on her left side, and had a very large scar on her abdomen. According to hospital records (which the researcher reviewed), Nakintu was "initially admitted under the surgical department." A splenectomy (removal of the spleen) had been performed, and Nakintu had suffered a central line-induced thrombosis (blood clot), which led to an acute infarction (stroke). There is no mention of any accident or other trauma or injury.²⁹⁵

Nakintu's family was informed by her employer that they (the employer, his family, and Nakintu) had been in a car accident on their way to take the COVID-19 test. Nakintu's brother recounts that when the family demanded Nakintu's return to Uganda for treatment, the employer blocked his number and subsequently blocked any phone number used to try to communicate with him about Nakintu's situation. The family then turned to the Ugandan recruitment agency for assistance and was advised by the agency

294 See, for example, , Eddie Ssejjoba, 'Ugandan migrant worker loses kidney in Jeddah, Saudi Arabia' (30 January 2022), online: New Vision Official https://www.newvision.co.ug/category/news/ugandan-migrant-worker-loses-kidney-in-jeddah-NV_125732; The Independent, 'Trafficking: Nile Treasure Gate denies conspiracy over worker's missing kidney' (13 February 2022), online: The Independent <https://www.independent.co.ug/trafficking-nile-treasure-gate-denies-conspiracy-over-workers-missing-kidney/>; Kato Joseph, 'Nakintu Criminally Lost Kidney in Saudi Arabia, Suffers Brain Damage-Medical Report' (14 February 2022), online: Uganda Radio Network <https://ugandaradionetwork.net/story/nakintu-criminally-lost-kidney-in-saudi-arabia-suffers-brain-damage-medical-report>; Kato Joseph, 'Judith Nakintu Awarded UGX 270m Over Road Accident' (16 February 2022), online: Uganda Radio Network <https://ugandaradionetwork.net/story/saudi-arabi-an-court-awards-judith-nakintu-shs-270m-over-road-accident>; The Citizen Reporter, 'Saudi court awards Sh165 million to Ugandan domestic worker in 'stolen kidney' scandal' (17 February 2022), online: The Citizen <https://www.thecitizen.co.tz/tanzania/news/africa/saudi-court-awards-sh165-million-to-ugandan-domestic-worker-in-stolen-kidney-scandal-3720266>.

295 At least one media report states that "Police surgeons have now confirmed that Nakintu mysterious [sic] lost her kidney in a deliberate operation with no signs that she was involved in an accident." See Kato Joseph, 'Nakintu Criminally Lost Kidney in Saudi Arabia, Suffers Brain Damage-Medical Report', *ibid*.

to wait and allow Nakintu to receive treatment where she was in Saudi Arabia. Sometime later, the family was informed that Nakintu had been discharged and was in a shelter waiting to be repatriated. The family later learned that officials from the Ugandan embassy had visited the hospital to see Nakintu but had never communicated with her family. Upon her return home, Nakintu's brother reports that a representative from the Uganda recruitment agency came to the family, informed them that the agency had 'checked' and "everything was there," and offered them 30 million Ugandan Shillings (approximately US\$7500) for Nakintu's care.²⁹⁶ The family became suspicious, noticed the scar on her abdomen, and decided to take Nakintu for a medical examination.²⁹⁷ The Ugandan medical report (viewed by the researcher) states, "Spleen, normal in size. Renal bed is empty, no right kidney seen."

Nakintu's brother states that the family became aware of a "fake" court ruling in which Nakintu was awarded 270 million Ugandan Shillings (approximately US\$70,000) by a court in Saudi Arabia, to be paid by her employer as compensation for injuries sustained in a car accident. Interestingly, a news article quotes a lawyer for the Ugandan recruitment agency as saying the agency "has since been following the accident and even sued Dhafer to compensate Nakintu until the court delivered its verdict on January 30th, 2022, awarding the victim 270 million Ugandan Shillings minus legal costs." Nakintu's family insists they were unaware of any court case or ruling.²⁹⁸ In the same article, the Deputy Coordinator of the National Anti-Human Trafficking Department at the Ugandan Ministry of Internal Affairs is quoted as saying that the Ugandan recruitment agency "conspired with medical officers in Saudi Arabia to falsely claim that Nakintu was involved in an accident and that her internal organs were intact."²⁹⁹

Indeed, several individuals from the Ugandan recruitment agency have been criminally charged with 'aggravated trafficking in persons.'³⁰⁰ After arguing that the events occurred in Saudi Arabia and that the Ugandan recruitment agency merely acted within the bounds of its government licence, the individuals were granted bail in February 2023.³⁰¹ MWV states that before the individuals were granted bail, one 'coordinator' named Jeniffer asked to speak to the family and whispered that she had overheard a conspiracy involving the Ugandan agency, the Saudi agency, and government officials, whereby the Ugandan agency was to "get 30 per cent," and she herself had been promised 6 million Ugandan Shillings to "protect the situation." After being granted bail, however, Jeniffer has refused to speak to MWV or the family again. The Ministry of Gender, Labour and Social Development has suspended the recruitment agency's licence pending the outcome of the criminal case.³⁰²

MWV and Nakintu's family maintain that their efforts to obtain information from the Ugandan government, including the Office of the Director of Public Prosecutions, have been frustrating, as they are redirected from one ministry or department to another. However, they have recently made progress after meeting

296 It is interesting to note that in a media story the Ugandan recruitment agency is quoted as saying that "following pressure from the Embassy in Saudi Arabia and family, they bought an air ticket and flew her back to Uganda after raising Shillings 30 million in compassionate financial welfare support." See The Independent, n.289. Nakintu's family maintains that her employment contract provided for the employer to pay for both sick leave/benefits and her return flight.

297 The family states that, in fact, after their sustained efforts to get Nakintu's story covered by the media, including international media, they were contacted directly by the Office of the President of Uganda (State House), which arranged for a further medical examination to be done.

298 It is interesting how the recruitment agency allegedly brought a claim on behalf of Nakintu without her or her family's knowledge. The family learned of this "case" through the media and have subsequently been told that the monetary award was paid to the Ugandan Embassy in Saudi Arabia, but that the Embassy could not 'find' Nakintu to give the money to her. The family's position however is that they are not interested in receiving any compensation before the question of how Nakintu's kidney was removed is answered.

299 See Kato Joseph, 'Judith Nakintu Awarded UGX 270m Over Road Accident', n.289.

300 MWV questions the charge of human trafficking, arguing that Nakintu was sent to Saudi Arabia through a standard process via a licensed recruitment agency and fears that, in light of these facts, the charge of human trafficking may not be upheld. However, the offenses cited under the Prevention of Trafficking in Persons Act, 2009, include recruiting a person for exploitation (trafficking, s.3(1)(a)) and aggravated trafficking (s.4(c), (i), and (j)), which occurs when a syndicate "organizes, facilitates" the sending of a person for the purpose of "removal of any body part or organ," rendering the victim "a person of unsound mind" and/or "suffers mutilation." The punishment upon conviction for the latter is life imprisonment. The consent of a trafficking victim is irrelevant (s.3(4)).

301 See *Kato & 4 Others v Uganda (Criminal Miscellaneous Application 6 of 2022)* [2022] UGHCI CD 6 (27 October 2022), online: ULI.org <https://ulii.org/akn/ug/judgment/ughcicd/2022/6/eng@2022-10-27> which is the only reported decision that could be found in this case so far, in which the accused persons applied to the Uganda High Court (International Crimes Division) for bail.

302 See The Independent, 'Trafficking: Nile Treasure Gate denies conspiracy over worker's missing kidney', n.289.

with the Criminal Investigations Directorate ('CID'). They explain that the family was informed by the 'state lawyers' and the Ugandan police that they needed to advocate for investigations to be conducted in Saudi Arabia. The family notes that the only information they have received so far from the Ugandan Embassy in Saudi Arabia consists of photocopies of medical records viewed by the researcher (noted above) and a photocopy of the alleged court award, neither of which appear to be authenticated in any way. The police have also informed the family that they do not possess any original documents from Saudi Arabia. During the most recent court appearance in the criminal case, the prosecution was told to "get serious" or the charges would be stayed. MWV is hopeful that the recent meeting with CID will lead to progress. In any case, MWV indicates that the family has initiated a civil lawsuit against the individuals charged with trafficking and against the government, claiming compensation. However, MWV is concerned that the evidence needed to prove that the government failed to protect Nakintu – by ensuring her access to justice for the serious crime committed against her – has either never been gathered by the public agencies responsible or is in the possession of government officials but will never see the light of day.

B. KENYA

On 8 March 2024, one male and two female migrant workers, along with two community justice workers – one known as the 'Street Changer'³⁰³ – were interviewed in Nairobi. Additionally, one male migrant worker was interviewed virtually on 22 March 2024. Trace Kenya also shared information relayed by Kenyan migrant workers about their experiences abroad, as well as its insights into migrant workers' experiences in Kenya.

Migrant Workers

The community justice workers at the Kamkunji Community Justice Centre ('KCJC') in Nairobi assist migrant workers from East and Central Africa, including Ugandans, Tanzanians, Burundians, Rwandans, Sudanese, South Sudanese, and Congolese, who come to Kenya for the promise of better-paying jobs.³⁰⁴ The vast majority of these migrant workers are irregular migrants who cross the land border into Kenya. While some enter through irregular border crossings, many come through regular points, often without needing to provide any formal identification. As a result, combined with the prohibitive cost and bureaucracy involved in obtaining a work permit or a non-national ID (alien card), they work in the informal sector.

Trace Kenya advocates that these 'so-called aliens' should not be treated as foreigners. Trace Kenya also works to dispel the common notion that 'foreigners' are coming to Kenya to take jobs from Kenyans, a claim that lacks factual basis. Migrant workers in Kenya are either performing jobs that 'Kenyans don't want,' or they are 'creating opportunities for themselves.' However, authorities take every opportunity to 'criminalize them.'

Male incoming migrant workers primarily work as street vendors, while female incoming migrant workers mainly serve as domestic workers. The average income for these irregular immigrant workers is around 3000 Kenyan Shillings (approximately US\$20-25) per month. These male migrant workers primarily face challenges from the police and the Nairobi County Inspectorate, who arrest them for selling items like second-hand clothes or shoes without a vendor permit, or for selling prepared food items without the necessary food handler certificate, often confiscating their goods. Many are released after paying 'bail money' or 'taxes,' but others who cannot or refuse to pay are typically released without charge after being taken to court.³⁰⁵ The KCJC and the Street Changer maintain a positive working relationship with the police and local area chiefs,³⁰⁶ often negotiating their release.

303 The Street Changer, aka Peter Mweke Msanii, works with the homeless and street children in Kamkunji Constituency. See <https://www.facebook.com/people/The-street-Changer/100064618185302/>

304 Note that some are also refugees who have come to Kenya to seek safety and the promise of work. Official refugee status in Kenya allows the person to work. Also interviewed in this respect were a psychological counsellor and two legal interns from Kituo cha Sheria's Forced Migration Program. See <https://kituochasheria.or.ke/forced-migration-fmp-programme/>

305 steps have recently been taken in Kenya to decriminalize so-called 'petty offences' – misdemeanours that attract a small fine or jail time if the person cannot pay the fine – following many recommendations, including those from the National Council on the Administration of Justice (NCAJ) Committee on Criminal Justice Reforms. These offences are disproportionately committed by the poor and other vulnerable individuals who are over-incarcerated.

306 Local Area Chiefs are publicly appointed administrators in a local jurisdiction to maintain order and prevent crime. The KCJC and the Street Changer collaborate with the Local Area Chiefs and police to conduct community policing.

Ugandan women coming to Kenya as domestic workers, particularly in the households of Kamkunji and Starehe constituencies of Nairobi, primarily belong to the Karamojong ethnic group and are referred to as such. The Karamojong face challenges such as unpaid wages, being 'chased out' of homes, and subsequently ending up on the streets where they often become further victimized (including instances of rape or exchanging sex for a place to sleep). The KCJC and the Street Changer indicate that the *Karamojong* typically have either a basic written or verbal agreement regarding their pay rate, and when they seek help from the Local Area Chief to report breaches of this contract, the Chief will mediate, and employers usually pay the wages owed.³⁰⁷

These irregular immigrant workers are not reported to immigration authorities, likely because they primarily belong to the East African community. As long as they do not 'bring problems,' no one seems particularly concerned about their lack of documentation (except as noted above). The Street Changer has assisted *Karamojong* who decide to return to Uganda and reports that they often face more difficulties when crossing back into Uganda at regular border crossings due to the absence of identification documents than they do when entering Kenya.

MW4's Story

MW4 decided to go abroad for work after a friend, who was already employed in Qatar, promised to assist her in securing a job. When MW4 was informed that it would cost her nothing, she saw it as a fantastic opportunity to support her family. MW4 had no direct contact with the recruitment agency; she merely handed her passport to her friend, who returned it along with a visa and plane ticket to Qatar. MW4 received no information, no contract, and no training. No one at the airport asked her destination or purpose of travel.

When she landed in Qatar, MW4 was taken by airport security to an office where they took her passport and instructed her to wait while they 'figured something out.' She never saw her passport again, but shortly afterwards, she was taken directly to board another flight to Jeddah in Saudi Arabia, where she transferred to a third flight and finally landed in Riyadh. MW4 was then taken to a holding centre 'in the basement of the airport' where she waited for three days until her employer came and took her to his house. She was told that she would be paid at the end of two years. MW4 quickly realized that she was a 'slave' with 'no rights' while working 18-hour days and often faced threats of being beaten. MW4 recounts one incident where she forgot to wash the parking garage and was punished by being forced to stand outside barefoot on hot concrete in the 'worst Saudi sun' for hours until she developed sunstroke and blisters on her feet.

After five months in these conditions, MW4 told her employer that she 'really needed to be paid' because her family in Kenya was expecting her to send money home to care for her child. Instead, MW4 recounts that her 'boss,' who was a police officer, took her to the police station and reported her for stealing. MW4 says that after a 'threat,' her employer 'begged' her to come back, telling her that things 'would change,' but as soon as she returned to the house, she says that things got even worse; they took her belongings – her phone and all her clothes – and started denying her food, and locking her inside at night so that she would not run away. MW4 finally decided that she had to escape after she was locked inside a bathroom and told to clean it after the employer poured acid on the tiles. She remembers struggling to breathe and eventually leaving the bathroom with her skin 'looking scaly like a snake.' MW4 remembers the day that the employer left the house and apparently forgot to lock the door, she could not believe it and recounts going out and back in 'like ten times' before realizing that she was actually free.

When MW4 got out onto the street, she explained that she had no idea where she was; everything felt strange, as she had never been outside before. It was nighttime, and while she wandered the streets, the police picked her up and asked where she was coming from and where she was going. When she answered, "I don't know," and began to cry, the police took her to the station, where she explained that she had left due to how her employer had treated her. She remembered being told, 'you are in our country,' which she understood to mean that her employer could treat her however they wished.

³⁰⁷ Kituo cha Sheria's Forced Migration Programme similarly intervenes, with similar success, on behalf of refugees – officially permitted to work once they have a Refugee Card (ID) – who, in addition to working as domestic workers, often work as day labourers on construction sites and experience similar issues (failure to pay wages).

The police took her fingerprints, found her 'in the system,' and called her employer, who came and told her she could return to the house with him or stay there for two years and go back to Kenya with nothing. MW4 told him she would 'rather be in jail than return to that house; I just want to go back to my country.'

MW4 believes she was in the detention centre for about six months, along with many others in similar situations, some of whom told her they had been there for nearly a year with 'no follow-up on their cases.' No one was aware they could get help from their own country's embassy until a police officer – a Saudi who had been trained and worked in the US – came and noted that they had been there a long time. MW4 explains, 'That is when we started getting help.' She says that eventually, someone from the Kenyan Embassy came and arranged for a travel document (not a passport). MW4 states that she told her story to the person from the Kenyan Embassy, but no one suggested that she could or should seek justice for what happened, either in Saudi Arabia or in Kenya. She was never compensated and returned to Kenya 'without even a coin.'

MW4 did not seek formal justice for the abuses she suffered. Instead, upon returning to Kenya, she was referred to the Kamkunji Youth Empowerment Organization, where she worked through her trauma by sharing her story. Eventually, she began collaborating with an NGO called the Solidarity Centre, conducting community sensitization for domestic workers regarding ILO Convention 189. Through this, MW4 'regained her confidence' and started working with Footprints to Freedom, an organization of human trafficking survivors, to raise awareness in schools, churches, and communities about migrant workers' rights in Kenya, including minimum wage and how to join a union. MW4 explains that, like herself prior to her experience in Saudi Arabia, many in the community are unaware of human trafficking, modern slavery, and how migrant workers can be exploited and abused. MW4 feels that "our voices are not being heard as survivors, because people who speak on behalf of us are those people in the offices ... and we have so much to share. And we have much we want to know, [for example] what's happening in the government[.] ... We need to understand what is in the [BLAs] ... [Y]ou need also to have a monitoring and evaluation [system]." MW4 has been advocating for better protection through stakeholder meetings held by the National Employment Authority. She explains that NEA informed stakeholders that migrant workers can take six months of training at the National Industrial Training Authority (NITA), but she knows that most people prefer the two-week training offered by recruitment agencies. However, she is aware that agencies are 'sending lists of names' to NITA and obtaining certificates without any worker actually undergoing the training, and 'NEA is not monitoring the training.' MW4 believes that issues arise because employers 'on that side' expect to receive workers who have been trained. She feels that the Kenyan government should adopt the Philippine model to protect migrant workers.

MW5's Story

MW5 is educated as a teacher with a certification in Early Childhood Development and Education, enabling her to teach at primary levels up to grade three. She was employed at a small village school, earning 5,000 Kenyan Shillings (approximately US\$40) per month when a family friend approached her mother and suggested that MW5 could go abroad and earn 'a lot of money' as a teacher. When the friend explained that all MW5 needed was a photo, her mother agreed, and the friend took MW5 to an 'immigration centre' in Nakuru, where she received her passport 'that same day.' MW5 recalls that her parents and grandmother were very happy and proud, and everyone came to see her off when she left for Nairobi. There, she was taken to a recruitment agency that arranged for a medical examination, but she did not receive any training. MW5 remembers being shown a contract that was in Arabic only and being told, 'You are going to teach in Qatar' and 'sign here.' She recalls wanting to ask what the contract said, but she was in a room with many other people 'who were waiting to be served,' so she kept quiet.

Upon her arrival in Qatar, MW5's passport was taken, and she was directed to wait for her 'sponsor' to come. She was taken to a place with bunk beds, where she stayed for one week until a woman arrived and said, 'I am the sister of your boss. You will stay at my house until your boss comes.' When she got to the woman's house, she was told, 'Don't just sit there; find something to do. You can clean the bathroom.' MW5 was confused, but she recalled that the recruitment agency in Nairobi had informed her she was going to teach, so she decided to have courage and be patient. However, she was shocked to discover that the bathroom was covered in vomit. Although she was not accustomed to cleaning, she managed

to figure it out. After finishing, she was directed to clean the kitchen and began to realize that she had been deceived into going abroad as a domestic worker. A week later, when her employer came to pick her up a week later, MW5 was told, 'We don't dress like that in this country.' Her clothes were taken along with her passport, and she was given 'a long top, trousers, and a hijab' to wear. Upon arriving at the next house MW5 discovered that she was indeed expected to work there, including as a nanny to a small infant for whom she was responsible at all times, even during the night, as she was instructed to sleep in the child's room. The house was very large and housed the extended family, including two other small children. MW5 was expected to cook and clean for everyone and take care of the three children. She was not allowed to leave the compound by herself; she only went out with the family or with the family's driver to drop off and pick up the two children from school. MW5 reported being rudely treated, 'like a slave,' by everyone in the house, including visitors and the children who called her 'hadama,' which means 'maid.' There was no time for her to rest or eat; she was 'busy 24 hours.' MW5 was paid 750 Riyal monthly in cash, which she claims was equivalent to about 15,000 Kenyan Shillings at the time. However, she was unhappy and concluded after three weeks that she could not possibly continue in that situation for two years.

MW5 began to plan her exit, using her salary to purchase a smartphone so that she could study the area and arrange for a driver to be ready to take her to a police station the moment she had the opportunity to 'get out of that place.' She packed her belongings slowly so that no one would notice, ensuring she would be prepared when the chance arose. Eventually, after spending nine months in the house, the opportunity came in September, just after Ramadan, when the family was preparing for one of the young men's weddings. The house was busy, full of people coming and going. MW5 cooked for everyone, cleaned, and put the children to bed. Then she saw her chance to leave through an open gate. However, as she was exiting, the groom and his mother returned from delivering invitations and caught her leaving. She was brought back to the house and locked in a room while the police were called. MW5 overheard the grandmother telling the groom to inform the police that she had stolen from them and damaged the house, and that she should be punished and brought back. MW5 feels very fortunate that the groom refused to do this, telling his grandmother it would be 'haram' and that MW5 'had not done anything wrong.' When the police arrived, they listened as she explained that she was from Kenya and no longer wanted to work there. They took her to the police station, where she was interviewed and told her story. When she explained that her phone and passport had been taken, the police arranged for them to be brought back, and her phone was returned to her. She spent the night in a jail cell, terrified, exclaiming, "I've never slept in a cell! There were people taking drugs, cocaine, and bhang."

The next day, MW5 was taken to a deportation centre, where she found 'a very big family of so many nationalities', including many Kenyans. She spent a week at the deportation centre, where she heard many stories of abuse, including from two Kenyan women, one of whom who had been 'brutally caned' and her head shaved, and the other who had been taken to the deportation centre after she got into a physical confrontation with her employer when she refused to climb back up a tall ladder to clean a chandelier after falling down and injuring her leg. Because MW5 had a cell phone, she and these other women (whose phones had been confiscated by their employers and not returned) tried to call the Kenyan Embassy to report what had happened to them. MW5 remembers clearly that a woman answered and said, "You people are being warned every day and night about the conditions in Middle Eastern countries, but you don't listen!" and then hung up. Not to be deterred, MW5 says she called a second time, and this time a man answered. He did not say his name or what his job was, but he listened to her story and told her, 'Okay, we will check on that.' MW5 waited for a couple of days. When nothing happened, she tried to call back again, but no one answered. After a week in the detention centre she decided that she would have to "take matters into my own hands." She explained that she gathered a lot of courage and went to speak to a police officer who appeared to be in charge at the deportation centre, "people feared him because he was very cruel." Despite this, the officer checked and told MW5 that she had an open flight that had been booked by her employer, so she should be ready to leave any time. The next time she saw the officer she followed up and indeed, she was given her passport and taken to the airport that day. Upon landing in Nairobi, MW5 "thanked God."

MW5 recounts that when she returned to Kenya, she looked "like drama," and she was afraid to leave her parents' house for two months. She knew that neighbours were saying she had 'come back with a lot of money and just squandered it,' but her parents were very supportive. Eventually, she started applying for teaching jobs and found a school that pays her 15,000 Kenyan Shillings per month, the same amount

she earned in Qatar. MW5 also volunteers for Footprints to Freedom. When asked whether she tried to access justice for what happened to her, MW5 replied, “I’ve never thought of that. Because [in my mind] in Kenya, there’s a lot of corruption. And then there is no justice in Kenya. ... So I just saw that it will be a very long process. ... So I just decided to let it go.”

MW6’s Story

MW6 states that ‘for men, it is very different.’ He went through a recruitment agency to work in Qatar as a “company helper.” He explains that the Qatari people, especially the police, ‘are not bad’; rather, it is the Kenyan recruitment agencies that are ‘very corrupt.’ In MW6’s case, he paid the recruitment agency 150,000 Kenyan Shillings (approximately US\$1,500 at the time) and was informed that he would earn 60,000 Kenyan Shillings per month for a job as a security guard. MW6 did not see or sign any contract. Upon arrival in Qatar, he was informed that he would instead be paid 20,000 Kenyan Shillings per month but would not receive payment for the first month. When MW6 explained that he had been told he would be paid more, the response was, ‘we don’t know what your agency said there.’ Initially, the place where he was told to sleep, along with several other men, was ‘not a good place,’ but fortunately, the neighbours called the police, who came and checked the conditions and warned the employer that they would close the business if they found the workers living in such conditions again. Aside from the salary issue, MW6 says that he did not encounter any problems in Qatar; he was free to move around, fed regularly, and given rest days. After three months of his family in Kenya not believing that he could not send as much money as expected, MW6 decided he did not want to stay. Because he had breached his contract, when he resigned, the employer ‘calculated everything up’ and told him that he owed the company money and would have to pay for his own airfare back to Kenya. MW6 borrowed the money, paid the employer, and returned home. He did not take any action against the recruitment agency in Kenya, but he believes that ‘people need to be educated about contracts.’

MW7’s Story

MW7 is a migrant worker who has travelled and worked in many countries since 2010. He first decided to leave when ‘it was a terrible time in Kenya’ after the post-election violence in 2007 and 2008. He utilized a recruitment agency to secure a job in Dubai, UAE. MW7 states that most of these agencies are con men. You have to pay; there is no training or contract. While he received an offer letter, it did not specify the salary. The recruitment agency told him that he would have to pay 150,000 Kenyan Shillings to go but that once he got there, he would be paid US\$1500 per month. Although he ‘felt the pinch,’ he decided to go because this was an opportunity. He says he was not aware of his rights and did not ask any questions; he was just so excited and happy to be ‘going for a better life.’ However, when he arrived, he was given a contract and discovered that he would be paid 60,000 Kenyan Shillings (at the time, approximately US\$600) per month. This was the first time he realized that ‘this company is not respecting human rights.’ Then his passport was confiscated; he was housed in the same room with ten other men from many different countries and cultures,³⁰⁸ and he was fed ‘plastic rice.’ His contract stated that he would work 13 hours a day as a porter at the airport, but with a one-hour commute, he was working 15-hour days, seven days a week. He was not paid overtime, although he did receive one month of vacation after six months. After working for just over one year, he was offered a job at a military base in Afghanistan, and so he decided to resign.

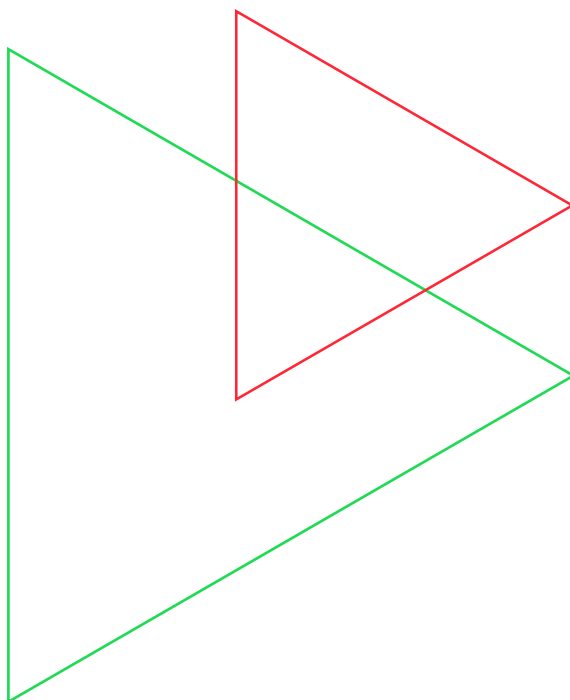
MW7 states that Afghanistan was better than Dubai. He was paid a flat rate of US\$800 per month, working 12 hours a day, seven days a week, with one month of vacation after every four months. The living conditions were ‘okay,’ except that he was in an active war zone, with fighting and ‘incoming missiles’ all the time, so he ‘slept with one eye open.’ MW7 continued working in Afghanistan until the contract ended due to a ‘drawdown,’ at which point he returned to Kenya. In 2016, he was assigned again to the US military base in Bagram, where he says the security situation got very bad, the base was attacked and some people were killed. MW7 returned to Kenya from Afghanistan in 2019 when there was another drawdown, and says that many of the workers there, including himself, suffer from PTSD. A large number of these workers, over one hundred, have filed a class action lawsuit claiming benefits and

³⁰⁸ MW7 explained that exposure to other cultures is not a bad thing, but the conditions they were housed in lead to conflict, and one man was even pushed off a balcony and died due to a ‘cultural misunderstanding.’

compensation. However, MW7 states that when he realized the process would take a very long time, and he learned that the employer was now 'coming to Africa' with employment opportunities in Cameroon, Niger, and Somalia, he felt he would not get another job with the company if he was suing them, so he decided not to join the lawsuit.

Instead, he discovered an opportunity to go to Canada through a recruitment agency, which informed him that he (along with six other Kenyans) would secure caregiver jobs with generous pay. MW7 explains that they each 'parted with 500k' and signed a contract, but before travel arrangements were made, they were informed that the head of the recruitment agency had passed away and, thus, there were no longer any jobs available. They sought a lawyer to recover the money they had spent but ultimately learned that nothing could be done after the death of the agency's head.

MW7 decided to go to Qatar to work during the World Cup, once again through a recruitment agency. Similar to his experience in Dubai, MW7 paid money but received no training or contract. He was told he would be going for four months to work as a security guard. Upon his arrival in Qatar, he discovered that the first month was for training, for which he would not be paid. He asked a friend in Kenya to visit the recruitment agency for assistance, but his friend learned that the agency was only responsible for getting him to Qatar. Once there, the contract was with the employer in Qatar, and there was nothing they could do because he had not signed any contract with the recruitment agency. He was instructed to wait and would be paid at the end of the four-month contract. He then contacted the Qatari Labour Department but was again informed that the contract stipulated he would be paid at the end of four months. He soon learned that many companies hiring for the World Cup said the same thing, and when workers began to complain on social media, 'people started demonstrating,' prompting payment for the second month. As a result of the demonstrations, representatives from FIFA came to inquire about the situation and promised that everyone would be paid after the World Cup ended. Despite these assurances, MW7 states that when the World Cup concluded, and 'FIFA had left,' migrant workers were rounded up 'in batches' and taken to the airport, where they were paid in cash as they departed. MW7 said, "I was lucky, I got paid for two months," but he knows many who were only paid for one month. There was no time and 'nowhere to go' to file complaints. MW7 emphatically states, "I don't think I believe in justice. In Kenya, unless you have money, you have no rights."



► Annex II. Ugandan Case Law Summaries on Migrant Workers' Access to Justice for Rights Violations

i. *Sospeter Tatyabala v. SOC SMG and Dreshak Enterprises Ltd. (High Court of Uganda, Civil Division), judgment of Stephen Musota J. dated 24 March 2015*

The plaintiff filed a claim against the defendants, the second being the Ugandan recruitment company, seeking compensation for injuries sustained while performing his duties, breach of his employment contract, unfair termination, special, exemplary, and general damages, interest, and costs. The plaintiff was recruited to work for the first defendant in Iraq as a security guard. He worked for nearly a year before developing back pain, which he reported to his supervisor. Two days later, he was terminated and deported back to Uganda approximately two weeks afterward. Upon returning to Uganda, the plaintiff received medical treatment, including surgery, for a repetitive strain injury and was left permanently incapacitated "to the tune of 17 per cent." The defendants alleged that the plaintiff was terminated for gross misconduct due to his refusal to perform his duties and his rejection of treatment for his 'ailments.' The Court found that since the plaintiff underwent a medical examination before travelling abroad for work and was deemed physically fit for the job, the injury occurred while he was performing his duties. Additionally, the Court determined that the injury suffered by the plaintiff was covered by the *Workers Compensation Act*, making the employer liable for compensation, which was awarded by the Court. The Court also granted special damages to cover the proven costs of the plaintiff's medical treatment in Uganda. Finally, as the defendants failed to provide any evidence to support the allegation of insubordination, nor did they issue any termination letter specifying the reasons for termination, the Court ruled that the defendants breached the contractual requirement to provide notice for termination and to pay severance, resulting in the plaintiff's wrongful dismissal. The Court awarded compensation in lieu of notice and general damages against the defendants jointly and severally.

ii. *C. et al. v. Attorney General and Uganda Veterans Development Ltd. (High Court of Uganda, Civil Division), judgment of Ssekaana Musa J. dated 14 April 2020*

Uganda Veterans Development Ltd. (the defendant) is a recruitment agency licensed under the Externalization of Labour Programme, in accordance with the (former) *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005*. The 12 plaintiffs were recruited by the defendant and sent to Iraq, where they were informed that they would be employed as domestic workers, earning US\$200 per month inclusive. The plaintiffs had not expected to be employed in domestic work. When they contacted the defendant to complain, they were told that this was the job they had been assigned. The plaintiffs subsequently complained to the Iraqi recruitment agency, where they were allegedly "threatened, beaten and their passports taken away". They were deployed as domestic workers and subjected to a range of abuses, including hard labour, forced labour, sexual abuse and non-payment of wages. They sought compensation and damages. The plaintiffs brought a claim against the Attorney General (AG), alleging that the government had failed in its duty under the *Regulations* to establish labour assistance centres and to monitor the practices of employers and recruitment agencies.

Given that the plaintiffs were recruited and signed contracts in Uganda, the judge determined that the Ugandan High Court had jurisdiction over their claims, despite the fact that their employment occurred in Iraq. The Court noted that the employment contracts required the employer to report monthly to the defendant on compliance with the agreement and on any "job challenges." It therefore concluded that the cause of action arose partly in Uganda and partly in Iraq, allowing it to be adjudicated in Uganda. The plaintiffs contended that they had been coerced into signing the contracts without reading or understanding them and were unaware they would be employed as domestic workers. However, the Court found no evidence of undue influence. It noted that the contracts were signed after the plaintiffs

obtained their work visas, and that “the doctrine of undue influence is not intended to save a person from their own folly. ” It also remarked that, given their travel abroad for work, it was reasonable to expect them to exercise extra caution before signing documents with legal consequences.

Regarding the claim against the AG, the Court acknowledged that “there was no one at the airport who would have interrogated the plaintiffs’ departure and possible employment terms and conditions in Iraq, ” as would have been expected under the government’s obligations to establish labour assistance centres. Although the language of the Regulations on this matter was permissive rather than mandatory, the Court nonetheless found that such centres are a “very important” means of fulfilling the government’s statutory duty to protect migrant workers, and that the government had failed in this obligation. While the Court described as “absurd” the plaintiffs’ experience of the “heinous ordeal of torture, sexual harassment or rape, long working hours, and general mistreatment, ” it concluded that they had not been trafficked but had voluntarily travelled abroad for employment, during which they suffered these violations. The case against the defendant recruitment agency was therefore dismissed.

iii. *Uganda v. Kyalimpa Godfrey and Kunywana Benon* (High Court of Uganda, International Crimes Division), confirmation of charges ruling of Susan Okalany J. dated 4 October 2022

This is a ruling in an ongoing criminal prosecution against the defendants, wherein the Director of Public Prosecutions alleges that the accused persons produced, printed, issued, and distributed a clearance list for the purpose of trafficking fifty migrant workers from Uganda, falsely claiming it was issued by the Ministry of Gender, Labour and Social Development (i.e., forgery and trafficking). The court found no evidence to indicate that the migrant workers were recruited without their consent or under duress, and since no statements from the migrant workers were submitted to suggest that they were trafficked, the evidence only proved that the defendants violated government requirements in processing migrant workers by falsifying an immigration document. This did not constitute trafficking. Ultimately, the court determined that the charges of forgery and attempting to defraud the immigration authorities by using the forged document to facilitate the exit of the migrant workers should be upheld, and the defendants committed for trial on this basis.

iv. *Uganda v. Kato Abubaker Sulaiman et al.* (High Court of Uganda, International Crimes Division), bail ruling of Susan Okalany J. dated 27 October 2022

This ruling concerns an ongoing criminal prosecution against the defendants for the offence of aggravated trafficking in persons. The victim in this case is MW3, and her family was interviewed for this research. This is the only reported ruling in this case thus far, regarding the defendants’ application for release on bail, which the prosecution opposed on the grounds that bail could only be granted by the trial court following the confirmation of charges. The court determined that all judges of the International Crimes Division of the High Court possess the jurisdiction to hear bail applications, regardless of whether it is a pretrial or trial court. The court noted (at paragraph 38) that “it has taken over five months since 25th February 2022 for the accused in this case to be committed for trial. The delay in conducting committal proceedings is often attributed to delays in concluding investigations, particularly in transnational crimes such as this one.” Consequently, the Court dismissed the objection and ordered that the defendants appear for a bail hearing five days later, at which hearing – as the researcher was informed by the victim’s family – the defendants were all granted bail.

► Annex III. Best Practices

1. The Philippines' Model

The Philippines has established a robust system for protecting Filipino migrant workers, both domestically (before departure and after return, along with support for their families) and internationally. Many stakeholders interviewed for this research, including migrant workers, spoke highly of the Philippines' model and suggested that it should serve as a basis for reforming the legal framework to protect Kenyan and Ugandan migrant workers. Therefore, it is described in some detail here, with an emphasis on the specific provisions that support access to justice for Filipino migrant workers.

► Overseas Workers Welfare Administration

The *Overseas Workers Welfare Administration (OWWA) Charter Act of 2004* ('OWWA Act') establishes the policy of the Philippines to "protect and promote the welfare of overseas Filipino workers and uplift their families' living standards," in accordance with national and international laws regarding migrant workers (s.2). This law pertains to all Filipino migrant workers registered with the Philippine Overseas Employment Administration ('POEA') and their beneficiaries in the Philippines (s.3).

Chapter I of the OWWA Act provides for the registration of membership in the POEA through the submission of an enrolment form processed at a designated processing centre and the payment of premiums of US\$25 or its equivalent, either in the Philippines or in the country of employment. Upon completion, new members receive an official receipt and an OWWA e-card. The POEA and the OWWA are jointly mandated to maintain an up-to-date database of members, or Overseas Foreign Workers (OFWs), with **membership considered active for the duration of the OFW's employment contract, or for two years for OFWs who voluntarily register** in the country of employment. Contributions are payable for each new contract (ss.5 and 6). The OWWA Act stipulates that no OFW shall be denied membership based on age, gender, nationality, religion, etc.

The OWWA is mandated to "take affirmative steps to enhance the access of overseas Filipinos and migrant Filipino workers to its programs and services" (s.12). It is governed by a Board of Trustees that includes the minister responsible for labour and employment, the respective Chairpersons of the Senate and House committees on labour and employment, a representative of the 'management sector' nominated by overseas recruitment agencies to serve a two-year term, **two representatives of migrant workers with a minimum of five years of overseas experience, and two additional female representatives of migrant workers who also have five years or more of experience**. The migrant worker representatives are nominated by registered OFW organizations or associations and serve for a two-year term (Chapter II s.13).

► Overseas Workers Trust Fund – Benefits and Services

Title II of the OWWA Act establishes the OWWA Trust Fund, which "remains the private funds of OFWs and shall be utilized exclusively for their benefit" in accordance with the provisions of the OWWA Act for social and welfare services (Chapter I, Article I ss.34 and 35). Title III, Article I, Section 44 of the OWWA Act provides for the **benefits and services available to OWWA members, which include insurance and healthcare,³⁰⁹ involuntary separation benefits, permanent and temporary disability benefits, survivorship benefits, funeral benefits, and life insurance**. Additionally, members can access **a loan guarantee fund for pre-departure loans and family assistance loans, a repatriation program, a reintegration program, and education and training benefits in the form of a 'skills-for-employment' scholarship, an 'education for development' scholarship, and (for seafarers only) an upgrading program**. Finally, OFWs are entitled to workers' assistance and on-site services.

³⁰⁹ There is a separate Medicare Program Fund that provides medical treatment for OFWs and their dependents. OFWs pay a mandatory premium of 900 pesos (approximately US\$15) for one year.

► Workers' Assistance and On-Site Services in Destination Countries

The OWWA Act mandates that the OWWA offer assistance and on-site services to all OFWs in regional and overseas offices. These **services include locating the worker, providing information and guidance, conducting psychosocial counselling and conciliation, and offering legal assistance.** It specifically states that “on behalf of the OFW, the OWWA may provide appropriate representation with employers, agents, and host government authorities.”

► Accountability Mechanism

To protect against corruption and mismanagement of members' contributions, the OWWA Act establishes criminal offences with severe penalties, including imprisonment for a term ranging from 1 to 5 years, along with fines between ten and twenty thousand pesos (approximately US\$176-353). It also imposes “absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government” for those found guilty of ‘failure, refusal, or delay’ in delivering OFWs' membership contributions collected by personnel stationed abroad, who cannot claim any immunity (e.g., on the basis of being diplomats).

► Regulation of Recruitment (Including Access to Justice for Violations)

The OWWA is supplemented by the *POEA Rules and Regulations* ('Rules') that regulate recruitment and provide legal assistance and enforcement measures. These measures include ‘anti-illegal recruitment programs’ that offer, among other things, **legal support to victims of illegal recruitment and related cases, along with** sensitization efforts. When necessary, the administrator of the programme is required to coordinate with ‘other appropriate entities’ for implementation.

Regarding legal assistance, the Rules state that **free legal assistance shall be provided “to victims of illegal recruitment and related cases including but not limited to legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counselling during preliminary investigation and hearings.”**

Victims of illegal recruitment can submit a written report or complaint (under oath) to the POEA administration at the head office as well as at regional offices. The Rules stipulate that surveillance of recruitment agencies should be conducted, and recommendations made for the issuance of closure orders by the POEA. Criminal proceedings may also be initiated. Administrative (non-criminal) complaints (e.g., violations of recruitment rules) are considered and resolved by the POEA Administration within 90 calendar days (i.e., three months). The Rules outline **various grounds for imposing administrative sanctions**, including charging (or overcharging) fees to the worker, inducing a worker to change their employment, substituting or altering employment contracts, withholding travel or other documents, and delaying salary payments. **Possible sanctions include reprimands and suspension or revocation of licences, along with remedies or reliefs that may be granted, and the obligatory refund of fees to the worker.** The decision must be documented in writing and include justifications (among other requirements).

► Complaints and Disciplinary Action Against Workers, Foreign Employers and Foreign Recruitment Agencies in Destination Countries

Part VII of the Rules addresses ‘disciplinary action cases’ for which the POEA Administration “shall exercise original and exclusive jurisdiction to hear and decide **disciplinary action cases against migrant workers, foreign employers, and principals that are administrative in character.**” Complaints can be filed with the Adjudication Office in the country of employment. **Disciplinary action may be taken against foreign employers and foreign recruitment agencies that default on their contractual obligations to the migrant worker and/or to their Philippine agent, commit ‘gross violations’ of overseas employment laws and rules, engage in ‘grave misconduct’ or “gross negligence leading to serious injury or illness or death of the worker,” and commit ‘offences involving moral turpitude.’**

Action can be taken in response to a complaint filed by ‘any aggrieved person’, or at the Administration's own initiative “based on verifiable or official reports.” If the employer or agent refuses to ‘submit to the jurisdiction’ of the Administration, they are temporarily disqualified from participating in the overseas

employment programme until they submit an answer to the complaint. They may also be temporarily suspended from the programme pending investigation “when the evidence of guilt is strong and there is reasonable ground to believe that the continued deployment to the principal/employer will result to further violation or exploitation of migrant workers.” The case must be heard by a Hearing Officer, and a decision rendered within sixty calendar days (i.e., two months) of the case being filed. The penalty, upon determination that the offence was committed, is suspension or disqualification from the programme unless subsequently cleared or the penalty is lifted.

Disciplinary action may also be taken against the OFW for offences including submitting false information for a job application, committing a crime against the laws of the host country or the Philippines, “unjustified” breach of the employment contract, embezzlement of funds, and “violation/s of the sacred practices of the host country.” Any person may file a complaint. Importantly, the Rules provide the following ‘legitimate reasons’ for a worker to abandon or withdraw from employment: exposure to hazardous and degrading working and living conditions; refusal by the employer or principal to grant, release, or remit wages and other benefits due to the worker; war, epidemics, or other calamities at the worksite; and violations of labour laws of the Philippines, the host country, or international labour laws. The same procedure outlined above regarding employers and recruitment agents applies to the handling of cases against migrant workers. A worker who is the subject of a complaint – and any worker who is arrested by the authorities of the host country – is disqualified from overseas employment unless cleared. Penalties for offences include suspension (of various lengths depending on the severity of the offence and whether it is a first or subsequent offence) and permanent disqualification from the program. **The Rules provide for the worker (and the employer/agent) to have legal representation, and submissions can be made orally or in writing (meaning the worker does not have to be physically present for the case to proceed).**

► Welfare Services (Requests for Assistance and Status Reports)

Regarding ‘welfare services’, the Rules specify that the POEA Administration “shall ensure that workers deployed overseas are amply protected and that their interest, well-being and welfare are promoted,” which includes ‘taking cognizance’ of requests for assistance from workers and their families. **Philippine recruitment agencies are accountable ‘for the faithful compliance by their foreign principals’ with their contractual obligations and for addressing complaints brought to its attention, including submitting reports on the ‘status or condition’ of an OFW.** A ‘deliberate failure’ by an agency or employer to act on a request for assistance or a complaint is subject to ‘appropriate’ sanctions by the POEA Administration.

► Conciliation of Complaints

The Rules also allow the Administration to conciliate any complaint at its discretion (i.e., conciliation is not mandatory) by scheduling a meeting of the parties within five days of receiving the complaint. If an ‘amicable settlement’ is reached, the Administration approves it, making it ‘final and binding’. If no settlement is reached, the complaint must be referred immediately to ‘the appropriate office’. The Administration is also required to disqualify an employer or agency from the programme if, based on the complaint and supporting documents, “the employer or principal is found to be remiss in the performance of its contractual obligations to its workers. ”

► Sensitization of Workers, Recruitment Agencies, Foreign Employers and the Public

Finally, the Rules establish a ‘comprehensive and integrated workers’ education programme’ that **encompasses all stages of recruitment and employment**, including the provision of ‘useful information’ to OFWs in addition to **regular orientation programmes that are country- and skills-specific**. The POEA Administration is mandated to conduct a “nationwide, multi-media and sustainable grassroots information campaign to raise public awareness” about the OFW programme. This includes offering ‘continuing orientation programmes’ for licensed recruitment agencies and providing orientation to foreign employers regarding the ‘requirements, standards, laws and regulations’ related to the recruitment and employment of OFWs.

► Capacity Building of ‘Case Officers’

Notably, the POEA Administration conducts training for OWWA Case Officers in ‘Case Management for Trafficked and Severely Exploited Migrant Workers’³¹⁰ – which encompasses distressed migrant workers, including victims of severe exploitation and trafficking – through a comprehensive manual that contains modules on:

- a. The principles, goals and phases of case management
- b. The OWWA processes and procedures in managing cases both overseas and in the Philippines
- c. The reintegration process
- d. Principles, techniques and mechanics in conducting stress debriefing
- e. Principles, techniques and mechanics in conducting counselling
- f. How to assist OFWs with behavioural and psychological disorders
- g. How to provide immediate health aid to physically ill OFWs

The Manual also includes **all relevant laws, policies, guidelines, sample case study reports, and forms that Case Officers utilize to effectively manage migrants’ cases**. The ‘Principles and Goals of Case Management’ encompass advocacy for the OFW, holistic support (social, psychological, medical, skills, and financial) for the OFW, client empowerment (respect for the OFW’s dignity and worth), and gender sensitivity. A core function of Case Officers is advocating for the OFW to secure necessary services and resources.

► Services to Overseas Workers in Distress or Other Need

Services for OFWs include psycho-social intervention, temporary shelter, and assistance in resolving disputes with their employers and recruitment agencies. If a settlement is not achieved, the **Case Officer must assist the OFW in filing appropriate charges, which include accompanying the OFW to the police to lodge a complaint in criminal cases and providing advice on legal options and processes for filing labour disputes.** Case Officers are also trained on the requirements for **tracking the services provided to OFWs and for the continuous evaluation of the accuracy, effectiveness, and success or failure of the actions taken.** Additionally, Case Officers are expected to systematically document progress, including preparing and updating case summary reports.

► Migrant Workers Resource Centres in Destination Countries (Including Legal Services)

Finally, the *Migrant Workers and Overseas Filipinos Act of 1995* mandates the **establishment of a Migrant Workers Resource Centre at Philippine embassies in countries with a significant number of OFWs.** These centres offer **counselling and legal services**, welfare assistance for **medical treatment**, information programs such as **post-arrival orientation** to promote social integration, **gender-sensitive programmes and activities** to support women migrant workers, **monitoring daily situations, circumstances, and activities affecting migrant workers**, and the **registration of undocumented workers.** The centres operate seven days a week, 24 hours a day, including holidays. The **labour attaché is tasked with coordinating the centre’s operations**, supported by a staff of foreign service personnel and officers representing organizations from host countries. The *Act* specifies that, “In countries categorized as highly problematic by the Department of Foreign Affairs and the Department of Labor and Employment, where there is a concentration of Filipino migrant workers, **the government must provide a lawyer and a social worker for the Centre.**” The Philippine Department of Foreign Affairs has a corresponding 24-hour information and assistance centre that guarantees a continuous network and coordination mechanism at the home office.

³¹⁰ OWWA and ILO, *Case Management for Trafficked and Severely Exploited Migrant Workers: A Manual for OWWA Case Officers* (2009).

► Data and Information Collection, Management and Sharing (Including Access to Justice Info)

The *Act* also establishes a ‘**shared government information system** for migration,’ which contains shared databases that include an “**inventory of pending legal cases involving Filipino migrant workers**” and “a tracking system of past and present **gender-disaggregated** cases involving male and female migrant workers.” Government agencies participating in the inter-agency committee responsible for contributing information to the databases include the OWWA, the POEA, the Department of Justice, and the Department of Labor and Employment, among many others.

► Financing

The *Act* establishes a **Migrant Workers Loan Guarantee Fund** with a ‘revolving amount’ of 100 million Philippine pesos (approximately US\$1,745) from the OWWA allocated as a guarantee.

► Funding, Oversight and Coordination of Legal Assistance

Finally, the *Act* establishes a **Legal Assistance Fund**, detailing how and in what amount it will be funded from certain existing government funds. It also creates the position of **Legal Assistant for Migrant Workers Affairs**, who is appointed by the President and is responsible for the provision and overall coordination of all legal assistance services for Filipino migrant workers. The responsibilities of the Legal Assistant are as follows:

- a. Establish guidelines for providing legal assistance to OFWs.
- b. Secure assistance, including hiring, from Filipino law firms to complement the government’s efforts.
- c. Administer the Legal Assistance Fund
- d. Keep and maintain the information system
- e. Establish linkages with the POEA, OWWA, Department of Labor and Employment, other government agencies, and NGOs that assist migrant workers.

The Legal Assistance Fund is solely dedicated to providing legal assistance to migrant workers, which includes covering the fees of foreign lawyers employed by the Legal Assistant to represent migrant workers facing criminal charges abroad.

2. UN Network on Migration’s Guidance on BLAs

The *Guidance on Bilateral Labour Migration Agreements* was developed by the UN Network on Migration’s Thematic Working Group 4 on BLMAs, co-led by the ILO and the IOM, “to assist countries of origin and destination in designing, negotiating, implementing, monitoring and evaluating rights-based and gender-responsive BLMAs, following a cooperative and multi-stakeholder approach” in line with the Global Compact.³¹¹ The *Guidance on BLMAs* emphasizes that it is essential for BLMAs to be grounded in labour migration information systems and to facilitate the enforcement of workers’ rights established in international and domestic laws by explicitly including provisions to prevent and address violations, as well as provisions for the involvement of social partners and other stakeholders.³¹² The *Guidance* also suggests areas of cooperation between authorities, which include information sharing, enhancing the level and efficiency of labour law enforcement, and establishing mechanisms for monitoring compliance.³¹³ Regarding monitoring, the *Guidance* stresses the importance of disaggregated data collection, reporting, analysis, and sharing “to understand what has worked and what has not worked,

311 UN Network on Migration, *Guidance on Bilateral Labour Migration Agreements* (February 2022), online: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_protect/%40protrav/%40migrant/documents/publication/wcms_837529.pdf [Guidance on BLMAs] at p.7.

312 At pp. 7-9 and 12.

313 At pp. 10-11.

and why” and to amend BLAs as appropriate. Some suggested indicators for monitoring reports and data analysis include the number of victims of abuses, the number of complaints (disaggregated by age, sex/gender, and type of complaint), the number of cases filed, decisions rendered and remedies granted, the number of migrant workers who received consular and other assistance (including legal assistance), and the number of workers who benefited from sensitization and prevention measures.³¹⁴

Other key recommendations applicable to the labour migration context in Kenya and Uganda are as follows:³¹⁵

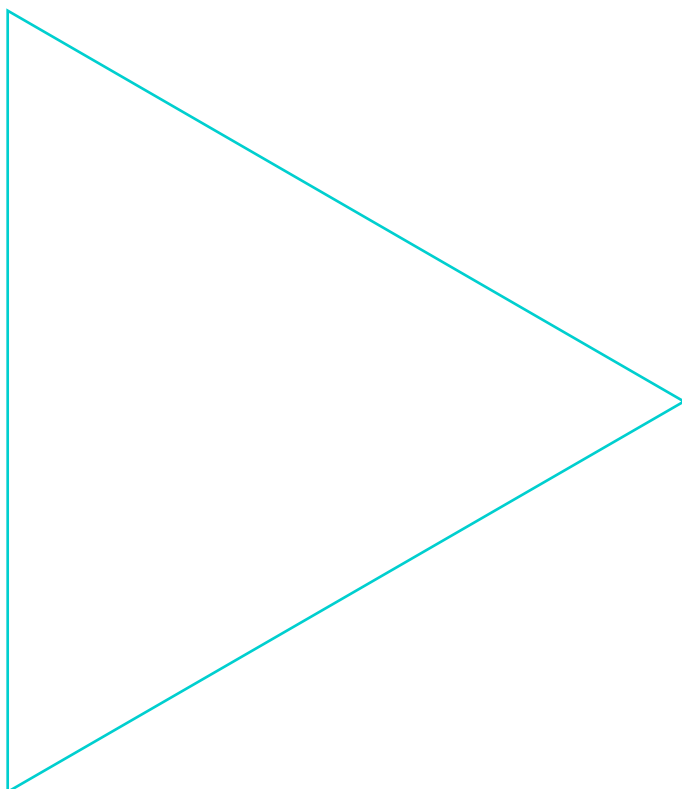
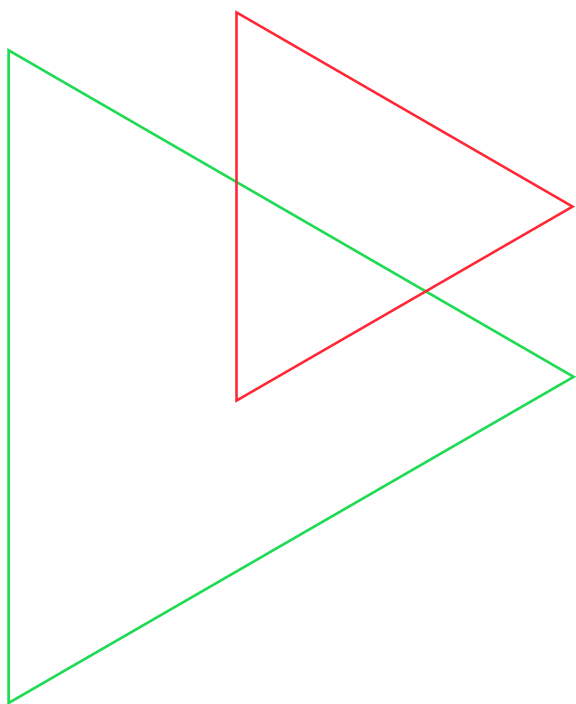
- BLAs should explicitly allow migrant workers to leave their employment of their own free will if they feel their rights have been violated. They also have the right to meaningful access to dispute resolution mechanisms to seek redress for such violations.
- BLA provisions on access to justice for violations of migrant workers’ rights should clearly outline the judicial and non-judicial complaint and redress mechanisms available in various circumstances – specifically, not only covering claims of contractual violations but also detailing how to submit complaints of abuse and other criminal offences to the appropriate authorities. Additionally, these provisions should identify the specific institutions and duty-bearers responsible for monitoring and enforcing migrant workers’ living and working conditions, and for assisting migrant workers in accessing these mechanisms, which should be supported through formal labour migration information systems. BLAs should also stipulate that complaints and redress mechanisms must be meaningful (that is, providing a remedy for the migrant worker) and at no cost to the migrant worker.
- Provision should be made either for the extension of the worker’s stay in the country for the duration of proceedings (including authorization to move about freely and work for a different employer during that period), or for an alternative mechanism to ensure that proceedings are followed through and completed in a timely manner, that orders for compensation and damages (and any other remedy for the migrant worker) are enforced, and that all monies due to the worker are transferred to them promptly and in full. For instance, bilateral agreements Canada has signed with migrant-sending countries specifically state that migrant workers are allowed to change employers and extend their residence status in the country to seek other employment if they lose their job through no fault of their own.³¹⁶
- BLA provisions should also clarify the roles and responsibilities of labour attachés, as well as other consular officials and authorities, in supporting migrant workers to address complaints, access dispute resolution mechanisms, and receive representation or support as an accused or victim in any criminal proceedings involving violations of their rights. This includes detailing how and by whom legal assistance will be provided and paid for.
- Migrant workers’ right to access timely and adequate information about how to lodge a complaint and seek redress for violations of their rights, along with references to an established and effective mechanism for disseminating such information – in a language and format that is comprehensible to the worker – should be clearly outlined, including the roles and responsibilities of the relevant institutions and duty-bearers.
- BLAs should ensure alternatives to detention (both in police stations/jails and in detention centres) and deportation as the default response to disputes with their employer. This should include provisions for action against reprisals by the employer and discrimination or reprisal by any public authority (such as police or immigration authorities), with specific reference to any domestic laws that prohibit such actions to promote transparency and accountability.
- To ensure women migrant workers can access support that addresses their specific needs, BLAs should outline how the sending and receiving countries will provide gender-responsive services.

³¹⁴ At pp.48-54 and Annex 6.

³¹⁵ At pp. 7-12 and 17.

³¹⁶ ILO *Multilateral Framework* n.60 at ANNEX II, V(i) para. 61.





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