

► Policy Brief

November 2024

Key Findings from an Assessment of the Kenyan Legal Framework for Access to Complaints and Remedy Procedures by Migrant Workers

► 1. Introduction

Exploitation, discrimination, and violence against migrant workers occur in employment settings worldwide, throughout all phases of migration, in various forms including excessive (and illegal) fees, unethical recruitment practices, contract substitution, confiscation of identity documents, restrictions on movement, overwork (insufficient rest periods), poor living conditions, wage theft, conditions resembling forced labour or slavery, and both physical abuse and sexual and gender-based violence.¹

In early 2024, the International Labour Organization (ILO) conducted a research study on the legal framework—laws, policies, institutions, and procedures—related to respecting, protecting, and promoting migrant workers' rights to access justice for human rights violations. The study evaluated the legal framework concerning Kenyan migrant workers who face rights violations at home or abroad, as well as the framework concerning migrant workers experiencing rights violations in Kenya. The goal was to make evidence-based, country-specific recommendations to improve access to justice, including legal mechanisms and outcomes for migrant workers—especially low-skilled workers, who are often the most vulnerable—within and from Kenya.

The research study culminated in a comprehensive Report that includes a literature review on the challenges faced by migrant workers, an examination of the international and regional normative framework, a thorough review of the existing domestic legal framework, a situational analysis based on an empirical study comprising case studies of migrant worker experiences, and the results of stakeholder consultations with duty bearers (government institutions responsible for respecting, protecting, and promoting the rights of the rights holders), as well as implementers and supporters/allies (such as employer and worker organizations, and justice system actors) who advocate for the rights holders and hold the duty bearers accountable. Additionally, the Report includes a gap analysis and eighteen recommendations for Kenya, each accompanied by a number of proposed actions (the "Report"). This policy brief summarizes the Report's findings and recommendations for Kenya.²

¹ 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. <https://jimp.au.int/en/documents/2020-12-09/strategic-framework-2020-2030>

² Given that this brief provides a summary overview of the Report, it should be referenced directly to fully understand the research findings that underlie the gap analysis and recommendations, as substantively set out in the Report and summarized in this brief.

► 2. The Kenyan Labour Migration Context

Recent statistics on labour migration in Africa indicate that the number of African nationals migrating for work is increasing, especially in the East and Horn of Africa region. According to data on international migration collected and analysed by the Population Division of the United Nations (UN) Department of Economic and Social Affairs, there were over 7.7 million African migrant workers in the East and Horn of Africa region in 2020.³ Labour migration – particularly among low-skilled workers – tends to be gendered, with women migrant workers more concentrated in the service and informal sectors, often working as domestic workers.⁴

Kenya serves as both a destination and transit country for both labour migrants and refugees, primarily from African nations, particularly those in East Africa. A 2019 study on labour migration within the East African Community found that Kenya hosts approximately 300,000 migrant workers.⁵ Male migrant workers from other East and Horn of Africa countries working in the informal sector in Nairobi (interviewed for the Report), described being criminalized by law enforcement, likely due to the security context surrounding terrorism. This situation blurs the distinction between irregular migrant workers from neighbouring countries and those who may pose a security threat, especially in Nairobi, where many foreigners reside and several terrorist attacks have occurred in recent years. Law enforcement typically views foreigners—which includes any African person with a foreign accent or those unable to speak a local language—through a security lens, encompassing irregular migrant workers and refugees who may also seek migrant opportunities. Interviewees reported that female migrant workers from neighbouring countries often work informally as domestic workers and suffer abuses from their employers, such as wage theft and being ‘chased out’ of their homes. As a result, they may end up on the streets and become further victimized, often facing rape or being forced to trade sex for shelter.

Kenya is also a country of origin for migrant workers of early 2023, with an estimated 4 million Kenyan migrant workers working abroad,⁶ in regions such as Asia, Latin America, the Caribbean, Oceania, Canada, and Australia.⁷ Many Kenyan migrant workers migrate to the Middle East and Gulf Cooperation Council countries, including Saudi Arabia, the United Arab Emirates, and Qatar, to take on low-skilled jobs such as domestic workers, cleaners, construction workers, hospitality servers, security officers, and taxi drivers.⁸

Kenyan migrant workers abroad face numerous challenges, including rights violations by recruitment agencies in Kenya and their foreign counterparts, foreign employers, and law enforcement and immigration authorities abroad. While the types of violations against workers’ rights are diverse, as previously noted, female migrant workers—often employed as domestic workers—typically endure physical, sexual, and psychological abuse, along with other unsafe working conditions and wage theft. Male migrant workers often experience financial exploitation by recruitment agencies. These challenges worsen when Kenyan consulate officials abroad refuse or fail—for any reason—to provide assistance. Consequently, many Kenyan migrant workers who leave or are forced away from unbearable employment situations end up in detention for extended periods before being deported or returned to Kenya at their own expense. Others simply vanish or return home in a coffin, as has been widely reported in various media and investigative reports from public bodies in recent years.⁹

All migrant workers, simply by being foreigners and due to other intersecting characteristics like gender, potentially face discrimination and stereotyping—whether conscious or unconscious—in their countries of employment.

3 IOM Global Migration Data Analysis Centre, *Migration Data in Eastern Africa* (May 2023), online: Migration Data Portal <https://www.migrationdataportal.org/regional-data-overview/eastern-africa> [accessed 18 September 2024].

4 African Union Commission, n.1 at p.12.

5 Abebe, T. and G. Mukundi-Wachira (eds.), 2023. *The State of Migration in East and Horn of Africa Report 2022* (International Organization for Migration (IOM), Geneva), online: <https://publications.iom.int/books/state-migration-east-and-horn-africa-report-2022> [accessed 8 January 2024] at p.53.

6 Republic of Kenya, Ministry of Labour and Social Protection, *New Hope For Labour Migrant Workers, As PS Meets Agencies And Home Care Training Institutions* (February 10, 2023), online: <https://www.labour.go.ke/new-hope-labour-migrant-workers-ps-meets-agencies-and-home-care-training-institutions> [accessed 9 January 2024].

7 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.

8 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.

9 See for example 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>; 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); 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).

► 3. Access to Justice for Violations of Migrant Workers' Rights

In the context of labour migration, access to justice fundamentally concerns ensuring that migrant Workers, whether emigrants or immigrants,¹⁰ have equal protection and treatment under the law, free from discrimination based on nationality, gender, age, disability, socioeconomic status, and migration status, among other factors.

Access to justice means more than just a migrant worker having a way to complain about violations 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 them for complaints and obtaining redress. Therefore, access to information is essential for achieving justice.
- Second, not only must a mechanism exist, but the migrant worker must also be able to utilize it. This means it should be both physically and financially accessible, and the worker needs to comprehend the process or have assistance to navigate it. This assistance could come from a union representative, legal counsel, or an interpreter if the proceedings are in a language unfamiliar to the worker.
- Third, the mechanism must be capable of providing remedies that are both appropriate and effective, and this should occur in a timely manner. Mechanisms for accessing justice concerning worker rights violations can be formal or informal and include workplace grievance processes, state-based non-judicial mechanisms such as informal conciliation or formal mediation by a labour officer, as well as state-based judicial mechanisms like labour tribunals or courts.

The inability to access justice goes beyond the adverse effects on the worker and extends not only to the worker's family but also to their community and to society. As noted above, while violations of migrant workers' rights occur in various ways and involve several actors, they are primarily perpetrated by recruitment agencies and employers. Public officials—such as consular officials, police, and immigration authorities—also violate migrant workers' rights, often by failing to recognize or respect those rights, likely due to a lack of knowledge or understanding of the rights and their associated obligations. When workers are exploited and abused without the responsible actors being held

accountable, it can lead to negative consequences for the broader business and labour environment, as well as the rule of law.¹¹ It is the state's obligation to prevent these consequences by ensuring that migrant workers whose human rights have been violated can access justice. This requires proactively identifying and addressing all aforementioned barriers and challenges by making sure that the legal framework—the laws, policies, institutions, and procedures aimed at addressing violations of workers' rights—not only exists but is implemented effectively.



¹⁰ An 'emigrant' is a person who leaves their country of origin to take up residence (whether lawfully or otherwise) in another country, and an 'immigrant' is a person who is residing (whether lawfully or otherwise) in a country that is not their country of origin.

¹¹ 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.

► 4. Barriers and Challenges Affecting Access to Justice for Violations of Migrant Workers' Rights in Kenya

The following barriers and challenges were identified by stakeholders who were interviewed for the Report, and by a substantive review and human rights analysis of the current legal framework.

Regarding the current legal framework protecting migrant workers in Kenya, strong laws are in place, but implementation is lacking. While the *Employment Act, 2007* outlines the labour rights of migrant workers, concerns arise around enforcement, as the National Employment Authority (NEA) and the Labour Inspectorate do not prioritize migrant workers' rights and access to justice for violations. Although the legal framework and institutions like the NEA and the Employment and Labour Relations Court are established, **a major issue is the lack of awareness among migrant workers and insufficient outreach by the government regarding the requirement for them to file complaints to enforce their legal rights and protections. Consequently, recruitment agencies are not held accountable under the existing laws.**

There is an inadequate structure for monitoring implementation and addressing the gaps between migrant workers' rights and complaints mechanisms that exist 'on paper' and the reality 'on the ground.' **Proper data collection, management, and reporting are lacking.** Additionally, a key challenge with the existing legal framework is the effectiveness of various government institutions in implementing their mandates, particularly the need for effective coordination among them. **Government institutions in the labour migration sector operate in isolation, with no referral pathways or coordination of oversight and accountability.**

Kenya has Bilateral Labour Agreements (BLAs) with at least Qatar and the Kingdom of Saudi Arabia. Although these agreements are publicly available on the National Employment Authority website,¹² they are not proactively shared with relevant stakeholders, including public institutions responsible for oversight. **Since the BLAs depend on the destination country to address violations of migrants' rights, they fall short of effectiveness.** The Kenya Senate Standing Committee on Labour and Social Welfare found that **"migrant workers lack formal mechanisms, including necessary consular**

assistance, that are helpful for self-improvement, well-being, and the protection of their rights."¹³ While the Kenyan Government is increasing the number of labour attachés in destination countries, there are concerns about whether they understand their protection mandate and possess the interest and capacity to fulfil it. The Commission on Administrative Justice remarked that most migrant workers do not know how to contact the Embassy or report violations of their rights.¹⁴ **Very few migrant workers who attempt to utilize the available mechanisms ever receive a remedy.**

The Labour Migration and Management Bill, 2024, was introduced in the Kenyan Senate on March 21, 2024, but as of the time of writing this Report, it has yet to be submitted for First Reading. While its stated objectives include promoting safe, fair, ethical, and orderly recruitment of workers, protecting the human and labour rights, and promoting the welfare of Kenyan migrant workers, as well as ensuring equal treatment of migrant workers in Kenya, the definition of 'migrant worker' is limited to Kenyan citizens, and **there are no substantial provisions in the Bill that protect migrant workers in Kenya. The Bill would eliminate some protections for migrant workers that are currently found in the Employment Act, such as section 86, which allows a complaint of any violation of the Act to be made to a labour officer or to the Employment and Labour Relations Court (ELRC), which would have exclusive jurisdiction to address the complaint. Furthermore, protections outlined in the Bill are discretionary rather than mandatory.**

Finally, a **systemic issue identified in the Report was insufficient funding and human resources** to provide effective consular assistance, as noted by both the Senate Standing Committee on Labour and Social Welfare and the Commission on Administrative Justice. For instance, there are few labour attachés in Kenyan missions abroad.¹⁵ The Employment and Labour Relations Court also encounters resource challenges in delivering access to justice. In addition to a lack of judicial officers to manage the caseload, there is also insufficient funding for the training of judges, who are not prepared for the specific challenges faced by migrant workers.

¹² See <https://nea.go.ke/web/agreements/>

¹³ See Senate Standing Committee Report, n.9 at p.7.

¹⁴ See CAJ Report, n.9 at pp.2-3, 36, 39, 42 and 43.

¹⁵ *Ibid.* and Senate Standing Committee Report, n.9 at pp. 7, 12, 15, 19, 21, 22, 24-25, 27-29.

► 5. Gap Analysis and Recommendations

Despite the current legal framework and the intentions and actions of duty bearers, supporters, and allies to implement this framework and ensure the respect and protection of migrant workers' human and labour rights, migrant workers in Kenya, as well as Kenyan migrant workers abroad, continue to have their rights violated and face significant challenges in accessing justice for these violations. While the efforts of the Kenyan Government to provide access to justice by establishing systems and measures, collaborating domestically and regionally, and negotiating BLAs are commendable, they still do not effectively remedy the violations suffered by migrant workers.

Considering that the legal framework already exists in most instances and contains both the rights of migrant workers to access justice and the obligations of duty bearers to ensure access to justice, the Report's analysis and recommendations—as summarized below—address a key concern with 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.

► GAP ONE: Access to Information – Sensitization of Migrant Workers, Training and Capacity Building of Duty Bearers, Data Collection and Management, Reporting, Coordination and Collaboration

While Kenya recognizes in policy documents¹⁶ that information is crucial for protecting workers, and that this information is provided to migrant workers through various means—primarily mandatory orientation/training programmes and websites—it is evident from stakeholder feedback that these measures are neither sufficient nor effective.

Therefore, the **Kenyan Government and judiciary should re-evaluate how this vital information is disseminated and take proactive measures to improve awareness** among migrant workers and the public authorities that provide services to them.



RECOMMENDATION 1: Systematic, Ongoing, Proactive and Targeted Dissemination of Information on Rights and Complaints Mechanisms

The Kenyan Government should be more proactive in informing migrant workers – both in Kenya and in destination countries – about their rights and how to access complaint mechanisms. The following actions are proposed to implement this recommendation:

- Training curricula for migrant workers – which is one of the mandates of the National Employment Authority (NEA), along with the National Industrial Training Authority – should explicitly include workers' rights and what to do, including how to access a complaint mechanism in the event of a violation or emergency.
- Gender-responsive¹⁷ information targeted at migrant workers in different sectors (specifically including the informal sector) and types of employment must be proactively disseminated.

¹⁶ 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.

¹⁷ Gender responsiveness means considering gender-based differences and addressing gender barriers (such as discriminatory gender norms and stereotypes) in the design and implementation of laws, policies, and programmes.

- Information on rights and obligations in the workplace must be disseminated in accordance with the relevant requirements (such as section 15) of the *Employment Act, 2007*.
- Gender-responsive information should be systematically and proactively disseminated to recruitment agencies and employers, on an ongoing basis, regarding their responsibilities toward migrant workers.
- Worker and employer organizations, non-governmental organizations (NGOs), and community-based organizations (CBOs) should receive support to provide information to migrant workers, as well as to train others, such as community paralegals and migrant worker advocacy and support groups, to do the same.
- Local government administrators, including area chiefs, should be trained on the labour migration process and the rights of migrant workers in relation to both recruitment agencies and employers. They should also be educated about access to justice mechanisms and how to utilize them, and they are required to disseminate this information within their areas of jurisdiction.
- Social media platforms should be employed to raise awareness and distribute essential information about rights, access to justice mechanisms, and ways to seek assistance. Labour officers, labour attachés, legal aid providers, and courts should be encouraged to use social media to inform migrant workers about the access to justice services they provide and how to access them.

RECOMMENDATION 2: Systematic and Substantive Training and Capacity Building of Duty Bearers

Frontline public officers and other implementers who interact directly and regularly with migrant workers, such as judges, magistrates, lawyers, paralegals, labour officers, enforcement authorities such as police and immigration officials, local administrators including area chiefs, consular officials, and labour attachés, are not sufficiently aware of migrant workers' rights in Kenya and Kenyan migrant workers and the corresponding obligations of duty bearers to assist these workers in complying with the law (including residency and work authorization requirements) and accessing justice for any violations of their rights. Therefore, systematic and substantive training and capacity building should be undertaken to ensure that public and judicial officials understand migrant workers' rights—particularly those commonly in irregular situations, such as the rights of establishment and residence for EAC nationals—and their corresponding obligations to protect and enforce those rights in a gender-responsive manner.

The training of public officials in Kenya is primarily conducted by or in collaboration with the Kenya School of Government (KSG). The KSG's mandate is to enhance the knowledge, skills, and competencies of public officials in national government ministries, departments, agencies, state corporations, county governments, and other devolved units, including National Government Administration Officers and local area chiefs. The KSG offers general courses



in professional development, such as corporate governance, as well as specialized courses on topics like data protection and access to information. Currently, none of the courses offered specifically focus on the respect for and protection of human rights in public service, which is a gap that needs to be addressed.

Other public institutions that provide specialized training for public officials and conduct broader public education efforts include the Commission on Administration of Justice (which features a Public Education, Advocacy, and Corporate Communications Department), the Kenya Law Reform Commission (which includes a Public Education division), and the Kenya National Commission on Human Rights (KNCHR), which has a Public Education Department. The KNCHR has developed a curriculum on '[Migration and Human Rights](#)' that addresses the international and domestic legal and institutional frameworks that protect the rights of migrant workers, as well as the National Labour Migration Policy. This serves as an excellent starting point for training public officials on migrant workers' rights in Kenya and beyond.

The training of judicial officers, including judges and magistrates, is primarily the responsibility of the [Kenya Judiciary Academy](#) (KJA), which has the mandate to support the acquisition and enhancement of judicial skills, covering both subject expertise and the social context in which judging occurs. The KJA collaborates with various national, regional, and international government and non-governmental organizations to provide relevant training programmes, such as training for Employment and Labour Relations Court magistrates and judges on equality and non-discrimination. However, training on issues specific to migrant workers is lacking, representing a gap that needs to be addressed.

The National Police Service has several training colleges for the different levels and divisions of police officers, all of which operate under the National Police Service Commission's Policy on Training and Development. The purpose of this policy is to ensure the continuous improvement of staff competencies, including respect for human rights and fundamental freedoms. Training on human rights issues in policing has been conducted by external organizations such as the KNCHR and the [International Commission of Jurists](#) (ICJ-Kenya).

All of the above institutions should ensure that duty bearers relevant to their mandate, whose responsibilities include migrant workers (whether in Kenya and/or abroad), are trained on the following topics generally and more specifically as they relate directly to the responsibilities of each category of duty bearer concerning migrant workers:

- i. Definition of a migrant worker (including relevant definitions under international and domestic law, and specific subsets of migrant workers such as

those in an irregular situation and those from EAC countries).

- ii. The domestic legal framework that regulates migrant workers, including:
 - a. The rights and responsibilities of migrant workers and their families regarding immigration (including residence and work/employment), recruitment and placement, workplace conditions, and social security in both Kenya and abroad.
 - b. The institutional framework outlining the mandate of each institution (ministry, department, agency, etc.) concerning migrant workers (including subsets of migrant workers), both in Kenya and abroad, and how each institution should interact and collaborate with others and public officers having mandates related to migrant workers (with specific emphasis on information-sharing responsibilities and modalities).
 - c. The responsibilities of relevant duty bearers (both at institutional and job-specific levels) that correspond to the rights and responsibilities of migrant workers and their families, particularly including their right to access information relevant to their situation, both generally and at the individual level.
- iii. The human rights of migrant workers, viewed through a gender-responsive lens (including workplace rights, social and economic rights, rights to residence and movement, as well as rights related to detention), alongside the types of abuses and violations that migrant workers experience (especially those affecting subsets of migrant workers with intersecting vulnerabilities, such as domestic workers, workers in the informal sector, and those in irregular situations).
- iv. The significance and requirements of access to justice for violations of migrant workers' rights, covering both formal and informal mechanisms (particularly the jurisdiction and procedures of each mechanism), referral pathways, and the rights of migrant workers to receive representation (whether legal or otherwise), interpretation, and a remedy.

Given the KNCHR's mandate and expertise in this area, it is recommended that it lead the development of training curricula for various institutions and categories of duty bearers. Training should not be a one-time event but should occur 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.

RECOMMENDATION 3: Systematic Disaggregated Data Collection by all Duty Bearers

While the National Employment Authority collects data, and this data serves as one of the sources for the Kenya Labour Market Information System (KLMIS), it does not seem that data is gathered on migrant workers generally, nor is it disaggregated into subsets of migrant workers (such as regular versus irregular status). If such data is collected, it is not publicly accessible on the NEA Integrated Management System website, nor is it a key labour market indicator on the KLMIS website. Disaggregated data is crucial for policymaking and interventions that are responsive and tailored to address specific characteristics and vulnerabilities of migrant workers, who are not a homogeneous group. Making data publicly accessible is essential for transparency and accountability and for the rights of migrant workers and the general public to access information. Given that Kenya has the Integrated Management System and the KLMIS, which are interconnected, these systems should be updated to gather and publish data specific to migrant workers both in and from Kenya, while ensuring compliance with the *Data Protection Act, 2019*. The following actions are proposed to implement this recommendation:

- Data specific to migrant workers should be systematically collected by all duty bearers—including the NEA, the Ministry of Labour and Social Development/labour officers, labour attachés, and the courts—and disaggregated by, at a minimum, sex, age, nationality, job type/sector, country of origin, country of employment, and migration status. This should include both the utilization and outcomes of their services, which encompass not only the number of complaints made by migrant workers but also the time taken for services to be provided and the outcomes (redress) achieved. This information should be made publicly available and regularly updated.
- While the NEA's Labour Migration Integrated Management System serves as a source of data for the KLMIS, these systems should be better harmonized, incorporating indicators specific to migrant workers—both migrant workers in Kenya and Kenyan migrant workers. They should also be integrated with other data collection systems from various ministries (like the Ministry of Foreign Affairs), departments (such as the Directorate of Immigration Services), agencies, and courts that have labour migration mandates (both domestically and internationally). Furthermore, these systems should be made more user-friendly by utilizing or connecting with other platforms accessible to a broader audience



(like a mobile application). A fully integrated information management system should offer different levels of access for various users (i.e., duty bearers, implementers/supporters such as worker and employer organizations, human rights institutions/NGOs, and rights holders like migrant workers and the general public). This design will enable 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.

RECOMMENDATION 4: Labour Officers and Labour Attachés Should Systematically Record and Report on Actions Taken to Support Migrant Workers' Access to Justice

To ensure accountability in fulfilling their roles and responsibilities, public officials tasked with helping migrant workers access complaint mechanisms and processes — particularly labour officers (including labour inspectors) in Kenya and labour attachés (or other consular officials) in destination countries — should be required to report on their performance of obligations and duties. A good example of this can be observed in Sri Lanka and the Philippines, where both countries require labour attachés to submit reports that include data on complaints received from migrant workers. This data is entered into an information management system and is disaggregated by gender, nature of the complaint, and destination country. The following actions are proposed to implement this recommendation:

- The recommended integrated labour migration information management system should be used to report all complaints received and the associated actions taken.
- Reporting should include follow-up actions that are labelled for completion or referral to another mechanism, which should also be monitored within specified timelines.
- To the extent that reporting complaints and follow-up actions is not mandatory, it should become mandatory and be clearly included in BLAs.
- Destination country reporting requirements outlined in BLAs should also be recorded in the information management system and cross-referenced with the responsibilities of labour attachés or other authorities from the country of origin that may be accountable for taking action.

RECOMMENDATION 5: Improve Collaboration and Information Sharing Among Government institutions with a Labour Migration Mandate, and Between Government and Civil Society

Many stakeholders interviewed for the research study noted the lack of effective coordination, collaboration, and information sharing among various duty bearers, not only between public institutions and authorities (including police, immigration, and border officials) but also among public institutions, employer organizations, trade unions, and other actors in the broader labour migration sector, such as NGOs, CBOs, and grassroots organizations. Therefore, enhanced coordination, collaboration, and information sharing—across borders—among all labour migration stakeholders are necessary to ensure the timely and effective provision of assistance and support to migrant workers for filing complaints and accessing remedies for rights violations. To the extent that some collaboration and information sharing is already occurring, for example, through tripartite arrangements, initiatives should be upscaled and supported (or responsibility assumed)



by the Kenyan Government to ensure the participation of all relevant duty bearers and supporters/allies, specifically including the Kenya National Commission on Human Rights, which has a dual mandate to promote (including research, law reform, sensitization, and capacity building) and protect (including receiving and investigating complaints) all human rights.

The following action is proposed to implement this recommendation:

- An integrated information management system should be established by the government—following data protection and access to information laws—and should allow for varying levels of access and input from worker and employer organizations, as well as other civil society actors, the KNCHR, and the Judiciary. This system aims to facilitate information sharing, referrals, and follow-ups, especially concerning complaints, investigations, and active legal proceedings involving migrant workers.

► GAP TWO: Monitoring and Enforcement in Kenya

Effective monitoring and enforcement of compliance with employment contracts and other rights of migrant workers in the workplace are necessary to identify and address violations, thereby ensuring access to justice for migrant workers facing such violations. In Kenya, the responsibility for proactive monitoring and enforcement of migrant workers' rights primarily rests with labour officers. The legal framework is in place and is generally sufficient regarding the obligations of these duty bearers and the processes they must follow to fulfil these obligations. However, effective implementation—especially regarding the responsibility to monitor workplaces and recruitment agencies, including through inspections—is hindered by a lack of capacity.

Migrant workers in irregular situations in Kenya face significant barriers in reporting and filing complaints. While the *Employment Act, 2007* states that migrant workers have the right to non-discrimination and equal protection under labour laws, regardless of their status, Section 5 of the Act limits the definition of a migrant worker to those who are 'lawfully' in Kenya. Similarly, the proposed *Labour Migration and Management Bill, 2024* restricts the definition of 'migrant worker' (and thus the application of the law) to citizens of Kenya.

RECOMMENDATION 6: Migrant Workers in irregular Situations Should Not be Criminalized/ Detained/Deported, and Options for Regularization Should Be Explored

Article 9 of the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which Kenya has ratified, states regarding migrant workers who are not compliant with the laws concerning authorization to work in a destination country that, "... the migrant worker shall, in cases where 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), in part, 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." Furthermore, Kenya's Labour Migration Policy states in section 4.8 regarding 'Protection of Migrant Workers with Irregular Status' that "Migrant workers whose entry or stay in a country is irregular are very vulnerable to exploitation and have no avenue for legal redress, as they are afraid of contacting the authorities for fear of arrest or deportation. To enhance regular labour migration, the government will strengthen labour inspections to eliminate foreign workers in irregular situations in the country; ... [and] explore opportunities for regularizing the status of Kenyan migrant workers in irregular situations." Finally, regularization was a key issue and recommendation from several stakeholders interviewed for the Report, particularly in cases where migrant workers from the East Africa region working in the informal sector are criminalized by law enforcement. This concern further relates to reducing the use of immigration detention and deportation, which some view as a systemic human rights issue.¹⁸

The following actions are proposed to implement this recommendation:

- The legal framework should provide protection for migrant workers in irregular situations in Kenya. This should be accomplished by ensuring that law enforcement (policing), labour inspections, and the receipt of complaints by labour officers that lead to identifying a worker as being in an irregular situation do not result in criminal or immigration detention and deportation. This can be achieved either by establishing an institutional 'firewall' between police, labour officers, and immigration authorities

¹⁸ See for e.g., Kenya National Commission on Human Rights, *A Survey Report on the Status of Migrants in Places of Detention in Kenya* (2020), online: https://www.knchr.org/Portals/0/A%20Survey%20Report%20-Status%20of%20Migrants%20in%20%20Detention-%20FINAL_1.pdf

or, preferably, by explicitly requiring coordination among these agencies to assist workers in becoming regularized. For example, they should be informed of the rules and processes necessary to obtain residence and/or work permits relevant to their specific situations.¹⁹

Detention in prisons should only be used in cases where a migrant worker has committed a serious offense that could lead to criminal prosecution.²⁰ The use of immigration detention should be examined as a systemic human rights issue, for example, by the Kenya National Commission on Human Rights and/or the Commission on Administrative Justice.

Kenya's proposed *Labour Migration and Management Bill* should be amended to ensure that migrant workers in Kenya are not excluded by definition (i.e., eliminate the citizenship requirement in the definition of a migrant worker), and that migrant workers in Kenyan (specifically including those with irregular status) receive protection. In this regard, the bill should be revised to align with the Labour Migration Policy's goal to 'eliminate irregular status' by explicitly providing for the regularization (not deportation) of migrant workers with irregular status.



► GAP THREE: Access to Complaints Mechanisms

Access to justice comprises both procedural and substantive aspects. For mechanisms aimed at ensuring access to justice to be effective, all these aspects must be addressed. Moreover, due to the specific and intersecting vulnerabilities of migrant workers, especially women migrant workers, concrete and targeted interventions must be implemented to tackle the inherent power imbalance in the relationship between migrant workers and their employers and recruitment agencies when the rights of migrant workers are violated.

RECOMMENDATION 7: Migrant Workers Must be Facilitated to File Complaints, Including by Removing Legislative Barriers

The following actions are proposed to implement this recommendation:

- Discriminatory eligibility restrictions on access to the courts for migrant workers in irregular situations should be identified and removed (e.g., section 5 of the Employment Act, 2007, which provides protection to migrant workers "lawfully in Kenya").
- The time restriction on eligibility to file complaints of unfair termination in s. 45(3) of the Employment Act, 2007—which requires an employee to have been employed for at least a year before they can complain of unfair termination—should be revised downward.
- Section 86 of the Kenyan Employment Act, 2007—which states that a complaint of any violation of the Act can be made to a labour officer or the Employment and Labour Relations Court—has been proposed for deletion by the Labour Migration and Management Bill, 2024. This deletion should be removed from the Bill (section 86 should be retained in the Employment Act).
- Legal aid providers, paralegals, community justice organizations, local administrators such as area chiefs and councils, and community policing initiatives should be supported to assist migrant workers in filing complaints by educating them on referral pathways and providing capacity-building for informal dispute resolution, particularly for migrant workers in irregular situations and the informal sector.

¹⁹ See, for example, ILO Labour Migration Branch, *Protecting The Rights Of Migrant Workers in Irregular Situations And Addressing Irregular Labour Migration: A Compendium* (Geneva, 2021) at pp.51 and 52.

²⁰ See UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants* (7 February 2018), online: https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf, esp. paras. 10 and 12. See also UN GA Res. 43/173 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (9 December 1988), online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=Any%20form%20of%20detention%20or%20imprisonment%20and%20all%20measures%20affecting,a%20judicial%20or%20other%20authority.>

- Consideration should be given to ways in which the burden of proof in employment matters for migrant workers may be eased by relaxing evidentiary requirements regarding proof of an employment relationship or by shifting some of the evidentiary burden onto the employer. For example, the employer could be required to demonstrate that wages were paid and other benefits provided in compliance with the law.
- Facilitating the monitoring and reporting of violations of workers' rights in destination countries should include specific measures to ensure domestic workers can report instances where their freedom of movement has been restricted. This could involve an app, a helpline, the use of social media, and cooperation with local and international human rights NGOs, workers' organizations, and other relevant entities in destination countries. While the National Employment Authority has a 24-hour helpline, none of the stakeholders—particularly the migrant workers—interviewed for the Report were aware of it. Therefore, greater awareness efforts for this important tool are necessary. Additionally, Kenya should consider developing and implementing an app similar to that being created by the Ugandan Ministry of Gender, Labour and Social Development. This app would allow for remote check-ins and raise a flag if the migrant worker does not interact with it after a certain period. Such an app should be launched alongside targeted awareness campaigns to ensure users recognize the importance of checking in for their own protection.
- Assistance should be provided to migrant workers in filing complaints with the relevant authorities in destination countries, including through the use of 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 (such as the Migrant Workers' Association recently established by KUDHEIHA, the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers). This association could undertake monitoring and assist with the complaint filing process.



RECOMMENDATION 8: Explore Opportunities for the Establishment of Migrant Workers' Resource Centre (Or Similar Provision of Services) in Destination Countries

For Kenyan migrant workers in destination countries who can move freely and are situated in or near urban centres where embassies are located, as well as for migrant workers who have been rescued from other areas of the destination country, establishing a Migrant Workers' Resource Centre similar to the one of the Philippines is strongly recommended. Kenya should seek opportunities to provide such services in a 'one-stop shop' setting within destination countries. This 'one-stop shop' should serve as the foundation for all initiatives aimed at protecting migrant workers and facilitating their access to justice, specifically including:

- i. Registration of all migrant workers upon arrival in the country (post-arrival orientation).
- ii. Ensuring the provision of free language interpretation and legal aid;
- iii. Provision of victim support services;
- iv. Provision of gender-responsive programmes and outreach activities to provide targeted assistance and support to women migrant workers; and
- v. Collecting data and reporting on complaints and outcomes.

RECOMMENDATION 9: Kenyan Migrant Workers Should Not Be Penalized for Failing to Register with the Kenyan Authorities

Mechanisms to ensure that migrant workers are aware of and can comply with the requirement to register with Kenyan authorities in destination countries need to be strengthened. In this regard, proposed clause 35 of Kenya's Labour Migration and Management Bill, 2024 – which would penalize a Kenyan migrant worker for failing to register with Kenyan authorities within three months of employment in a destination country, by imposing either imprisonment or a fine – should be removed. Similar to the criminalization of migrant workers in irregular situations, penalizing migrant workers for failing to register – although likely intended to 'encourage' them to register for their own protection – is not a human rights-based approach to protection. It contributes to over-incarceration, which is costly for the government and increases the likelihood of involuntary repatriation and/or the inability to send remittances (especially if a fine is imposed on the migrant worker), adversely affecting not only the worker

but also their family, particularly when migrant workers are often unaware of such legal requirements. Instead, the migrant worker should be simply registered. While it is important for a migrant worker to register with the NEA and/or mission in the destination country, it is the Kenyan Government's responsibility to ensure that this is done in a way that does not impose an additional financial burden on the migrant worker.

RECOMMENDATION 10: Physical Access to Courts Should Be Enhanced

Physical barriers to accessing justice include the physical access to courts, which are often spread out across urban centres with considerable distances between them. Kenya is a vast country. While the Judiciary of Kenya already has mobile courts for certain types of matters, there should be consideration for expanding this service to cover employment issues before magistrates and the Employment and Labour Relations Court.

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 claims against their employers, as well as those who are victims of criminal offenses resulting in prosecution of their employer (or anyone else), should be granted sufficient time to remain in the destination country without the risk of detention or deportation until a final decision on the merits of their case is reached. This applies to both migrant workers in Kenya and Kenyan migrant workers. The following actions are proposed to implement this recommendation through BLAs and the legal framework governing incoming labour migration:

- Arrangements should be made to allow a worker to engage in alternative employment so that they can support themselves while proceedings are ongoing.
- Additionally, provisions should be established to ensure that a migrant worker can participate in dispute resolution proceedings after returning to their home country.
- The same provisions should apply to migrant workers in Kenya, including agreements or coordination with the migrant worker's embassy or consulate to provide support, such as safe housing. Every alternative to detention should be considered and made available to migrant workers in irregular situations.

RECOMMENDATION 12: Ensure Timely Resolution of Complaints

- As a corollary to the preceding recommendation, provisions should be made to ensure the timely resolution of complaints. The following actions are proposed to implement this recommendation:
- Duty bearers – labour officers and courts – should have sufficient resources and capacity to fulfil their obligations in this regard.
- Options for informal and rapid dispute resolution mechanisms (such as alternative dispute resolution by local area chiefs, paralegals, community-based organizations, and labour attachés, as well as increasing the capacity of labour officers to undertake informal resolutions and mobile labour courts) should be expanded, with appropriate capacity building of duty bearers, including training on relevant laws and workers' rights, ensured.
- 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 that it is resolved in a timely manner.
- The Kenya National Council on Administration of Justice should ensure that prosecutions of offenses related to employment matters, as provided for in the *Employment Act, 2007* – whether by labour officers or the Director of Public Prosecutions – are heard by the court specialized in employment matters (i.e., the Employment and Labour Relations Court).



RECOMMENDATION 13: Migrant Workers Should be Provided with Legal Aid and Assistance

Ensuring legal assistance for migrant workers should continue until the final outcome of proceedings, specifically encompassing the enforcement of judgments and orders for remedies. The following actions are suggested to implement this recommendation:

- Labour officers should notify a migrant worker's embassy or consulate and the relevant umbrella representative association—workers' organizations, employers' organizations, or associations of recruitment agencies—when a complaint is lodged by a migrant worker in Kenya, facilitating the provision of legal and other assistance to all parties involved.
- The Kenyan *Legal Aid Act* should be revised to include migrant workers—explicitly those in an irregular situation—as a category of eligible recipients on par with refugees and internally displaced persons for employment matters. Additionally, the existing Judiciary fund for 'pauper briefs' should be intentionally made accessible to all migrant workers in Kenya,²¹ including raising awareness about its availability when filing a complaint with the ELRC and assisting them in accessing it.

► GAP FOUR: Access to a Remedy

A key component of access to justice is access to a remedy. Securing an effective remedy for migrant workers require the systematic enforcement of judgments and orders for compensation, restitution, and sanctions against recruitment agencies and employers. While some jurisdictions impose licensing fees or require a bank guarantee to cover migrant workers' claims, others enforce penalties such as revoking a license or banning future hiring of migrant workers if an agency or employer fails to pay the ordered amounts. This serves as an incentive for compliance. Concerning employers, this can be complemented by additional regulatory mechanisms outside the labour migration management framework, which issue permits or licenses necessary for operation. Additionally, agencies and employers may be publicly identified and shamed by publishing their names—such as on the oversight body's website, whether governmental (e.g., the NEA) or self-regulatory—in a list of those who have been de-registered or had a license or permit revoked.

²¹ Kenya offers 'pauper briefs' (legal representation) by advocates for indigent litigants at no cost, although an application is required and initial court filing fees for this application still apply. However, the fund for pauper briefs is not controlled by the Judiciary and is mainly used for indigent participants in criminal cases, not for civil proceedings like employment matters.

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

The following actions are proposed to implement this recommendation:

- Statutory requirements for recruitment agencies to provide a bank guarantee as a condition of accreditation or licensing (as outlined in reg. 3(g) of the *Labour Institutions (General) Regulations*, 2014) should be systematically enforced, and these bank guarantees should be utilized to compensate workers for violations by the recruitment agencies. Data regarding this issue should be collected and made publicly available to ensure transparency and accountability.
- Foreign employers should also be mandated to provide a bank guarantee or security bond upon signing an employment contract with a migrant worker in every instance (as stated in section 84 of the *Employment Act, 2007*, which is substantially replicated in clause 33 of the *Labour Migration and Management Bill, 2024*, though it is currently discretionary and not mandatory), and these bank guarantees or bonds should be used to compensate workers for violations by the employer. Discretionary provisions for bank guarantees or security bonds should be made mandatory and enforced in all cases. Data regarding this issue should be collected and made publicly available to ensure transparency and accountability.
- Section 88 of the Kenyan *Employment Act, 2007* – which stipulates enforcement of employment contracts made outside of 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 either be retained or replicated in the *Labour Migration and Management Bill, 2024*.
- Kenya's *Labour Migration and Management Bill, 2024* should be amended to remove the caveat that a Kenyan recruitment agency's responsibility to repatriate a migrant worker is exempted "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 the migrant worker's responsibility to cover the costs of their repatriation follows only a clear determination of the worker's 'sole fault' for the termination, meaning an impartial determination of just cause (or other justifications) for termination made by an adjudicator in a fair hearing following due process.



RECOMMENDATION 15: Sanctions Such as Imprisonment and Fines for Offenders Provided Under Labour Laws Should be Reviewed and Harmonized

Sanctions such as imprisonment and fines for offenders specified in labour laws should be reviewed and aligned with those for offenses under other laws to ensure they serve as an adequate deterrent. For example, while the *Kenyan Employment Act, 2007* allows for imprisonment of up to two years for individuals convicted of using or recruiting for forced labour, the same offense under the *Counter Trafficking in Persons Act* carries a minimum sentence of 30 years. Likewise, Section 85 of the *Employment Act, 2007* states that it is an offense to employ a migrant worker outside of Kenya or to arrange for someone to leave Kenya for this purpose without meeting the attestation requirements, with a penalty of up to six months in prison and/or a fine. In contrast, the punishment for trafficking under the *Counter Trafficking in Persons Act*, including for financing, controlling, aiding, or abetting trafficking, is a minimum prison sentence of 30 years. Finally, in this context, the *Labour Migration and Management Bill of 2024* would penalize recruitment agents who substitute contracts or withhold travel documents with up to two years of imprisonment or a fine of up to three million Kenyan Shillings (approximately US\$23,000), which seems strangely disproportionate.

► GAP FIVE: Bilateral Labour Agreements (BLAs)

Recent meetings of the African Labour Migration Conference, the Regional Ministerial Forum on Migration, and others have addressed the necessity of incorporating effective complaint procedures into BLAs, which include communication platforms and case follow-up procedures.²²

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 to implement this recommendation:

- i. General references to compliance with 'international labour standards' in BLAs should be supplemented by explicit provisions for comprehensive complaints procedures and dispute resolution mechanisms, including timelines and clear referral pathways. A good example of this is Article 13 of Uganda's Memorandum of Understanding with the UAE.²³
- ii. 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, along with provisions for their use in compensation if an employer or recruitment agency is found at fault.
- iii. Processes and mechanisms to ensure access to justice for migrant workers who are victims of criminal offenses (such as sexual offenses, trafficking, organ harvesting) by a foreign recruitment agency, an employer, or any other individual—such as victim services and provisions to give evidence at trial and provide a victim impact statement during sentencing—should also be explicitly included.
- iv. Specific provisions should be made to extend a migrant worker's status and regularize it, if necessary, for the time required to resolve a migrant worker's complaint and any related remedies.
- v. Cooperation between state parties through Joint Technical Committees should be strengthened by

increasing the frequency of and funding for JTC engagements, ensuring representation of national human rights institutions (i.e., the Kenya National Commission on Human Rights) and migrant workers in the JTCs.

- vi. Provisions for cooperation between state parties should also be enhanced to outline specific actions to be taken by destination countries to assist and facilitate the origin country's measures to protect its migrant workers and ensure their access to justice in the destination country, along with a requirement to report on all actions taken.
- vii. Provisions in standard employment contracts attached to BLAs that violate migrant workers' human rights—including restrictions on engaging in 'political or religious affairs,' which violate freedoms of expression and religion—should be eliminated.
- viii. General references to 'penalties' for failing to fulfil 'responsibilities under the contract' should be revised to provide explicit notice of such responsibilities and the associated sanctions for non-compliance, for both migrant workers and employers.

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 the Kenya National Commission on Human Rights should also be involved in the development of BLAs to encourage engagement and ownership among all stakeholders responsible for implementation and oversight.

Reference should be made to the best practice guidelines on BLAs issued by the UN Network on Migration.²⁴

RECOMMENDATION 17: BLAs Should be Publicly Available and Proactively Disseminated to Relevant Stakeholders

Since BLAs serve as the framework outlining the responsibilities of governments to recognize the rights of migrant workers and ensure their protection in destination countries, a lack of awareness among migrant workers and their supporters about BLA requirements and protections creates a knowledge barrier. This barrier hinders timely and efficient referral and coordination of support and assistance to

22 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].

23 Uganda's memorandum of understanding (MOU) with the United Arab Emirates (UAE) outlines a process for 'dispute resolution in employment.' In any conflict between a worker and an employer, a complaint must be submitted to the complaints department of the UAE Ministry of Human Resources and Emiratization, "with a view to an amicable settlement." If the dispute is not resolved within two weeks, it will be referred to the appropriate judicial authorities in the UAE. A migrant worker is not required to pay fees for court proceedings but must cover their own costs lawyer.

24 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. See esp. pp. 7-12, 17, 48-54 and Annex 6. See also the Report at Annex III.

access available mechanisms for resolving complaints, which adversely impacts migrant workers' access to justice. To fulfil their obligations to provide access to information, ensure transparency and accountability from governments in respecting and promoting the human rights of migrant workers, and facilitate awareness among workers, employers, and recruitment agencies about compliance with their obligations, all BLAs should be proactively disseminated to relevant stakeholders, such as unions and umbrella organizations representing employers and recruitment agencies, and made easily searchable and accessible online.

► GAP SIX: Funding and Resource Capacity

Adequate resources—both financial and human—are essential to ensure that the welfare of migrant workers is fully protected and that all migrant workers can access justice both in Kenya and in destination countries, irrespective of their migration status. The Commission on Administrative Justice has identified insufficient funding for effective consular assistance as a systemic issue, stemming from the way the public sector is budgeted and how resources are allocated.²⁵ The Employment and Labour Relations Court and the wider Judiciary also encounter resource challenges, such as a shortage of judicial officers and courts, in providing access to justice in Kenya.

Both Kenya's *Labour Migration Policy* and the *Labour Migration and Management Bill, 2024* allow for the establishment of a fund to support labour migration and/or the welfare of migrant workers. As of the time of writing this Brief, efforts are underway to create such a welfare fund.²⁶ Whatever model of welfare fund is implemented or developed, specific provisions should be made to fund legal assistance to ensure access to justice for all migrant workers.



RECOMMENDATION 18: A Dedicated Fund for Legal Assistance Should be Established Through Legislation

A separate fund should be established exclusively to provide legal assistance to migrant workers, including covering the fees of foreign lawyers representing migrant workers facing criminal charges abroad. The legal assistance fund should not be limited to providing aid to Kenyan migrant workers but should also extend support to migrant workers in Kenya. This support should include legal assistance in both non-judicial matters (for example, conciliation or mediation by labour officers) and judicial proceedings before Magistrates' Courts and the Employment and Labour Relations Court, as an alternative or supplement to the above recommendations regarding amendments to the *Legal Aid Act*.

²⁵ See CAJ Report, n.9 at p.36.

²⁶ See ILO, *ILO Supports Kenya to Establish Migrant Workers Welfare Fund* (4 November 2024), online: <https://www.ilo.org/resource/news/ilo-supports-kenya-establish-migrant-workers-welfare-fund>.

Contact details

ILO Country Office for Ethiopia,
Djibouti, Somalia, Sudan
and South Sudan

Menelik II Avenue,
ECA Congo Building, 5th and 6th Floor
P.O Box 2788, Addis Ababa, Ethiopia

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